RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE DIRIDON STATION AREA PLAN AMENDMENT ADDENDUM TO THE DOWNTOWN STRATEGY 2040 FINAL ENVIRONMENTAL IMPACT REPORT, AS ADDENDED, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, prior to the adoption of this Resolution, the Director of Planning, Building and Code Enforcement of the City of San José prepared an Initial Study and an Addendum for the Diridon Station Area Plan Amendment, Planning File Nos. PP19-082 and GP20-007 (the "Initial Study/Addendum"), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively "CEQA"); and

WHEREAS, the Diridon Station Area Plan Amendment (the "Project") analyzed under the Initial Study/Addendum consists of the General Plan Amendment amending the "Planned Job Capacity and Housing Growth Areas by Horizon" table in Appendix 5, the Land Use/Transportation Diagram showing land use designations on certain properties within the boundaries of the Diridon Station Area Plan (sometimes referred herein as "Plan") and transportation street typology designations, expanding the Diridon Station Area Plan Boundary, and the Diridon Station Area Plan, which includes other text amendments and amendments to diagrams for the Diridon Station Area Plan to reflect the updates to the Plan including the addition of equity as a critical component, increases in maximum building height limits, transportation network changes, changes to parks and open space and infrastructure in the Plan areas, updated design guidelines, implementing of Climate Smart San José and updated GHG Reduction Strategy and Parking strategy, and aligning the amended Diridon Station Area Plan to the City's Downtown Strategy 2040; and

WHEREAS, the Initial Study/Addendum concluded that implementation of the Diridon Station Area Plan Amendment would not result in substantial changes due to any new impacts not considered in the prior certified Downtown Strategy 2040 Final Environmental Impact Report (Resolution No. 78942), and all addenda thereto; and

WHEREAS, the Initial Study/Addendum concluded that implementation of the Diridon Station Area Plan Amendment would not result in substantial increase in the severity of previously identified significant effects in the prior certified Downtown Strategy 2040 Final Environmental Impact Report; and

WHEREAS, the Initial Study/Addendum concluded that implementation of the Diridon Station Area Plan Amendment would not result in substantial changes with respect to circumstances that will require major revisions to the prior certified Downtown Strategy 2040 Final Environmental Impact Report; and

WHEREAS, the Initial Study/Addendum concluded that implementation of the Diridon Station Area Plan Amendment would not affect one or more significant effects discussed in the prior certified Downtown Strategy 2040 Final Environmental Impact Report due to substantial new information or information of substantial importance, and

WHEREAS, the Initial Study/Addendum concluded that implementation of the Diridon Station Area Plan Amendment would not affect one or more significant effects previously examined that will be substantially more severe than those disclosed in the prior certified Downtown Strategy 2040 Final Environmental Impact Report; and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Addendum for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Addendum for the Project and the Downtown Strategy 2040 Final Environmental Impact Report are on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and on the Department of Planning, Building, and Code Enforcement's website and are, by this reference, incorporated into this Resolution as if fully set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Addendum and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Addendum prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/Addendum represents the independent judgment and analysis of the City of San José, as lead agency for the Project.

The City Council designates the Director of Planning, Building and Code Enforcement at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence

that the Project will have any new significant effect on the environment and does hereby adopt the Addendum prepared for the Project (Planning File Nos. PP19-082 and GP20-007). The Initial Study/Addendum is: (1) on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113 and is posted to the Department of Planning, Building, and Code Enforcement's website and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

RESOLUTION NO._____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CERTIFYING THE DOWNTOWN WEST MIXED-USE PLAN ENVIRONMENTAL IMPACT REPORT AND MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT IMPACTS, MITIGATION MEASURES AND ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED

WHEREAS, the proposed Downtown West Mixed-Use Plan includes: a General Plan Amendment, Diridon Station Area Plan ("DSAP") Amendment, Planned Development Rezoning, Planned Development Permit, amendments to the historic landmark boundaries of the Southern Pacific Depot and San José Water Company, Historic Preservation Permit Amendment for the San José Water Company, a Vesting Tentative Map, a Development Agreement, and other approvals to facilitate the development of up to 5,900 residential units; up to 7,300,000 gross square feet (gsf) of office space; up to 500,000 gsf of active uses such as retail, cultural, arts, etc.; up to 300 hotel rooms; up to 800 limited-term corporate accommodations; up to two event and conference centers totaling up to 100,000 gsf; up to two central utility plants totaling approximately 130,000 gsf; logistics/warehouse(s) totaling approximately 100,000 gsf; approximately 15 acres of open space; and infrastructure, transportation, and public realm improvements, all on approximately 80 acres (the "Project"); and

WHEREAS, approval of the Downtown West Mixed-Use Plan would constitute a project under the provisions of the California Environmental Quality Act of 1970, together with related state and local implementation guidelines and policies promulgated thereunder, all as amended to date (collectively, "CEQA"); and

WHEREAS, this Resolution certifying the Downtown West Final Environmental Impact Report and adoption of CEQA Findings, a Mitigation Monitoring and Reporting Program, and Statement of Overriding Considerations is a companion to the following approvals relating to Downtown West: a General Plan Amendment (Resolution No. ___); amendments to the Diridon Station Area Plan (Resolution No. ___); an override of the Santa Clara County Airport Land Use Commission's inconsistency determination (Resolution No. ___); the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. ___); Planned Development Rezoning, including a General Development Plan (Ordinance No. ___); a Planned Development Permit (Resolution No. ___); amendments to Title 20 of the San José Municipal Code (Ordinance No. ___); approval of a Vesting Tentative Map (Resolution No. ___); amendments to the landmark boundaries of the San José Water Company Historic Landmark and the Southern Pacific Depot Historic District (Resolution Nos. ___ and ___); an amendment to Historic Preservation Permit File No. HP16-002 (Resolution No. ___); approval of Major Encroachment Permits (Resolution No. ___); approval of the Construction Impact Mitigation Plan (CIMP) (Resolution No. ___); and approval of partial vacation of certain streets within Downtown West (Resolution Nos. _____); and

WHEREAS, the City of San José ("City") issued a Notice of Preparation (NOP) of an Environmental Impact Report that was filed with the California Office of Planning and Research State Clearinghouse and circulated to responsible agencies, trustee agencies, involved federal agencies, and other interested agencies and members of the public on October 23, 2019, in accordance with CEQA Guidelines Sections 15082(a) and 15375; and

WHEREAS, the City held a public scoping meeting on November 7, 2019, to discuss the proposed project and receive input on the scope and contents of the Draft Environmental Impact Report for the project (the "Draft EIR"); and

WHEREAS, the 30-day public comment period on the NOP concluded on November 22, 2019, after which the Department of Building, Planning, and Code Enforcement took comments received at the scoping meeting and during the public comment period under consideration during preparation of the Draft EIR; and

WHEREAS, the City concurrently filed and distributed a Notice of Completion and a Notice of Availability for the Draft EIR (State Clearinghouse No. 2019080493) on October 7, 2020; and the DEIR was circulated for public review and to the appropriate agencies and interested parties for a sixty two (62) day comment period from October 7, 2020 to December 8, 2020, in addition to providing printed copies of the Draft EIR upon request, as City Hall and San José Public Library Branches were closed due to the COVID-19 pandemic; and

WHEREAS, the First Amendment to the Draft EIR, which is comprised of comments received by the City on the Draft EIR during the public review period, responses to those comments, and revisions to the Draft EIR, was published on April 16, 2021; and

WHEREAS, the City is the lead agency for the project, and has prepared a Final Environmental Impact Report for the project pursuant to and in accordance with CEQA, which is comprised of the Draft EIR together with the First Amendment to the Draft EIR, including revisions to the Draft EIR made in the First Amendment (collectively, all of said documents are referred to herein as the "FEIR"); and

WHEREAS, the project applicant, in coordination with the City, made certain modifications to the project subsequent to publication of the Draft EIR and in response to comments on the Draft EIR, which are detailed in the First Amendment to the Draft EIR and which, as analyzed in Sections 1.2.2 and 1.2.3 of the First Amendment to the Draft

EIR, do not constitute "significant new information" as defined in State CEQA Guidelines Section 15088.5 but rather clarify, amplify, or make insignificant modifications to the Draft EIR and, for this reason, recirculation of the Draft EIR is not required; and

WHEREAS, pursuant to CEQA Guidelines Section 15088(b), the City provided notice to public agencies that commented on the Draft EIR of the availability of the Final EIR on the City's website, including the written responses to the respective agency's comments, at least ten (10) days prior to the City's action certifying the FEIR; and

WHEREAS, the FEIR concluded that implementation of the project would potentially result in significant adverse effects on the environment; and

WHEREAS, the FEIR outlines mitigation measures and alternatives that would substantially lessen or avoid some, but not all, significant effects of the project; and

WHEREAS, CEQA requires that, in connection with the approval of a project for which an environmental impact report has been prepared which identifies one or more significant environmental effects of the project, the decision-making body of a public agency make certain findings regarding those effects and adopt a mitigation monitoring or reporting program and make a statement of overriding considerations for any impact that may not be reduced to a less-than-significant level; and

WHEREAS, on April 28, 2021, the Planning Commission of the City of San José reviewed the FEIR prepared for the Downtown West Mixed-Use Plan at a duly-noticed public hearing, considered the FEIR and testimony and information received at the public hearing, and recommended that the City Council find that environmental review for the proposed project was completed in accordance with the requirements of CEQA and further recommended that the City Council adopt this Resolution; and

WHEREAS, on May 25, 2021, the City Council conducted a duly noticed public hearing at a regularly scheduled meeting to consider the FEIR and approval of the project. The City Council has heard and considered the public testimony provided to it at the hearing and has further considered written materials and oral testimony presented on behalf of the City, the project applicant, and other interested parties. The City Council has reviewed the entire record of this proceeding regarding the alternatives, mitigation measures, environmental impacts analyzed in the FEIR, overriding considerations for approving the project, and the proposed Mitigation Monitoring and Reporting Program (MMRP) attached as Exhibit A and incorporated fully by this reference. The entire record was made available to the public.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

1. That the above recitals are true and correct and made part of this Resolution; and

2. That the City Council finds that the public has been afforded ample notice and opportunity to comment on the EIR; and

3. That the City Council does hereby find and certify that the FEIR has been prepared and completed in compliance with CEQA; and

4. That the City Council certifies it was presented with, and has independently reviewed and analyzed, the FEIR and other information in the record located in File Nos. GP19-009, PDC19-039, AND PD19-029 at the City's Department of Planning, Building and Code Enforcement, San José City Hall, 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113 and located on the internet at https://downtownwestadminrecord.com/, and has considered the information contained therein, including the written and oral comments received at the public hearings on the FEIR and the project, prior to acting upon or approving the project; and

5. That the City Council does hereby find and certify that the FEIR represents the independent judgment of the City of San José ("City") as lead agency for the project; and

6. That the City Council does hereby find and recognize that the FEIR contains additions, clarifications, modifications, and other information in its responses to comments on the Draft EIR, or obtained by the City after the Draft EIR was issued and circulated for public review, and does hereby find that such changes and additional information are not significant new information, as defined in CEQA Guidelines Section 15088.5, because such changes and additional information have not changed the EIR in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project proponents have declined to implement; and

7. That the City Council does hereby find and determine that recirculation of the FEIR for further public review and comment is not warranted or required under the provisions of CEQA; and

   I. That the City Council does hereby make, pursuant to Section 15091, the following findings, as set forth below, with respect to the significant effects on the environment of the project, as identified in the FEIR, with the understanding that all of the information in this Resolution is intended as a summary of the full administrative record supporting the FEIR, which should be consulted for the full details supporting these findings.

   II. That the City Council has balanced the economic, legal, social, technological, and other benefits of the project against the unavoidable environmental risks that may result, and finds that the specific economic, legal, social, technological, and other benefits outweigh the unavoidable adverse environmental effects, as set forth in more detail below. The City Council, therefore, finds the adverse environmental effects of the project are "acceptable", and hereby adopts the statement of overriding considerations as set forth below.

   III. That changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen significant environmental effects, as identified in the Final EIR.

   IV. Mitigation measures have been identified to reduce significant impacts to less than significant.

   V. That the City Council, pursuant to Section 21081.6, hereby adopts the MMRP attached hereto as Exhibit A, adopts each mitigation measure set forth therein, and imposes each mitigation measure as a condition of the proposed project's approval.

DOWNTOWN WEST MIXED-USE PLAN
CEQA FINDINGS

These findings are organized as follows:

Section 1 provides a description of the project proposed for adoption and project objectives.

Section 2 provides findings regarding mitigation measures. Subsection 2A provides findings related to significant impacts that cannot be avoided or reduced to less-than-significant levels, and subsection 2B provides findings regarding mitigation measures related to potentially significant impacts that can be avoided or reduced to less than significant levels through mitigation measures proposed for adoption as part of the project.

Section 3 evaluates the different project alternatives and the economic, legal, social, technological, and other considerations that support approval of the project and the rejection of alternatives analyzed.

Section 4 presents a statement of overriding considerations setting forth specific reasons in support of the actions for the project and the rejection as infeasible of the alternatives not incorporated into the project.

The MMRP is attached to this Resolution as Exhibit A.

SECTION 1: PROJECT DESCRIPTION AND PROJECT OBJECTIVES

PROJECT DESCRIPTION

As generally summarized in the Draft EIR, Chapter S, Summary, as amended in the First Amendment, the project description is as follows:

Google LLC, the project applicant, is proposing the Project as part of the company's expansion of its workforce and business operations in the Bay Area. To accommodate workforce growth and create more efficient transportation linkages between Google workplaces and employees' homes, the proposed project envisions a new high-density job center anchored by public transportation. The proposed project would include a mix of uses generally consistent with the City's Diridon Station Area Plan (DSAP), providing for a mixed-use Downtown neighborhood.

The project site is located in the western portion of Downtown San José, mostly in the DSAP area, although the site also includes the former San José Water Company site at 374 W. Santa Clara Street, which is not part of the existing DSAP. The proposed project includes an amendment to the DSAP to bring the 374 W. Santa Clara Street site within the DSAP boundary. The project site is generally bounded by Lenzen Avenue and the Union Pacific Railroad tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, Barack Obama Boulevard (formerly South Autumn Street), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west. Cahill Street fronts Diridon Station and runs generally parallel to the rail tracks in the project's central area.

The proposed project consists of the demolition of most existing buildings on the project site and phased development of new buildings on approximately 80 acres on the west side of Downtown San José. The proposed project would require amendments to the General Plan and DSAP, Planned Development Rezoning, a Planned Development Permit, including adoption of the Downtown West Design Standards and Guidelines; Vesting Tentative Map(s)/Tentative Map(s)/Final Map(s); and related entitlements from the City including, but not limited to, a Development Agreement and permits related to tree removal, demolition, grading, building, encroachment, solid waste, and historic preservation. The proposed project would include the following uses:

- A maximum of 7.3 million gross square feet (gsf) of commercial office space
- A maximum of 5,900 residential units
- A maximum of 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community center, institutional, childcare and education, maker spaces, non-profit, and small-format office space, as well as one or more live entertainment venues)
- A maximum of 300 hotel rooms
- A maximum of 800 limited-term corporate accommodations (lodging of company workforce for not more than 60 consecutive days and not open to the public; considered a non-residential use)
- A maximum of 100,000 gsf of event and conference space
- On- and off-street public/commercial and residential parking
- A district-systems approach to on-site utilities delivery (i.e., an on-site utility network), including designated infrastructure zones with centralized utility plants totaling approximately 130,000 gsf.
- One or more on-site logistics centers to serve the commercial on-site uses that would occupy a total of about 100,000 gsf

- A total of approximately 15 acres of parks, plazas, and open space, including areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, mid-block passages, semi-public spaces, riparian setbacks, riparian setbacks, and trails
- Various improvements to the public realm to improve transit access and pedestrian and bicycle circulation and facilitate connectivity, both within the site and to and from surrounding neighborhoods

The project would also include the adoption of the Downtown West Design Standards and Guidelines, an enforceable series of design-focused standards, along with advisory guidelines, that would govern development on the project site and that would be approved as part of the Planned Development Permit.

PROJECT OBJECTIVES

The project has been proposed and planned to address objectives of the project applicant, the City, and the City and Google Memorandum of Understanding, as discussed in Section 2.14 of the Draft EIR, as amended, and listed below.

Project Applicant Objectives

Overarching Objectives

- The project applicant's key objective is to provide sufficient high-quality office space to accommodate the long-term expansion of its workforce and business operations in a Bay Area location that is anchored by public transportation.
- Deliver community benefits consistent with the terms of the Memorandum of Understanding between Google and the City of San José, dated December 4, 2018 (MOU).
- Provide this new office space in a vibrant mixed-use neighborhood centered around Diridon Station that includes not only new workplaces, but also housing and active commercial and open spaces with the amenities and services necessary to support a diverse, thriving community of residents and workers.

Establish Diridon Station as a New Regional Job Center

- Deliver a critical mass of new office space consistent with the goals and objectives of the Diridon Station Area Plan.
- Encourage a significant shift to public transportation by leveraging existing and planned local, regional, and statewide transportation facilities at the site by developing a high-density mix of office and residential uses.

- Create a dense commercial center that is designed to anticipate and adapt to changing business needs and growth over several decades, with floorplates large enough to provide horizontally connected workplaces.
- Group office uses contiguously while creating a mixed-use environment in order to take advantage of operational efficiencies, such as the ability to share amenity spaces.

Develop Housing, Including Affordable Housing, Alongside Jobs

- Deliver thousands of units of new, high-quality housing.
- Construct housing with sufficient density to maintain day and evening, weekday and weekend activities in Downtown West.
- Offer a mix of unit types, sizes, and levels of affordability to accommodate a range of potential residents.
- Deliver affordable housing consistent with the goals set forth in the MOU.

Create Opportunity Pathways

- Develop commercial retail spaces on the project site that would attract diverse tenants, adapt to future needs, integrate local small businesses, stimulate local economic activity, serve the neighborhood, and complement adjacent public spaces.
- Promote learning and career opportunities from retail, to food service, to professional and tech jobs.

Build a Place that is of San José

- Incorporate high-quality urban design, architecture, and open spaces with varied form, scale, and design character to enliven San José's downtown.
- Preserve and adapt landmark historic resources and assets where feasible to foster a place authentic to San José, and foster contemporary relations to San José's history.
- Develop key public spaces at the core of the project site as an extension to Downtown.
- Build upon the project's location at the convergence of a significant regional and statewide transportation hub and the city's Downtown to create a world-class, architecturally iconic civic/cultural center for the City of San José, particularly through the combination and juxtaposition of historic and contemporary design elements.
- Optimize environmental performance and comfort within buildings and adjacent public spaces through orientation, massing, and building technology.

- Create a place that fosters arts and cultural uses, especially through the provision of dedicated spaces for the arts, and as part of a larger suite of community benefits.

Connect People to Nature and Transit

- Connect people with nature along Los Gatos Creek and the Guadalupe River.
- Create myriad opportunities for passive recreation in new public open spaces, while improving access to active recreation by significantly augmenting a multi-use trail.
- Improve pedestrian, bicycle, and transit connectivity within the project area, as well as between the project area and existing adjacent neighborhoods, in order to create a highly active and lively pedestrian and bicycle friendly environment.
- Consistent with the MOU, develop a project with minimal parking and robust Transportation Demand Management measures in order to encourage active transportation and public transit use, and to support implementation of the City's Climate Smart plan.
- Provide a model of 21st century sustainable urban development by implementing shared infrastructure and logistics systems across the project, significantly reducing energy and water demand, vehicle miles traveled, and greenhouse gas emissions.

Vibrant Public Realm

- Create a network of connected plazas, green spaces, streetscapes, and trails to link office and residential uses with retail, cultural, hotel, and other active uses and provide a range of publicly accessible amenities that create attractive, vibrant and safe experiences.

City Objectives

The City of San José seeks to achieve the following objectives by approving the proposed project:

- Ensure development of the project site consistent with policies in the General Plan, Downtown Strategy 2040, and DSAP, that encourages ambitious job creation, promotes development of Downtown as a regional job center and a world-class urban destination, and supports transit ridership.
- Align the Diridon Station Area Plan with the Downtown Strategy 2040, specifically with regard to the increase in office development capacity.

- Ensure that development advances the City's progress toward the following goals and policies, as reflected in and implemented through the Downtown Strategy 2040 and Diridon Station Area Plan:
  - Manage land uses to enhance employment lands to improve the balance between jobs and workers residing in San José. To attain fiscal sustainability for the City, strive to achieve a minimum ratio of 1.1 jobs per employed resident by 2040. In the near term, strive to achieve a minimum ratio of 1 job per employed resident by 2025. (General Plan Policy IE-1.4)
  - Promote the intensification of employment activities on sites in close proximity to transit facilities and other existing infrastructure, in particular within the Downtown, North San José, the Berryessa International Business Park, and Edenvale. (General Plan Policy IE1.5)
  - Advance the Diridon Station Area as a world-class transit hub and key transportation center for Northern California. (General Plan Policy IE-1.7)
  - Foster development patterns that will achieve a complete community in San José, particularly with respect to increasing jobs and economic development and increasing the City's jobs-to-employed resident ratio while recognizing the importance of housing a resident workforce. (General Plan Policy LU-1.1)
  - Provide maximum flexibility in mixing uses throughout the Downtown area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, denser forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the *Envision General Plan*. (General Plan Policy LU-3.1)

Objectives of the City and Google Memorandum of Understanding

- Implement the vision statement in the MOU dated December 4, 2018, by (1) creating a vibrant, welcoming, and accessible urban destination on the project site consisting of land uses that are well-integrated with the intermodal transit station, adjacent neighborhoods, and Downtown; (2) demonstrating a commitment to place making, social equity, economic development, environmental sustainability, and financially viable private development; and (3) collaborating with the project applicant to innovate in the development of an urban destination that will bring opportunity to the local community and create new models for urban and workplace design and development.
- Deliver community benefits including, but not limited to, achieving the following goals in the MOU:
  - Grow and preserve housing, including affordable housing.

- Create broad job opportunities for San José residents of all skill and educational levels.
- Enhance and connect the public realm.
- Pay construction workers a prevailing hourly wage and benefit rate for Office and Research and Development building construction.
- Increase access to quality education, enrichment opportunities, internships, and pathways to careers in science, technology, engineering, and mathematics (STEM) fields.
- Support the timely delivery of substantial jobs and housing in the area surrounding Diridon Station to maximize integration with planned transit projects and successful implementation of the Diridon Station Area Plan.

- Support San José's economic growth by adding economic vitality to downtown and enhancing the property tax base.

SECTION 2: FINDINGS REGARDING MITIGATION MEASURES

Consistent with the requirement in State CEQA Guidelines Section 15091, changes or additions in the form of mitigation measures have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects identified in the FEIR. To the extent that effects will not be eliminated or lessened to a less-than-significant level, specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

SUBSECTION 2A: SIGNIFICANT AND UNAVOIDABLE IMPACTS

Air Quality

Impact: **Impact AQ2:** The proposed project would result in a cumulatively considerable net increase of a criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard.

Mitigation: **Mitigation Measure AQ-2a: Construction Emissions Minimization Plan**

To ensure that the project features assumed in the analysis of air pollutant emissions are implemented, and to further reduce criteria pollutant emissions from construction activities, the project applicant shall implement

the following measures prior to the issuance of any demolition, grading, or building permits for each phase of the project:

1. *Engine Requirements.*

   a. As part of the project design, all off-road construction equipment with engines greater than 25 horsepower must adhere to Tier 4 Final off-road emissions standards, if commercially available (refer to Item #2, *Engine Requirement Waivers*, below, for the definition of "commercially available"). This adherence shall be verified through submittal of an equipment inventory and Certification Statement to the Director of Planning, Building and Code Enforcement or the Director's designee. The Certification Statement must state that each contractor agrees to compliance and acknowledges that a significant violation of this requirement shall constitute a material breach of the contractor's agreement and/or the general contract with the project applicant.

   b. The project applicant shall use alternative fuels as commercially available, such as renewable diesel, biodiesel, natural gas, propane, and electric equipment. The applicant must demonstrate to the satisfaction of the Director of Planning, Building and Code Enforcement, or the Director's designee, that any alternative fuels used in any construction equipment, such as biodiesel, renewable diesel, natural gas, or other biofuels, reduce ROG, NO_X, and PM emissions compared to traditional diesel fuel.

   c. The project applicant shall use electricity to power off-road equipment, specifically for all concrete/industrial saws, sweepers/scrubbers, aerial lifts, welders, air compressors, fixed cranes, forklifts, and cement and mortar mixers, along with 90 percent of pressure washers and 70 percent of pumps, in all but isolated cases where diesel powered equipment is used as an interim measure prior to the availability of grid power at more remote areas of the site. Portable equipment shall be powered by grid electricity or alternative fuels (i.e., not diesel) instead of by diesel generators.

2. *Engine Requirement Waivers.*

   If engines that comply with Tier 4 Final off-road emission standards are not commercially available for specific off-road equipment necessary during construction, the project applicant shall provide the next cleanest piece of off-road equipment, as provided by the step-down schedule identified in Table MAQ2a. The project applicant shall provide to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval documentation showing that engines

that comply with Tier 4 Final off-road emission standards are not commercially available for the specific off-road equipment necessary during construction.

TABLE M-AQ-2A
OFF-ROAD EQUIPMENT COMPLIANCE STEP-DOWN SCHEDULE

Compliance Alternative	Engine Emissions Standard	Emissions Control
1	Tier 4 Interim	N/A
2	Tier 3	CARB Level 3 VDECS
3	Tier 2	CARB Level 3 VDCES

NOTES: CARB = California Air Resources Board; N/A = not applicable; VDECS = Verified Diesel Emissions Control Strategies

How to use the table: If engines that comply with Tier 4 Final off-road emission standards are not commercially available, the project applicant shall meet Compliance Alternative 1. If off-road equipment meeting Compliance Alternative 1 is not commercially available, the project applicant shall meet Compliance Alternative 2. If off-road equipment meeting Compliance Alternative 2 is not commercially available, the project applicant shall meet Compliance Alternative 3.

For purposes of this mitigation measure, "commercially available" shall take into consideration the following factors: (i) potential significant delays to critical-path timing of construction and (ii) the geographic proximity to the project site of Tier 4 Final equipment.

The project applicant shall maintain records of its efforts to comply with this requirement.

3. *Additional Exhaust Emissions Control Measures.*

   The Emissions Plan (described in greater detail under Item #5, *Construction Emissions Minimization Plan*, below) shall include the applicable measures for controlling criteria air pollutants and toxic air contaminants during construction of the proposed project. Control measures shall include but are not limited to the following:

   a. Idling times on all diesel-fueled commercial vehicles weighing more than 10,000 pounds shall be minimized either by shutting equipment off when not in use or by reducing the maximum idling time to two minutes, exceeding the five-minute limit required by the California airborne toxics control measure (California Code of Regulations Title 13, Section 2485s). Clear signage to this effect shall be provided for construction workers at all access points.

b. Idling times on all diesel-fueled off-road vehicles exceeding 25 horsepower shall be minimized either by shutting equipment off when not in use or by reducing the maximum idling time to two minutes. Fleet operators must develop a written policy as required by California Code of Regulations Title 23, Section 2449 ("California Air Resources Board Off-Road Diesel Regulations").

c. Portable equipment shall be powered by grid electricity if available, instead of diesel generators. If grid electricity is not available, batteries or fuel cell systems or other non-diesel fuels shall be used for backup power.

d. The project applicant shall use super-compliant volatile organic compound (VOC) architectural coatings during construction for all interior and exterior spaces and shall include this requirement on plans submitted for review by the City's building official. "Super-compliant" coatings are those that meet a limit of 10 grams VOC per liter (http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings).

e. All equipment to be used on the construction site shall comply with the requirements of California Code of Regulations Title 13, Section 2449 ("California Air Resources Board Off-Road Diesel Regulations"). This regulation imposes idling limits; requires that all off-road equipment be reported to California Air Resources Board and labeled; restricts adding older vehicles to fleets starting January 1, 2014; and requires fleets to reduce their emissions by retiring, replacing, or repowering older engines, or installing Verified Diesel Emissions Control Strategies. Upon request by the City (and Bay Area Air Quality Management District if specifically requested), the project applicant and/or its contractor shall provide written documentation that fleet requirements have been met.

f. Truck routes shall be established to avoid both on-site and off-site sensitive receptors. A truck route program, along with truck calming, parking, and delivery restrictions, shall be implemented. This program must demonstrate how the project applicant will locate the truck routes as far from on-site receptors as possible and how truck activity (travel, idling, and deliveries) will be minimized. The Construction Emissions Minimization Plan must include the location of construction truck routes and must demonstrate that routes have been established as far as possible from the locations of all on-site and off-site sensitive receptors.

g. The project applicant shall encourage walking, bicycling, and transit use by construction employees by offering incentives such as on-site bike parking, transit subsidies, and additional shuttles. The project shall target a project-lifetime performance standard of diverting at least 50 percent of construction employee trips from single-occupant vehicles. This may include the use of carpools and vanpools for construction workers.

4. *Dust Control Measures.*

The project applicant shall implement the following dust control requirements during construction of the project, consistent with the San José Downtown Strategy:

a. All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent (verified by lab samples or moisture probe).

b. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 miles per hour (mph).

c. All trucks and equipment, including tires, shall be washed off before they leave the project site.

d. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

e. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.

f. All vehicle speeds on unpaved roads shall be limited to 15 mph.

g. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

h. A publicly visible sign shall be posted, listing the telephone number and person to contact at the lead agency (the City) regarding dust complaints. This person shall respond and take corrective action within 48 hours. The sign shall also include the telephone number of the on-site construction manager. BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

i. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.

j. Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.

k. Site accesses to a distance of 100 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel.

l. Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.

5. *Construction Emissions Minimization Plan.*

Before starting each phase of on-site ground disturbance, demolition, or construction activities, the project applicant shall submit a Construction Emissions Minimization Plan (Emissions Plan) to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval. The Emissions Plan shall state, in reasonable detail, how the project applicant and/or its contractor shall meet the requirements of Section 1, Engine Requirements; Section 3, Additional Exhaust Emissions Control Measures; and Section 4, Dust Control Measures.

a. The Emissions Plan shall include estimates of the construction timeline, with a description of each piece of off-road equipment required. The description shall include but not be limited to equipment type, equipment manufacturer, engine model year, engine certification (tier rating), horsepower, and expected fuel usage and hours of operation.

b. For off-road equipment using alternative fuels, the description shall also specify the type of alternative fuel being used.

c. The project applicant shall ensure that all applicable requirements of the Emissions Plan have been incorporated into the contract specifications. The plan shall include a certification statement that each contractor agrees to comply fully with the plan.

d. The Emissions Plan shall be verified through an equipment inventory and Certification Statement submitted to the Director of Planning, Building and Code Enforcement or the Director's designee. The Certification Statement must state that the project applicant agrees to compliance and acknowledges that a significant violation of this requirement shall constitute a material breach of the contractor's agreement with the project applicant and/or the general contractor.

e. The project applicant and/or its contractor shall make the Emissions Plan available to the public for review on-site during working hours. The project applicant and/or its contractor shall post at the construction site a legible and visible sign summarizing the Emissions Plan. The sign shall also state that the public may ask to inspect the project's Emissions Plan at any time during working hours and shall explain how to request to inspect the Emissions Plan. The project applicant and/or its contractor shall post at least one copy of the sign in a visible location on each side of the construction site facing a public right-of-way. The sign shall include contact information for an on-site construction coordinator if any member of the public has complaints or concerns.

6. *Monitoring.*

After the start of construction activities, the project applicant and/or its contractor shall submit annual reports to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, documenting compliance with the Emissions Plan. The reports shall indicate the actual location of construction during each year and must demonstrate how construction of each project component is consistent with the Emissions Plan.

Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning

Prior to the issuance of any demolition, grading, or building permits for each phase, the project applicant shall implement the following measures:

1. Instruct all construction workers and equipment operators on the maintenance and tuning of construction equipment and require such workers and operators to properly maintain and tune equipment in accordance with the manufacturers' specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition before operation. Equipment check documentation shall be kept at the construction site and be available for review by the City and Bay Area Air Quality Management District as needed.
2. Implement the construction minimization requirements of Mitigation Measure AQ2a Item #5, *Construction Emissions Minimization Plan.*
3. Implement the monitoring requirements of Mitigation Measure AQ2a Item #6, *Monitoring.*

Mitigation Measure AQ2c: Heavy-Duty Truck Model Year Requirement

Prior to the issuance of any demolition, grading, or building permits for each phase, the project applicant shall ensure that all on-road heavy-duty trucks with a gross vehicle weight rating of 33,000 pounds or greater used at the project site during construction (such as haul trucks, water trucks, dump trucks, and vendor trucks) have engines that are model year 2014 or newer. This assurance shall be included in the construction contracts for all contractors and vendors using heavy-duty trucks for any construction-related activity.

Mitigation Measure AQ-2d: Super-Compliant VOC Architectural Coatings during Operations

Prior to the issuance of any building permits, the project applicant shall set an enforceable protocol for inclusion in all lease terms and/or building operation plans for all non-residential and residential developed blocks requiring all future interior and exterior spaces to be repainted only with "super-compliant" VOC (i.e., ROG) architectural coatings beyond BAAQMD requirements (i.e., Regulation 8, Rule 3: Architectural Coatings). "Super-compliant" coatings meet the standard of less than 10 grams VOC per liter (http://www.aqmd.gov/home/regulations/compliance/architectural-coatings/super-compliant-coatings). The Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, shall review the mandatory protocol to ensure that this requirement is included, and shall mandate that this requirement be added if not included.

Mitigation Measure AQ-2e: Best Available Emissions Controls for Stationary Emergency Generators

To reduce emissions of criteria pollutants and TACs associated with operation of the proposed project, the project applicant shall implement the following measures. These features shall be submitted to the Director of the Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval, and shall be included on the project drawings submitted for the construction-related permit(s) or on other documentation submitted to the City prior to the issuance of any building permits:

1. Permanent stationary emergency generators installed on-site shall have engines that meet or exceed CARB Tier 4 Off-Road Compression Ignition Engine Standards (California Code of Regulations Title 13, Section 2423), which have the lowest NO_x and PM emissions of commercially available generators. If the California Air Resources Board

adopts future emissions standards that exceed the Tier 4 requirement, the emissions standards resulting in the lowest NO_x emissions shall apply.

2. As non-diesel-fueled emergency generator technology becomes readily available and cost effective in the future, and subject to the review and approval of the City fire department for safety purposes, non-diesel-fueled generators shall be installed in new buildings, provided that alternative fuels used in generators, such as biodiesel, renewable diesel, natural gas, or other biofuels or other non-diesel emergency power systems, are demonstrated to reduce ROG, NO_x, and PM emissions compared to diesel fuel.
3. Permanent stationary emergency diesel backup generators shall have an annual maintenance testing limit of 50 hours, subject to any further restrictions as may be imposed by Bay Area Air Quality Management District (BAAQMD) in its permitting process.
4. For each new diesel backup generator permit submitted to BAAQMD for the proposed project, the project applicant shall submit the anticipated location and engine specifications to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to issuance of a permit for the generator. Once operational, all diesel backup generators shall be maintained in good working order for the life of the equipment, and any future replacement of the diesel backup generators must be consistent with these emissions specifications. The operator of the facility at which the generator is located shall maintain records of the testing schedule for each diesel backup generator for the life of that diesel backup generator and shall provide this information for review to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, within three months of requesting such information.

Mitigation Measure AQ-2f: Operational Diesel Truck Emissions Reduction

The project applicant shall incorporate the following measures into the project design and construction contracts (as applicable) to reduce emissions associated with operational diesel trucks, along with the potential health risk caused by exposure to toxic air contaminants. These features shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to the issuance of any building permits, and shall be included on the project drawings submitted for the construction-related permit or on other

documentation submitted to the City. Emissions from project-related diesel trucks shall be reduced by implementing the following measures:

1. Equip all truck delivery bays with electrical hook-ups for diesel trucks at loading docks to accommodate plug-in electric truck transportation refrigeration units (TRUs) during project operations. Ensure that intra-campus delivery vehicles traveling within the project site to serve the project applicant are all electric or natural gas.
2. Encourage the use of trucks equipped with TRUs that meet U.S. Environmental Protection Agency Tier 4 emission standards.
3. Prohibit TRUs from operating at loading docks for more than thirty minutes by posting signs at each loading dock presenting this TRU limit.
4. Prohibit trucks from idling for more than two minutes by posting "no idling" signs at the site entry point, at all loading locations, and throughout the project site.

Mitigation Measure AQ2g: Electric Vehicle Charging

Prior to the issuance of the final building's certificate of occupancy for each phase of construction, the project applicant shall demonstrate that at least 15 percent of all parking spaces are equipped with electric vehicle (EV) charging equipment, which exceeds the San José Reach Code's requirement of 10 percent EV supply equipment spaces. The installation of all EV charging equipment shall be documented in a report submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval, and shall be included on the project drawings submitted for the construction-related permit(s) or on other documentation submitted to the City.

Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program

The project applicant shall develop and submit a Transportation Demand Management (TDM) Program for review and approval by the Directors of Public Works and Planning, Building, and Code Enforcement or the Directors' designees prior to or concurrent with adoption of the Planned Development Permit. The TDM program shall be designed such that all project-related daily vehicle trips are reduced with a primary focus on the office and residential components of the proposed project. (Office and residential trips would comprise approximately 85 percent of project vehicle trips and are assumed to serve as a proxy for all project trips.)

The TDM program shall:

(A) Be designed to meet performance standards that include exceeding the 15 percent transportation efficiency requirement of AB 900 *and* achieving additional vehicle trip reductions to mitigate transportation-related environmental impacts and reduce criteria pollutant emissions from mobile sources, as described below;

(B) Describe project features and TDM measures that shall and may be used to achieve the performance standard commitments;

(C) Describe a monitoring and reporting program, including a penalty structure for non-compliance; and

(D) Recognizing that commute patterns, behavior and technology continue to evolve, describe a process for amending and updating the TDM program as needed over time while continuing to achieve the performance standards described below.

These elements of the TDM Program are described further below.

(A) **Performance Standards:** The project's TDM program shall be designed to achieve the performance standards described below:

- Assuming currently available (pre-COVID-19) public transit service levels, achieve a combined non-single occupancy vehicle (SOV) rate of 50 percent, which is estimated to be equivalent to a 24 percent reduction in daily vehicle trips from the City of San José Travel Demand Forecasting Model's travel demand outputs.
- Following completion of service enhancements related to Caltrain Electrification, achieve a combined non-SOV rate of 60 percent, which is estimated to be equivalent to a 26 percent reduction in daily vehicle trips from the City Travel Demand Forecasting Model's travel demand outputs.
- Following completion of service enhancements related to the start of BART service to Diridon Station, achieve a combined non-SOV rate of 65 percent, which is estimated to be equivalent to a 27 percent reduction in daily vehicle trips from the City Travel Demand Forecasting Model's travel demand outputs.

(B) **TDM Program:** Project features and required SOV trip reduction strategies shall include the following elements:

1. Improvements to pedestrian and bicycle facilities on-site and connecting the site to surrounding areas, including construction/contribution to Los Gatos Creek Trail improvements

and on-street connectors between West San Carlos Street and West Santa Clara Street;

2. Limited parking supplies on-site, including no more than 4,800 parking spaces for commercial uses and no more than 2,360 spaces for residential development (a portion of the residential spaces could be available as shared-use spaces for office employees) and enforcement of the project's parking maximums for new uses as a disincentive for employees and visitors to the site, encouraging them to carpool, take transit, bike, and walk instead of drive;
3. Market-rate parking pricing for non-residential uses and unbundled parking for market-rate residential uses;
4. Pre-tax commuter benefits for employees allowing employees to exclude their transit or vanpooling expenses from taxable income or an alternate commuter benefit option consistent with the MTC/BAAQMD Commuter Benefits Program required for employers with 50 or more full-time employees;
5. Marketing (encouragement and incentives) to encourage transit use, carpooling, vanpooling, and all non-SOV travel by employees and residents, including welcome packets for new employees and residents, and dissemination of information about Spare the Air Days in the San Francisco Bay Area Air Basin, as recommended by the 2017 Clean Air Plan; and
6. Rideshare coordination, such as implementation of the 511 Regional Rideshare Program or equivalent, as recommended by the 2017 Clean Air Plan.

Other supplemental SOV trip reduction strategies to meet performance standards shall include some combination of the following:

Transit Fare Subsidy	Provide transit passes or subsidies to employees and residents to make transit an attractive, affordable mode of travel.
Parking Pricing Structure	Ensure that the parking pricing structure encourages "park once" behavior for all uses.
Preferential Carpool and Vanpool Parking	Provide dedicated parking for carpool and vanpool vehicles near building and garage entrances.

On-Site Bicycle Parking and Storage	Provide additional security and convenience for bicycle parking, such as lockers or secured bicycle rooms.
Designated Ride-Hailing Waiting Areas	Dedicate curbside areas for passenger pickup by ride-hailing services, to minimize traffic intrusion and double-parking by rideshare vehicles.
Traffic Calming	Implement on-site traffic calming improvements to support the increased use of walking, biking, and transit.
Express Bus or Commuter Shuttle Services	Provide express bus or other commuter shuttle services to complement existing, high-quality, high-frequency public transit; service may also be provided through public/private partnerships with transit providers.
Alternative Work Schedules and Telecommuting	Allow and encourage employees to adopt alternative work schedules and telecommute when possible, reducing the need to travel to the office component of the project.
First-/Last-Mile Subsidy	Provide subsidies for first-/last-mile travel modes to employees to reduce barriers to the use of transit as a primary commute mode by making short connecting trips to and from longer transit trips less costly and more convenient. First-/last-mile subsidies could be used to access bicycle share, scooter share, ride hailing, and local bus and shuttle services, and could subsidize bicycling and walking.
On-Site Transportation Coordinators	Provide TDM program outreach and marketing via on-site transportation coordinators who can also give individualized directions, establish ridesharing connections, and provide other alternative travel information to project employees and residents.

Technology-Based Services	Use technology-based information, encouragement, and trip coordination services to encourage carpooling, transit, walking, and biking by project employees and visitors. These can include third-party apps to distribute incentives to people who choose to use these modes.
Employer-Sponsored Vanpools	Coordinate and provide subsidized vanpools for employees who cannot easily commute via transit.
Biking Incentives and On-Site Bike Repair Facilities	Provide additional incentives that encourage bicycle usage and ability to repair bikes on site.
Carshare Program	Provide car share subsidies to residents to encourage the use of carshare programs (such as ZipCar and Gig) and limit parking demand.
Building-Specific TDM Plans	Develop customized TDM plans for specific buildings and tenants to better address the needs of their users.
Transportation Management Agency Membership	Join a non-profit transportation management association if formed for Downtown San José, and leverage the larger pool of commuters and residents to improve TDM program marketing and coordinate TDM programs.

(C) **Monitoring and Enforcement:** Starting in the calendar year after the City issues the first certificate of occupancy for the first office building in the first development phase, the project applicant shall retain the services of an independent City-approved transportation planning/engineering firm to conduct an annual mode-share survey of the project's office and residential components each fall (mid-September through mid-November). The survey shall be conducted to determine whether the project is achieving the combined average non-SOV mode share for office and residential uses sufficient to indicate the specified trip reductions. The project applicant shall submit an annual report to the staff of the San José Department of Transportation each January 31 of the following year.

The annual report shall describe: (a) implementation of the TDM program; and (b) results of the annual mode split survey, including a summary of the methodology for collecting the mode split data, statistics on response rates, a summary conclusion, and an outline of additional TDM measures (i.e., a corrective action plan) to be implemented in subsequent years if the non-SOV mode split goal is not reached.

If timely reports are not submitted and/or reports indicate that the project office and residential uses combined have failed to achieve the combined non-SOV mode share specified above in two consecutive years after issuance of the certificates of occupancy for 50 percent of the office development, the project will be considered in violation of this mitigation measure. The City will issue a notice of non-compliance after the first year the project fails to meet monitoring requirements (submittal of timely reports and/or achieving specified non-SOV mode share), after which the project applicant has one year to comply with the monitoring requirements through the project's discretionary implementation of additional TDM measures.

After two years of not meeting the project-wide monitoring requirements, the City may initiate enforcement action against the project applicant and successors. In an enforcement action, the non-SOV mode share for the office and residential uses will be identified separately to determine whether the office and/or residential components are in non-compliance. Enforcement actions for owners and/or operators of the office development may include imposition of financial penalties that will support the funding and management of transportation improvements that would improve the project's ability to achieve the target non-SOV mode share. Financial penalties shall generally be consistent with City Council Policy 5-1 and include a mutually agreed-upon monetary cap for penalties applied to the office uses. Enforcement actions for the owner and/or operators of the residential development would include required implementation of additional feasible TDM measures as reasonably required by the City. If such additional TDM measures are not implemented as required, regardless of measured effectiveness, financial penalties may be imposed.

If timely reports are submitted and demonstrate that the project applicant has implemented required features and strategies and has achieved the non-SOV mode share specified above for five consecutive years after issuance of certificates of occupancy for 50 percent of the office development, monitoring shall no longer be

required annually, and shall instead be required every five years, or if reasonably determined by the City of San José Planning, Building, and Code Enforcement Department or Department of Public Works to ensure ongoing compliance, monitoring and reporting may be required up to once per year.

(D) **Flexibility and Amendments:** The project applicant may propose amendments to the approved TDM program as part of its annual report each year, provided that the project applicant shall not be permitted to decrease the performance standards specified in Section (A), above, subject to review and approval by the Director of Public Works and Director of Planning, Building, and Code Enforcement or the Directors' designees. The City and the project applicant expect that the TDM program will evolve as travel behavior changes and as new technologies become available. Any proposed changes will be considered approved unless the Director of Public Works or Director of Planning, Building, and Code Enforcement objects to the proposed change within thirty (30) days of receipt.

Finding: Implementing Mitigation Measures AQ 2a, Construction Emissions Minimization Plan; AQ 2b, Construction Equipment Maintenance and Tuning; AQ 2c, Heavy-Duty Truck Model Year Requirement; AQ 2d, Super-Compliant VOC Architectural Coatings during Operations; AQ 2e, Best Available Emissions Controls for Stationary Emergency Generators; AQ-2f, Operational Diesel Truck Emission Reduction; AQ 2g, Electric Vehicle Charging; and AQ-2h, Enhanced Transportation Demand Management Program, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

Facts in Support of Finding: As discussed in Section 3.1 (page 3.1-120) of the Draft EIR, as amended, implementation of Mitigation Measures AQ2a through AQ2h would reduce project construction and operational emissions of criteria air pollutants (reactive organic gases [ROG], oxides of nitrogen (NO_X), and particulate matter 10 microns or less in diameter and 2.5 microns or less in diameter [PM_{10} and $PM_{2.5}$, respectively]. However, as further explained on page 3.1-120 of the Draft EIR, the net increase in

criteria air pollutant emissions would exceed the Bay Area Air Quality Management District significance thresholds for ROG, NO_x, PM_{10}, and $PM_{2.5}$, even after mitigation. As described in the First Amendment to the Draft EIR, no other feasible mitigation measures were identified. For these reasons, the residual impact of project emissions during construction and overlapping operations would be significant and unavoidable.

Impact: **Impact AQ3:** The proposed project would expose sensitive receptors to substantial pollutant concentrations.

Mitigation: **Mitigation Measure AQ-2a: Construction Emissions Minimization Plan** (refer to Impact AQ-2)

Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning (refer to Impact AQ-2)

Mitigation Measure AQ-2c: Heavy-Duty Truck Model Year Requirement (refer to Impact AQ-2)

Mitigation Measure AQ-2e: Best Available Emissions Controls for Stationary Emergency Generators (refer to Impact AQ-2)

Mitigation Measure AQ-2f: Operational Diesel Truck Emissions Reduction (refer to Impact AQ-2)

Mitigation Measure AQ-2g: Electric Vehicle Charging (refer to Impact AQ-2)

Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program (refer to Impact AQ-2)

Mitigation Measure AQ-3: Exposure to Air Pollution—Toxic Air Contaminants

The project applicant shall incorporate the following health risk reduction measures into the project design to reduce the potential health risk caused by exposure to toxic air contaminants (TACs) (i.e., on-road vehicles, stationary emergency generators), as feasible for the project's sources of TACs. These features shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval and shall be included on the project drawings submitted for the construction-related permit(s) or on other documentation submitted to the City:

1. Plant trees and/or vegetation between new on-site and existing off-site sensitive receptors and the project's operational source(s) of TACs (i.e., on-road vehicles, stationary emergency generators), if feasible. In

addition, plant trees and/or vegetation between new on-site sensitive receptors and existing background sources of toxic air contaminants, if feasible. Locally native trees that provide suitable trapping of particulate matter are preferred.

2. Construction trucks shall adhere to the modeled haul route as presented in Figure 3.1-2. If an alternative truck haul route is used, the project applicant shall quantitatively demonstrate to the satisfaction of the Director of Planning, Building and Code Enforcement, or the Director's designee, that these haul routes would not result in health risks that exceed the project-level thresholds of significance for either existing off-site or new on-site sensitive receptors.

Finding: Implementing Mitigation Measures AQ 2a, Construction Emissions Minimization Plan; AQ 2b, Construction Equipment Maintenance and Tuning; AQ 2c, Heavy-Duty Truck Model Year Requirement; AQ 2e, Best Available Emissions Controls for Stationary Emergency Generators; AQ-2f, Operational Diesel Truck Emission Reduction; AQ 2g, Electric Vehicle Charging; AQ-2h, Enhanced Transportation Demand Management Program; and AQ-3, Exposure to Air Pollution—Toxic Air Contaminants, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

Facts in Support of Finding: As discussed in Section 3.1 (page 3.1-129) of the Draft EIR, as amended, implementation of Mitigation Measures AQ-2a, AQ-2b, AQ-2c, AQ-2e, AQ-2f, AQ-2g, AQ-2h, and AQ-3 would reduce the project's potential to expose sensitive receptors to substantial pollutant concentrations. With mitigation, both cancer and non-cancer health risks would be less than significant for on-site residents. However, lifetime cancer risk from a combination of construction and operational emissions would remain in excess of Bay Area Air Quality Management District (BAAQMD) thresholds for the maximally exposed off-site child resident receptor. For operational emissions from full buildout of the project, both lifetime cancer risk and health risks from exposure to annual average concentrations of $PM_{2.5}$ would remain in excess of BAAQMD thresholds for the maximally exposed off-site child resident receptor, while health risks from exposure to

$PM_{2.5}$ concentrations would remain in excess of BAAQMD thresholds for the maximally exposed off-site adult resident receptor. As described in the First Amendment to the Draft EIR, no other feasible mitigation measures were identified. For these reasons, the residual impact of project health risks to sensitive receptors would be significant and unavoidable.

Impact: **Impact CAQ-1:** The proposed project, in combination with past, present, and reasonably foreseeable future development in the project area, would result in a cumulatively considerable contribution to significant cumulative regional air quality impacts.

Mitigation: **Mitigation Measure AQ-2a: Construction Emissions Minimization Plan** (refer to Impact AQ-2)

Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning (refer to Impact AQ-2)

Mitigation Measure AQ-2c: Heavy-Duty Truck Model Year Requirement (refer to Impact AQ-2)

Mitigation Measure AQ-2d: Super-Compliant VOC Architectural Coatings during Operations (refer to Impact AQ-2)

Mitigation Measure AQ-2e: Best Available Emissions Controls for Stationary Emergency Generators (refer to Impact AQ-2)

Mitigation Measure AQ-2f: Diesel Truck Emissions Reduction (refer to Impact AQ-2)

Mitigation Measure AQ-2g: Electric Vehicle Charging (refer to Impact AQ-2)

Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program (refer to Impact AQ-2)

Mitigation Measure AQ-5: Hydrogen Sulfide and Odor Management Program for the Potential Water Reuse Facility(s) (refer to Impact AQ-5)

Finding: Implementing Mitigation Measures AQ-2a, Construction Emissions Minimization Plan; AQ-2b, Construction Equipment Maintenance and Tuning; AQ-2c, Heavy-Duty Truck Model Year Requirement; AQ-2d, Super-Compliant VOC Architectural Coatings during Operations; AQ-2e, Best Available Emissions Controls for Stationary Emergency Generators; AQ-2f, Operational Diesel Truck Emission Reduction; AQ-2g, Electric Vehicle Charging; and AQ-2h, Enhanced Transportation Demand Management Program would reduce the severity of the impact, but not to a less-than-

significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives. Mitigation Measure AQ-5 would, however, reduce the project's cumulative effects with respect to odor to a less-than-significant level.

Facts in Support of Finding: As discussed in Section 3.1 (page 3.1-145) of the Draft EIR, as amended, implementation of Mitigation Measures AQ-2a through AQ-2h and AQ-5 would reduce the severity of the project's cumulatively considerable contribution to a significant cumulative impact with respect to criteria pollutant emissions, as described above under Impact AQ-2. However, the project's contribution to the cumulative impact would remain cumulatively considerable. As described in the First Amendment to the Draft EIR, no other feasible mitigation measures were identified. For these reasons, the project's cumulative air quality effects would remain significant and unavoidable. Cumulative odor impacts would, however, be less than significant, as also stated on page 3.1-145.

Impact: **Impact CAQ-2:** The proposed project, in combination with past, present, and reasonably foreseeable future development in the project area, would result in a cumulatively considerable contribution to significant cumulative health risk impacts on sensitive receptors.

Mitigation: **Mitigation Measure AQ-2a: Construction Emissions Minimization Plan** (refer to Impact AQ-2)

Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning (refer to Impact AQ-2)

Mitigation Measure AQ-2c: Heavy-Duty Truck Model Year Requirement (refer to Impact AQ-2)

Mitigation Measure AQ-2e: Best Available Emissions Controls for Stationary Emergency Generators (refer to Impact AQ-2)

Mitigation Measure AQ-2f: Operational Diesel Truck Emissions Reduction (refer to Impact AQ-2)

Mitigation Measure AQ-2g: Electric Vehicle Charging (refer to Impact AQ-2)

Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program (refer to Impact AQ-2)

Mitigation Measure AQ-3: Exposure to Air Pollution—Toxic Air Contaminants (refer to Impact AQ-3)

Finding: Implementing Mitigation Measures AQ-2a, Construction Emissions Minimization Plan; AQ-2b, Construction Equipment Maintenance and Tuning; AQ-2c, Heavy-Duty Truck Model Year Requirement; AQ-2e, Best Available Emissions Controls for Stationary Emergency Generators; AQ-2f, Operational Diesel Truck Emission Reduction; AQ-2g, Electric Vehicle Charging; AQ-2h, Enhanced Transportation Demand Management Program; and AQ-3, Exposure to Air Pollution—Toxic Air Contaminants, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

Facts in Support of Finding: As discussed in Section 3.1 (page 3.1-150) of the Draft EIR, as amended, implementation of Mitigation Measures AQ-2a, AQ-2b, AQ-2c, AQ-2e, AQ-2f, AQ-2g, AQ-2h, and AQ-3 would reduce the project's contribution to cumulative health risk effects, as described above under Impact AQ-3, but the contribution would remain considerable. As described in the First Amendment to the Draft EIR, no other feasible mitigation measures were identified. For this reason, the project's contribution to cumulative air quality effects relative to health risks to sensitive receptors would remain considerable and the impact would be significant and unavoidable.

Cultural Resources

Impact: **Impact CU1:** The proposed project would demolish or relocate historic architectural resources, resulting in a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5.

Mitigation: Mitigation Measure CU-1a: Documentation

Before the issuance of a demolition and/or relocation permit and under the direction of the Director of Planning, Building and Code Enforcement or the Director's designee, the project applicant shall prepare documentation of all historic architectural resources under CEQA subject to demolition and/or relocation. This includes **150 South Montgomery Street; 343 North Montgomery Street; 345 North Montgomery Street; 559, 563, and 567 West Julian Street; 145 South Montgomery Street; and 580 Lorraine Avenue**. Each resource shall be photo-documented to an archival level utilizing 35 mm photography and consisting of selected black-and-white views of the building to the following standards:

- *Cover sheet*—A cover sheet identifying the photographer, providing the address of the building, common or historic name of the building, date of construction, date of photographs, and photograph descriptions.
- *Camera*—A 35mm camera.
- *Lenses*—No soft-focus lenses. Lenses may include normal focal length, wide angle, and telephoto.
- *Filters*—Photographer's choice. Use of a polarized screen is encouraged.
- *Film*—Black-and-white film only; tri-X, Plus-X, or T-Max film is recommended.
- *View*—Perspective view–front and other elevations. All photographs shall be composed to give primary consideration to the architectural and/or engineering features of the structure, with aesthetic considerations necessary but secondary.
- *Lighting*—Sunlight usually preferred for exteriors, especially of the front façade. Light overcast days, however, may provide more satisfactory lighting for some structures. A flash may be needed to cast light into porch areas or overhangs.
- *Technical*—Sharp focus required for all areas of the photograph.

The project applicant shall coordinate the submission of the photo-documentation, including the original prints and negatives, to History San José. Digital photos may be provided as a supplement to the above photo-documentation, but not in place of it. Digital photography shall be recorded on a CD and shall be submitted with the above documentation. The above shall be accompanied by a transmittal stating that the documentation is submitted as a Standard Measure to address the loss of the historic

resource, which shall be named and the address stated, with a copy provided to the Director of Planning, Building and Code Enforcement or the Director's designee.

Mitigation Measure CU-1b: Relocation

In accordance with General Plan Policy LU-13.2, and consistent with the DSAP Final EIR's *Measures Included in the Project to Reduce and Avoid Impacts to Historic Resources,* relocation of a historic architectural resource shall be considered as an alternative to demolition. After implementation of Mitigation Measure CU-1a, Documentation, and prior to issuance of any permit that would allow demolition of a historic architectural resource, the project applicant shall take the following actions to facilitate historic architectural resource relocation within the City limits. This applies to **343 North Montgomery Street (partial); 345 North Montgomery Street; and 145 South Montgomery Street (partial)**:[1]

(1) **Relocation Outreach.** The project applicant shall advertise the availability for relocation of historic architectural resources subject to Mitigation Measure CU-1b, Relocation. A dollar amount equal to the estimated cost of demolition, as certified by a licensed contractor, and any associated Planning Permit fees for relocation shall be offered to the recipient of the building who is willing to undertake relocation and rehabilitation after relocation. Advertisement and outreach to identify an interested third party shall continue for no less than 60 days. The advertisements shall include notification in at least one newspaper of general circulation and on online platforms as appropriate, including at a minimum *The Mercury News* (print and online), and the City of San José Department of Planning, Building and Code Enforcement's Environmental Review website. Noticing shall be compliant with City Council Policy 6-30: Public Outreach Policy and shall include posting of a notice, on each building proposed for demolition, that is no smaller than 48 x 72 inches and is visible from the public right-of-way.[2] Satisfaction of the notification provisions shall be subject to review by the Director of Planning, Building and Code Enforcement or the Director's designee following completion of the minimum 60-day public outreach period, before the issuance of demolition permits.

(2) **Relocation Implementation Plan(s).** If, before the end of the outreach period, an interested third party (or parties) expresses interest in

[1] Garden City Construction, "Downtown West Mixed Use Plan – Historic Resource Move Feasibility," memo, prepared for Google/Lendlease, June 29, 2020.

[2] Current noticing protocols for *On-Site Noticing/Posting Requirements for Large Development Proposals* can be found at https://www.sanjoseca.gov/home/showdocument?id=15573.

relocating and rehabilitating one or more of the resources to a suitable site under their ownership or control, they shall be allowed a period of up to 60 days to prepare and submit a Relocation Implementation Plan, and an additional 120 days to complete removal of the resources from the project site. The Relocation Implementation Plan(s) shall be prepared in consultation with historic preservation professionals who meet or exceed the *Secretary of the Interior's Professional Qualification Standards*. The plan(s) shall be based on the findings of the *Downtown West Mixed-Use Plan—Historic Resource Move Feasibility* memo and *Site Selection Criteria for Relocation of Identified Historic Resources* memo (EIR Appendix E3) or subsequent relocation feasibility documentation, to support relocation of the historic resource to a site outside of the project site and acceptable to the City.[3]

The Relocation Implementation Plan for each resource shall include:

- A description of the intended relocation receiver site within the City limits and an analysis of its compatibility with the unique character, historical context, and prior physical environment of the resource;
- A description and set of working drawings detailing methods and means of securing and bracing the building through all stages of relocation;
- A site plan for the receiver site within the City limits demonstrating compliance with all setback and zoning requirements;
- A travel route survey that records the width of streets, street lamp and signal arm heights, heights of overhead utilities that may require lifting or temporary removal, and other details necessary for coordinating the relocation;
- A scope of work for building rehabilitation following completion of relocation, and anticipated timing to initiate and complete such rehabilitation; and
- Roles and responsibilities between the interested party, project applicant, City staff, and outside individuals, groups, firms, and/or consultants as necessary.

Once the Relocation Implementation Plan(s) have been reviewed and approved by the Director of Planning, Building and Code Enforcement

[3] Garden City Construction, "Downtown West Mixed Use Plan – Historic Resource Move Feasibility," memo, prepared for Google/Lendlease, June 29, 2020; Architectural Resources Group, *Site Selection Criteria for Relocation of Identified Historic Resources*, memo, prepared for Google/Lendlease, August 7, 2020.

or the Director's designee, implementation of the approved relocation shall occur within 120 days.

(3) **Rehabilitation after Relocation.** After relocation of the resource(s) and pursuant to General Plan Policy LU-13.6 and CEQA Section 15064.5(3), parties responsible for relocation shall also be responsible for rehabilitation of the building(s) on their new site(s) as specified in the Relocation Implementation Plan. Resource(s) shall be secured on a foundation and repaired to ensure that each resource remains in good condition and is usable for its intended purpose, and that all modifications are sensitive to those elements that convey the resource's historical significance. All repairs and modifications shall be consistent with the *Secretary of the Interior's Standards and Guidelines for Rehabilitation* and related permits shall be subject to review by the Director of Planning, Building and Code Enforcement or the Director's designee.

Mitigation Measure CU-1c: Interpretation/Commemoration

As part of the Downtown West Design Standards and Guidelines conformance review for each new building on the site of one or more demolished resources (including 150 South Montgomery Street), the project applicant, in consultation with a qualified architectural historian and design professional, and under the direction of the Director of Planning, Building and Code Enforcement or the Director's designee, shall develop an interpretive program that may include one or more interpretive displays, artworks, incorporation/reuse of historic materials, electronic media, smartphone apps, and other means of presenting information regarding the site's history and development. The program shall concentrate on those contextual elements that are specific to the resources that have been demolished. Display panels, if included in the interpretive program, shall be placed at, or as near as possible to, the location where the resource was historically located. The interpretive program shall be approved prior to the issuance of demolition permit(s) for the historical resource(s) to be demolished and shall be fully implemented and/or installed before the issuance of a certificate of occupancy for the applicable new building(s).

Mitigation Measure CU-1d: Salvage

Before the demolition of any historic resource on the site that is not relocated, the subject building shall be made available for salvage to companies or individuals facilitating reuse of historic building materials, including local preservation organizations. Noticing for salvage opportunities shall include notification in at least one newspaper of general circulation and online platforms as appropriate, including at a minimum *The*

Mercury News (print and online) and the City of San José Department of Planning, Building and Code Enforcement's Environmental Review website. Noticing shall be compliant with City Council Policy 6-30: Public Outreach Policy and shall include a notice, on each building proposed for demolition, that is no smaller than 48 x 72 inches and is visible from the public right-of-way.[4] The time frame for materials salvage shall be 30 days after the initial 60 days noticing for relocation.

Finding: Implementing Mitigation Measures CU-1a, Documentation; CU-1b, Relocation; CU-1c, Interpretation/Commemoration; and CU-1d, Salvage, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

Facts in Support of Finding: As discussed in Section 3.3 (page 3.3-70) of the Draft EIR, as amended, implementation of Mitigation Measures CU 1a and CU 1b—documentation and relocation, including rehabilitation according to the Secretary of the Interior's Standards—would substantially reduce impacts on historical resources. However, impacts cannot be reduced to a less-than-significant level. First, the building at 580 Lorraine Avenue and portions of two other buildings are not reasonable candidates for relocation. Additionally, relocation on-site would not allow for the project to proceed as proposed. Finally, the feasibility of off-site relocation is speculative because neither responsible parties nor receiver sites have been identified. Moreover, off-site relocation would remove resources from their historical setting and context. If relocation is not feasible, Mitigation Measures CU 1a, CU 1c, and CU 1d (documentation, interpretation, and salvage) would lessen the severity of, but would not avoid, the impacts associated with demolition. As described in the First Amendment to the Draft EIR, no other feasible mitigation measures were identified. For these reasons, the impact on historic architectural resources as a result of demolition would remain significant and unavoidable even with mitigation.

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[4] Current noticing protocols for *On-Site Noticing/Posting Requirements for Large Development Proposals* can be found at https://www.sanjoseca.gov/home/showdocument?id=15573.

Impact: **Impact CU3:** The proposed project would construct one or more additions to and adaptively reuse 150 South Montgomery Street (Hellwig Ironworks). The proposed additions and modifications would result in a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5.

Mitigation: **Mitigation Measure CU-1a: Documentation** (refer to Impact CU-1)

Mitigation Measure CU-1c: Interpretation/Commemoration (refer to Impact CU-1)

Finding: Implementing Mitigation Measure CU-1a, Documentation, and Mitigation Measure CU-1c, Interpretation/Commemoration, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

Facts in Support of Finding: As discussed in Section 3.3 (page 3.3-75) of the Draft EIR, as amended, the purpose of the proposed project's alterations to the Hellwig Iron Works building at 150 South Montgomery Street is to create an architecturally iconic center by juxtaposing historical and contemporary design elements and this alteration would not likely conform to the Secretary of the Interior's Standards. While Mitigation Measures CU-1a and CU-1c (documentation and commemoration) would reduce the severity of the impact, they would not prevent alterations or additions that are inconsistent with the Secretary of the Interior's Standards from affecting the building's integrity and resulting in a substantial adverse change in its historical significance. For this reason, the impact on the Hellwig Iron Works building would remain significant and unavoidable.

Impact: **Impact CCU1:** The proposed project would make a cumulatively considerable contribution to previously identified significant citywide cumulative adverse impact on historical resources as defined in CEQA Guidelines Section 15064.5.

Mitigation: **Mitigation Measure CU-1a, Documentation** (refer to Impact CU-1)

Mitigation Measure CU-1b: Relocation (refer to Impact CU-1)

Mitigation Measure CU-1c: Interpretation/Commemoration (refer to Impacts CU-1 and CU-3)

Mitigation Measure CU-1d: Salvage (refer to Impacts CU-1 and CU-3)

Finding: Implementing Mitigation Measures CU-1a, Documentation; CU-1b, Relocation; CU-1c, Interpretation/Commemoration; and CU-1d, Salvage, would reduce the severity of the project's contribution, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) ievel, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

Facts in Support of Finding: As discussed in Section 3.3 (page 3.3-101) of the Draft EIR, as amended, demolition of four historic architectural resources cannot be mitigated to a less-than-significant level, and anticipated changes to 150 South Montgomery Street may significantly affect the ability of the resource to convey its historical significance, as described above under Impacts CU-1 and CU-3. These significant and unavoidable project impacts would reduce the variety and quantity of 19th- and early-20th- century historic resources in the city of San José. A significant an unavoidable cumulative impact was previously identified in the environmental impact report for Envision San José 2040 General Plan, and the project would make a cumulatively considerable contribution to this significant impact, even with implementation of Mitigation Measures CU-1a through CU-1d. For the above reasons, the project's contribution to cumulative impacts on historic architectural resources would remain significant and unavoidable.

Land Use

Impact: **Impact LU-2:** The proposed project would cause a significant environmental impact due to a conflict with a land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

Mitigation: **Mitigation Measure NO-3: Exposure to Airport Noise** (refer to Section 3.10, Noise and Vibration)

Finding: Implementing Mitigation Measure NO-3, Exposure to Airport Noise, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

Facts in Support of Finding: As discussed in Section 3.9 (page 3.9-46) of the Draft EIR, as amended, implementation of Mitigation Measure NO-3 would reduce interior noise levels for residential uses within the 65 dBA CNEL noise contour to 45 dB CNEL or less. However, because the project could include outdoor residential areas within the airport's 65 dBA CNEL noise contour, it could result in a land use that is not compatible with the Norman Y. Mineta San José International Airport Comprehensive Land Use Plan (CLUP). This impact, therefore, would be significant and unavoidable even with mitigation.

Impact: **Impact C-LU-2:** The proposed project, in combination with past, present, and reasonably foreseeable future projects in the vicinity of the project site, would result in a significant cumulative impact due to a conflict with a land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

Mitigation: **Mitigation Measure NO-3: Exposure to Airport Noise** (refer to Section 3.10, Noise and Vibration)

Finding: Implementing Mitigation Measure NO-3, Exposure to Airport Noise, would reduce the severity of the impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures and project alternatives.

Facts in Support of Finding: As discussed in Section 3.9 (page 3.9-57) of the Draft EIR, as amended, implementation of Mitigation Measure NO-3 would reduce

interior noise levels for residential uses within the 65 dBA CNEL noise contour to 45 dB CNEL or less, as described above under Impact LU-2. However, because the proposed project alone would result in a conflict with CLUP Policy N-4, and future residential development within the 65 dB CNEL noise contour could likewise conflict with that policy, the proposed project, in combination with cumulative projects, would conflict with the CLUP such that future residential receptors in outdoor areas would be subject to elevated noise levels by being located in the 2027 65 dB CNEL contour. For this reason, the impact would be significant and unavoidable, even with mitigation.

Noise and Vibration

Impact: **Impact NO1b:** Project-generated traffic noise would result in permanent increases 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.

Mitigation: **Mitigation Measure NO-1b: Traffic Noise Impact Reduction**

Prior to the issuance of any building permits, the project applicant shall implement the following measures to reduce roadside noise impacts at the following roadway segments:

- *West San Fernando Street from South Montgomery Street to Delmas Avenue*. Prior to the issuance of any building permits for construction on this block, the project applicant for the construction work proposed shall prepare and submit to the Director of Planning, Building and Code Enforcement, or the Director's designee, a site-specific acoustical study for review and approval. Upon approval of the site-specific acoustical study, the project applicant shall directly contact property owners of single-family residences to implement, with the owners' consent, reasonable sound insulation treatments, such as replacing the existing windows and doors with sound-rated windows and doors and providing a suitable form of forced-air mechanical ventilation, that could reduce indoor noise levels up to 45 dBA DNL, as warranted by the study.
- *Bird Avenue from West San Carlos Street to Auzerais Avenue*. Prior to the issuance of any building permits for construction on this block, the project applicant for the construction work proposed shall prepare and submit to the Director of Planning, Building and Code Enforcement, or the Director's designee, a site-specific acoustical study for review and approval. Upon approval of the site-specific acoustical study, the project applicant shall directly contact the property owners of single-family

homes on Auzerais Avenue, within 200 feet of Bird Avenue, to implement, with the owners' consent, reasonable sound insulation treatments, such as replacing the existing windows and doors with sound-rated windows and doors and providing a suitable form of forced-air mechanical ventilation, that could reduce indoor noise levels up to 45 dBA DNL, as warranted by the study.

Finding: Implementing Mitigation Measure NO-1b, Traffic Noise Impact Reduction, would reduce roadside noise impacts at existing noise-sensitive receptors, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

Facts in Support of Finding: As discussed in Section 3.10 (page 3.10-40) of the Draft EIR, as amended, implementation of Mitigation Measure NO-1b could reduce traffic noise along two segments where sensitive residential receptors would be adversely affected by noise generated by project traffic, along West San Fernando Street and Bird Avenue. However, effective mitigation is not available or reasonable in the short term to reduce traffic noise levels along the third affected segment, along North Autumn Street, and it may not be feasible to reduce impacts to a less-than-significant level along the affected segments of West San Fernando Street and Bird Avenue. This is because it is unsure whether existing residences can be adequately sound-proofed, and it is not certain whether the owners of those buildings would accede to such measures. For the above reason, the traffic noise impact at existing noise-sensitive receptors along all three segments would be significant and unavoidable with mitigation.

Impact: **Impact NO-1c:** Construction of the proposed project could result in temporary increases 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.

Mitigation: **Mitigation Measure NO-1c: Master Construction Noise Reduction Plan**

Prior to the issuance of the first demolition, grading, or building permit for new construction within the project site or for any of the project's new public

and private infrastructure, the project applicant shall prepare a Master Construction Noise Reduction Plan, to be implemented as development occurs throughout the project site to address demolition and construction within 500 feet of residential uses, within 200 feet of commercial or office uses, or areas inside, or within 50 feet of, the Los Gatos Creek riparian corridor. The plan shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval, and implementation of the identified measures shall be required as a condition of each permit. This Master Construction Noise Reduction Plan shall include, at a minimum, the following noise reduction measures:

1. **Noise Monitoring:** The Master Construction Noise Reduction Plan shall include a requirement for noise monitoring of construction activity throughout the duration of project construction, at times and locations determined appropriate by the qualified consultant and approved by the Director of Planning, Building and Code Enforcement, or the Director's designee.
2. **Schedule:** Loud activities such as rock breaking and pile driving shall occur only between 8 a.m. and 4 p.m., every day (with pile driving and rock breaking to start no earlier than 9 a.m. on weekends). Similarly, other activities with the potential to create extreme noise levels exceeding 90 dBA shall be avoided where possible. (Extreme noise-generating activities consist of those activities that independently generate noise in excess of 90 dBA. These activities include impact pile driving, vibratory pile driving, deep dynamic compaction, rapid impact compaction, and the breaking of concrete using a hoe ram.) Where such activities cannot be avoided, they shall also occur only between 8 a.m. and 4 p.m. Any proposed nighttime (defined as 10 p.m. to 7 a.m.) construction activities, such as nighttime concrete pours or other nighttime work necessary to achieve satisfactory results or to avoid traffic impacts, shall undergo review, permitting, and approval by the Director of Planning, Building and Code Enforcement, or the Director's designee.
3. **Site Perimeter Barrier:** To reduce noise levels for work occurring adjacent to residences, schools, or other noise-sensitive land uses, and areas inside, or within 50 feet of, the Los Gatos Creek riparian corridor, a noise barrier(s) shall be constructed on the edge of the work site facing the receptor(s). Barriers shall be constructed either with two layers of 0.5-inch-thick plywood (joints staggered) and K-rail or other support, or with a limp mass barrier material weighing 2 pounds per square foot. If commercial barriers are employed, such barriers shall be constructed of materials with a Sound Transmission Class rating of 25 or greater.

4. **Stationary-Source Equipment Placement:** Stationary noise sources, such as generators and air compressors, shall be located as far from adjacent properties as possible, and no closer than 50 feet from the Los Gatos Creek riparian corridor. These noise sources shall be muffled and enclosed within temporary sheds, shall incorporate insulation barriers, or shall use other measures as determined by the Director of Planning, Building, and Code Enforcement, or the Director's designee, to provide equivalent noise reduction.
5. **Stationary-Source Equipment Local Barriers:** For stationary equipment, such as generators and air compressors, that will operate for more than one week within 500 feet of a noise-sensitive land use, and areas inside, or within 50 feet of, the Los Gatos Creek riparian corridor, the project contractor shall provide additional localized barriers around such stationary equipment that break the line of sight[5] to neighboring properties.
6. **Temporary Power:** The project applicant shall use temporary power poles instead of generators, where feasible.
7. **Construction Equipment:** Exhaust mufflers shall be provided on pneumatic tools when in operation for more than one week within 500 feet of a noise-sensitive land use, and areas inside, or within 50 feet of, the Los Gatos Creek riparian corridor. All equipment shall be properly maintained.
8. **Truck Traffic:** The project applicant shall restrict individual truck idling to no more than two consecutive minutes per trip end. Trucks shall load and unload materials in the construction areas, rather than idling on local streets. If truck staging is required, the staging area shall be located along major roadways with higher traffic noise levels or away from the noise-sensitive receivers, where such locations are available.
9. **Methods:** The construction contractor(s) shall consider means to reduce the use of heavy impact tools, such as pile driving, and shall locate these activities away from the property line, as practicable. Alternative methods of pile installation, including drilling, could be employed if noise levels are found to be excessive. Piles could be pre-drilled, as practicable, and a wood block placed between the hammer and pile to reduce metal-to-metal contact noise and "ringing" of the pile.

[5] If a barrier does not block the line of sight between the source and the observer, the barrier will provide little or no attenuation (U.S. Department of Housing and Urban Development, *The Noise Guidebook*, prepared by The Environmental Planning Division, Office of Environment and Energy, March 2009, p. 24).

10. **Noise Complaint Liaison:** A noise complaint liaison shall be identified to field complaints regarding construction noise and interface with the project construction team. Contact information including a telephone number (including for text messages, if feasible) and e-mail address shall be distributed to nearby noise-sensitive receivers. Signs that include contact information shall be posted at the construction site.

11. **Notification and Confirmation:** Businesses and residents within 500 feet shall be notified by certified mail at least one month before the start of extreme noise-generating activities (to be defined in the Construction Noise Reduction Plan). The notification shall include, at a minimum, the estimated duration of the activity, construction hours, and contact information.

12. **Nighttime Construction:** If monitoring confirms that nighttime construction activities substantially exceed the ambient noise level (to be defined for receptors near each nighttime construction area in the site-wide Master Construction Noise Reduction Plan) and complaints occur regularly (generally considered to be two or more per week), additional methods shall be implemented, such as installing additional storm windows in specific residences and/or constructing additional local barriers. The specific approach shall be refined as the construction activities and noise levels are refined.

13. **Complaint Protocol:** Protocols shall be implemented for receiving, responding to, and tracking received complaints. A noise complaint liaison shall be designated by the project applicant and shall be responsible for responding to any local complaints about construction noise. The community liaison shall determine the cause of the noise complaint and require that measures to correct the problem be implemented. Signage that includes the community liaison's telephone number shall be posted at the construction site and the liaison's contact information shall be included in the notice sent to neighbors regarding the construction schedule.

Finding: Implementing Mitigation Measure NO-1c, Master Construction Noise Reduction Plan, would implement a construction noise logistics plan to reduce the noise impact with respect to exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan, specific plan, or other land use plan, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that

this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

Facts in Support of Finding: As discussed in Section 3.10 (page 3.10-45) of the Draft EIR, as amended, implementation of Mitigation Measure NO-1c, along with Standard Condition of Approval NO-1 (Construction-Related Noise), would minimize construction noise to the extent feasible. However, the City considers construction noise impacts to be significant 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. The project would entail construction activities that may include substantial noise-generating activities occurring in three separate phases over a period of approximately 11 years, although construction activity within 500 feet of any particular residential uses or 200 feet of commercial or office uses would generally be limited to a particular phase or sub-phase of construction. However, because it is not feasible to ensure that no construction would exceed 12 months within the applicable distances from sensitive receptors the project's impact due to construction noise would remain significant and unavoidable with mitigation.

Impact: **Impact NO-3:** 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, the proposed project could expose people residing or working in the project area to excessive noise levels.

Mitigation: **Mitigation Measure NO-3: Exposure to Airport Noise**

Prior to approval of construction-related permits for residential and hotel structures on the easternmost blocks of the project site, which are located within the year 2027 65 dBA CNEL noise contour—including Blocks E3 and C3—each project applicant for a residential or hotel structure shall submit a noise reduction plan prepared by a qualified acoustical engineer for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee. The noise reduction plan shall contain noise reduction measures (e.g., sound-rated window, wall, and door assemblies) to achieve an acceptable interior noise level in accordance with the land use compatibility guidelines of the General Plan's Noise Element for any and all proposed residential land uses within the 65 dBA CNEL noise contour for

operations at Norman Y. Mineta San José International Airport. Exterior-to-interior noise reductions of 36 dBA have been demonstrated in modern urban residential uses,[6] while attenuation of up to 45 dBA CNEL has been achieved at Airport hotels. Noise-reduction specifications shall be included on all building plans, and the construction contractor shall implement the approved plans during construction such that interior noise levels shall not exceed 45 dBA CNEL at these residential land uses.

Finding: Implementing Mitigation Measure NO-3, Exposure to Airport Noise, would reduce interior noise levels; however, because the project could include outdoor residential areas located within the airport's 65 dB CNEL contour, it could result in a land use that is not compatible with the Norman Y. Mineta San José International Airport Comprehensive Land Use Plan (CLUP) and the impact would remain significant and unavoidable. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

Facts in Support of Finding: As discussed in Section 3.10 (page 3.10-54) of the Draft EIR, as amended, implementation of Mitigation Measure NO-3 would reduce interior noise levels for residential uses within the 65 dBA CNEL noise contour to 45 dB CNEL or less. However, because the project could include outdoor residential areas located within the airport's 65 dB CNEL contour, it could expose people residing or working in the project area to excessive noise levels. For the above reason, the impact of exposure of project residents to airport noise would remain significant and unavoidable.

Impact: **Impact C-NO1:** Construction activities of the proposed project combined with cumulative construction noise in the project area would result in substantial temporary or periodic increase in ambient noise levels in excess of standards established in the Envision San José 2040 General Plan (General Plan) or Noise Ordinance.

Mitigation: **Mitigation Measure NO-1c: Master Construction Noise Reduction Plan** (refer to Impact NO-1c)

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[6] Environmental Science Associates, *301 Mission Street, Millennium Tower Perimeter Pile Upgrade Project, Preliminary Mitigated Negative Declaration and Initial Study*, November 2019, p. 102.

Finding: Implementing Mitigation Measure NO-1c, Master Construction Noise Reduction Plan, would reduce the project's contribution to this cumulative impact, which would remain significant and unavoidable. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

Facts in Support of Finding: As discussed in Section 3.10 (page 3.10-59) of the Draft EIR, as amended, implementation of Mitigation Measure NO-1c, along with Standard Condition of Approval NO-1 (Construction-Related Noise), would minimize project construction noise to the extent feasible, as described above under Impact NO-1c. However, the project could contribute considerably to significant cumulative construction noise impacts in excess of standards established in the local general plan or noise ordinance—or in this case, the applicable standards of another agency (Federal Transit Administration). For the above reason, the project's cumulative impact relative to construction noise would remain significant and unavoidable.

Impact: **Impact C-NO-2:** Operation of the proposed project when considered with other cumulative development would cause a substantial permanent increase in ambient noise levels in excess of standards established in the General Plan or Noise Ordinance.

Mitigation: **Mitigation Measure NO-2: Cumulative Traffic Noise Impact Reduction**

Prior to the issuance of any building permits, the project applicant shall implement the following measures to reduce roadside noise impacts at the following roadway segment:

- *North Montgomery Street from West Julian Street to St. John Street.* Prior to the issuance of any building permits for construction on this block, the project applicant shall prepare and submit to the Director of Planning, Building and Code Enforcement, or the Director's designee, a site-specific acoustical study for review and approval. Upon approval of the site-specific acoustical study, the project applicant shall directly contact property owners of single-family homes on this stretch of North Montgomery Street to implement, with the owners' consent, reasonable sound insulation treatments. Treatments may include replacing the existing windows and doors with sound-rated windows and doors and

providing a suitable form of forced-air mechanical ventilation, which could reduce indoor noise levels up to 45 dBA DNL, as warranted by the study.

Finding: Implementing Mitigation Measure C-NO-2, Cumulative Traffic Noise Impact Reduction, would reduce the project's contribution to this cumulative impact, but not to a less-than-significant level. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

Facts in Support of Finding: As discussed in Section 3.10 (page 3.10-61) of the Draft EIR, as amended, implementation of Mitigation Measure C-NO-2 would reduce interior noise levels for the affected residences along North Montgomery Street to the extent feasible. However, existing multifamily residences along Stockton Avenue and San Carlos Street have usable balconies where mitigating noise increases is not possible. Therefore, the project would result in a considerable contribution to traffic noise impacts. For the above reason, the project's cumulative impact with respect traffic noise would be significant and unavoidable with mitigation.

Impact: **Impact C-NO-3:** The proposed project would make a considerable contribution to exposure of people to excessive airport noise levels.

Mitigation: **Mitigation Measure NO-3: Exposure to Airport Noise** (refer to Impact NO-3)

Finding: Implementing Mitigation Measure NO-3, Exposure to Airport Noise, would reduce interior noise levels, reducing the project's contribution to this cumulative impact, which would remain significant and unavoidable due to outdoor residential areas within the airport's 65 dB CNEL contour. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social,

technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

Facts in Support of Finding: As discussed in Section 3.10 (page 3.10-61) of the Draft EIR, as amended, implementation of Mitigation Measure NO-3 would reduce interior noise levels for residential uses within the 65 dBA CNEL noise contour to 45 dB CNEL or less, as described above under Impact NO-3. However, because the proposed project alone would result in a conflict with CLUP Policy N-4, and future residential development within the 65 dB CNEL noise contour could likewise conflict with that policy, the proposed project, in combination with cumulative projects, would conflict with the CLUP such that future residential receptors in outdoor areas would be subject to elevated noise levels by being located in the 2027 65 dB CNEL contour. For this reason, the impact would be significant and unavoidable, even with mitigation.

Population and Housing

Impact: **Impact C-PH1:** The proposed project would result in a cumulatively considerable contribution to the citywide significant and unavoidable cumulative impact related to the jobs/housing imbalance identified in the 2040 General Plan EIR.

Mitigation: None available.

Finding: As described in the EIRs for the Envision San José 2040 General Plan and Downtown Strategy 2040, there is no feasible mitigation for this impact, which would therefore be significant and unavoidable. The City Council finds that there are no additional feasible mitigation measures or alternatives that the City Council could adopt at this time that would reduce this impact to a less-than-significant level. For these reasons, the impact remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the City Council finds that specific economic, legal, social, technological, and other considerations identified in the FEIR make infeasible other mitigation measures.

Facts in Support of Finding: As discussed in Section 3.11 (page 3.11-28) of the Draft EIR, as amended, despite the absence of project-specific impacts related to vehicle miles traveled and greenhouse gas emissions, the proposed project would result in a cumulatively considerable contribution to the citywide significant and unavoidable impact that was previously identified in the EIRs for the Envision San José 2040 General Plan and Downtown

Strategy 2040. As explained in those EIRs and reiterated on Draft EIR page 3.11-28, no feasible mitigation is available for this impact, because the adopted General Plan policy to move to a jobs-to-employed-residents ratio of 1.1, if achieved, could have the secondary effect of inducing population growth outside of San José by creating demand for new housing to serve the new workers in San José. In addition, the shift in jobs/housing would result in a substantial new quantity of employment-intensive land uses that may generate more jobs than can be met by the San José workforce, causing out-of-area workers to commute to Downtown San José. For this reason, this EIR reiterates the conclusion of the prior EIRs that this is considered a significant and unavoidable cumulative impact.

SUBSECTION 2B: SIGNIFICANT IMPACTS THAT CAN BE MITIGATED TO A LESS-THAN-SIGNIFICANT LEVEL

Air Quality

Impact: **Impact AQ-1:** The proposed project would not conflict with or obstruct implementation of the applicable air quality plan.

Mitigation: **Mitigation Measure AQ-2a: Construction Emissions Minimization Plan** (refer to Impact AQ-2)

Mitigation Measure AQ-2b: Construction Equipment Maintenance and Tuning (refer to Impact AQ-2)

Mitigation Measure AQ-2c: Heavy-Duty Truck Model Year Requirement (refer to Impact AQ-2)

Mitigation Measure AQ-2d: Super-Compliant VOC Architectural Coatings during Operations (refer to Impact AQ-2)

Mitigation Measure AQ-2e: Best Available Emissions Controls for Stationary Emergency Generators (refer to Impact AQ-2)

Mitigation Measure AQ-2f: Operational Diesel Truck Emissions Reduction (refer to Impact AQ-2)

Mitigation Measure AQ-2g: Electric Vehicle Charging (refer to Impact AQ-2)

Mitigation Measure AQ-2h: Enhanced Transportation Demand Management Program (refer to Impact AQ-2)

Mitigation Measure AQ-3: Exposure to Air Pollution—Toxic Air Contaminants (refer to Impact AQ-3)

Mitigation Measure AQ-5: Hydrogen Sulfide and Odor Management Program for the Potential Water Reuse Facility(s) (refer to Impact AQ-5)

Finding: Implementing Mitigation Measures AQ-2a, Construction Emissions Minimization Plan; AQ-2b, Construction Equipment Maintenance and Tuning; AQ-2c, Heavy-Duty Truck Model Year Requirement; AQ-2d, Super-Compliant VOC Architectural Coatings during Operations; AQ-2e, Best Available Emissions Controls for Stationary Emergency Generators; AQ-2f, Operational Diesel Truck Emission Reduction; AQ-2g, Electric Vehicle Charging; AQ-2h, Enhanced Transportation Demand Management Program; AQ-3, Exposure to Air Pollution—Toxic Air Contaminants; and AQ-5, Hydrogen Sulfide and Odor Management Program for the Potential Water Reuse Facility(s), would reduce air emissions and bring the project into conformance with the Clean Air Plan. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

Facts in Support of Finding: As discussed in Section 3.1 (page 3.1-88) of the Draft EIR, as amended, with implementation of Mitigation Measures AQ-2a through AQ-2h, AQ-3, and AQ-5 and compliance with applicable regulations as described in Table 3.1-6 of Section 3.1, the project would include applicable control measures from the Clean Air Plan and the project would, therefore, support the primary goals of the Clean Air Plan and would not interfere with, disrupt, or hinder implementation of the Clean Air Plan. Furthermore, the project would be consistent with the applicable policies set forth in the General Plan. Accordingly, with implementation, the project impact related to consistency with the Clean Air Plan would be reduced to a less-than-significant level with mitigation.

Impact: **Impact AQ-5:** The proposed project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people.

Mitigation: **Mitigation Measure AQ-5: Hydrogen Sulfide and Odor Management Program for the Potential Water Reuse Facility(s)**

Prior to construction of each WRF, the project applicant shall develop a Hydrogen Sulfide and Odor Management program (HSOM Program) at each water reuse facility (WRF) for review and approval by the Director of Planning, Building and Code Enforcement and the Director of Environmental Services, or the Directors' designees. The HSOM Program

shall address hydrogen sulfide and odor management using a performance-based approach designed to meet the regulatory ambient air concentrations established in BAAQMD Regulation 9, Rule 2, (i.e., 0.06 ppm averaged over three consecutive minutes or 0.03 ppm averaged over any 60 consecutive minutes) and to limit public complaints. The HSOM Program shall include best management practices and emissions controls as follows:

1. For grit and screenings, refuse containers shall be odor proof and contained within an area draining to the sanitary sewer.
2. Primary screenings shall be housed in a ventilated enclosure at the WRF(s).
3. Carbon absorption, biofiltration, or ammonia scrubbers shall be installed at the WRF(s).
4. Ferrous chloride injection for hydrogen sulfide removal may also be installed and implemented if necessary.

The project applicant shall implement the HSOM Program on an ongoing basis and provide the Directors or the Directors' designees with an annual report to describe implementation of the program and any adjustments needed to improve performance.

The HSOM Program shall address odor complaints that occur over time and shall designate WRF staff to receive and respond to complaints. The name and contact information of the responsible WRF staff shall be posted in a noticeable location on each WRF facility. The performance standard for odors shall be based on a three-tier threshold based on 30-day, 90-day, and three year averaging times for complaints. The performance standards that must be met shall be as follows:

1. Three or more violation notices for public nuisance related to odors issued by the BAAQMD within a 30-day period;
2. Odor complaints from ten or more complainants within a 90-day period; or
3. Five or more confirmed odor complaints per year averaged over three years as an indication of a significant odor impact from a facility.

If one or more of these standards are not met, the project applicant shall revise the program and make any necessary improvement to the WRF odor

controls to achieve all performance standards in subsequent reporting years.

Additionally, odor-control facilities shall be designed to meet the requirements of Section 302 of BAAQMD Regulation 7 and shall not all the WRF to discharge any odorous substance that causes the ambient air at or beyond the property line to be odorous and to remain odorous after dilution with four parts of odor-free air.

Finding: Implementing Mitigation Measure AQ-5, Hydrogen Sulfide and Odor Management Program for the Potential Water Reuse Facility(s), would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

Facts in Support of Finding: As discussed in Section 3.1 (page 3.1-143) of the Draft EIR, as amended, with implementation of Mitigation Measure AQ-5 and compliance with applicable odor controls set forth in Bay Area Air Quality Management District Rules 1-301, 6-2, 7, 8-8, and 9-2, odors would not adversely affect a substantial number of people and the impact would be reduced to a less-than-significant level with mitigation.

Biological Resources

Impact: **Impact BI-1:** The proposed project could have a substantial adverse effect, either directly, indirectly, or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS (western pond turtle, central California coast steelhead distinct population segment, nesting birds, special-status bats).

Mitigation: **Mitigation Measure BI-1a: General Avoidance and Protection Measures**

The project applicant or the project applicant's contractor shall be responsible for this measure, which shall be required for demolition, site preparation (including clearing of vegetation), and construction work in the Los Gatos Creek channel and riparian corridor and the 50-foot building construction setback from the riparian corridor. It shall also be required for proposed construction activities within 50 feet of the Guadalupe River (Block E, including 374 West Santa Clara Street), and work within 20 feet of the creeping wild rye plant community described under Impact BI-2.

Relevant avoidance and protection measures shall be included on demolition, grading, and building permit plans.

- Before the issuance of any demolition, grading, or building permit, a qualified biologist shall prepare a worker environmental awareness training brochure and submit the brochure to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval. The training shall be distributed to the construction contractor for the specific work in question to ensure that a copy is available to all construction workers on-site. The training shall be implemented as described below.
- A California Department of Fish and Wildlife (CDFW)– and National Marine Fisheries Service (NMFS)–approved biologist shall be present to monitor all of the following activities:
  - All construction-related work within the Los Gatos Creek channel or riparian corridor or the 50-foot building construction setback from the riparian corridor;
  - Construction activities within 50 feet of the Guadalupe River (Block E, including the former San Jos é Water Company building [374 West Santa Clara Street]); and
  - Work within 20 feet of the creeping wild rye plant community.

  The biologist shall prepare and submit daily reports demonstrating compliance with all general avoidance and protection measures to the Director of Planning, Building and Code Enforcement or the Director's designee.
- A qualified biologist shall provide the worker environmental awareness training to field management and construction personnel. Communication efforts and training shall take place during pre-construction meetings so that construction personnel are aware of their responsibilities and the importance of compliance. The training shall identify the types of sensitive biological resources in the project area (nesting birds, roosting bats, salmonids and other special-status fish, western pond turtle, riparian habitat, and creeping wild rye plant community) and the measures required to avoid impacting these resources. The materials covered in the training program shall include environmental rules and regulations for the specific project and shall require workers to limit activities to the construction work area and avoid demarcated sensitive resource areas.

- If the project adds new construction personnel, the contractor for the work in question shall ensure that the new personnel receive worker environmental awareness training before starting work within the Los Gatos Creek riparian corridor or channel; within the 50-foot building construction setback from the Los Gatos Creek riparian corridor and the Guadalupe River; or within 20 feet of the creeping wild rye plant community. The contractor shall maintain a sign-in sheet identifying the individuals who have received the training. A representative from the contractor company for the work in question shall be appointed during the training to be the contact person for any employee or contractor who might inadvertently kill or injure a listed species, or who finds a dead, injured, or entrapped individual. The representative's name and telephone number shall be provided to NMFS and CDFW before the start of ground disturbance.
- The minimum qualifications for a qualified biologist shall be a four-year college degree in biology or related field and at least two years' demonstrated experience with the species of concern.
- If a listed wildlife species is discovered, construction activities shall not begin in the immediate vicinity of the individual until the CDFW Region 3 office in Fairfield is contacted, and the discovered species has been allowed to leave and is no longer present in the construction area.
- Any special-status species observed by the qualified biologist shall be reported to CDFW by the qualified biologist, or by a biologist designated by the qualified biologist, so that the observations can be added to the California Natural Diversity Database.
- The discharge of water from new construction sites into Los Gatos Creek or the Guadalupe River shall be prohibited if the temperature of the discharged water exceeds 72 degrees Fahrenheit (°F), unless modeling studies and subsequent monitoring demonstrate that the volume of the discharge would not increase maximum daily stream temperatures above 75.2°F. Prior to project construction, water and ambient air temperature loggers shall be installed at three locations within and adjacent to the project site. One logger shall be installed in upstream Los Gatos Creek, one within the affected reach adjacent to building construction, and one downstream of the project site. Loggers at these three locations shall record hourly water temperature values before, during, and after project construction. This prohibition shall cover both direct discharges and indirect discharges into local storm drains that discharge to Los Gatos Creek or the Guadalupe River. Construction discharges shall be prohibited until the discharged water cools below the

average daily stream temperature at the discharge point or maximum daily stream temperatures drop below 75°F.

Mitigation Measure BI-1b: In-Water Construction Schedule

The project applicant shall ensure that the contractor includes the schedule for in-water construction work in the Los Gatos Creek channel to occur outside of the normal rainy season, between June 1 and October 15 inclusive (or as otherwise specified by permits from the San Francisco Bay Regional Water Quality Control Board, California Department of Fish and Wildlife, National Marine Fisheries Service, and/or U.S. Army Corps of Engineers), when flows in Los Gatos Creek and the Guadalupe River are normally at their lowest and special-status anadromous fish species are least likely to occur in the project area.

Mitigation Measure BI-1c: Native Fish Capture and Relocation

The project applicant shall ensure that any contractor for any construction work in the Los Gatos Creek channel prepares and submits a fish relocation plan (consistent with federal and state permit requirements) for in-water work in Los Gatos Creek. Relocation shall be required only for in-water work in the Los Gatos Creek channel. The fish relocation plan shall be prepared by a qualified biologist. The plan shall be prepared in coordination with the California Department of Fish and Wildlife (CDFW), and a copy of the final plan shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee, along with demonstration of coordination with CDFW. Implementation of the fish relocation plan shall be consistent with the following conditions:

- Before rescues of listed species are attempted, any necessary authorization shall be obtained from the resource agencies (CDFW and/or National Marine Fisheries Service [NMFS]).
- Before dewatering may occur, a qualified biologist shall determine whether the extent of dewatering will result in immediate or foreseeable impacts on fish and wildlife. This shall include conducting a reconnaissance survey of the dewatering zone.
- Before dewatering can begin, the following elements of fish relocation shall be determined:
  - *Staging Area:* Staging areas in the dewatering zone shall be identified. Sites should be selected based on their proximity and access to the dewatering zone and ability to support safe operation of the equipment.

- *Relocation Sites:* Relocation site(s) shall be identified. Priority shall be given to a site's close proximity to the dewatering zone in the same stream. If a qualified on-site biologist determines that no suitable site in the stream is available, then "second choice" locations within the watershed shall be selected. In all cases, the closest site that is likely to result in a successful rescue shall be used.
- *Transportation Routes:* Transport routes for rescued fish species shall be determined in advance of dewatering.
- *Disease Consideration:* To guard against disease transmission, fish shall not be moved upstream over substantial barriers or long distances (i.e., greater than 10 miles).

- If salmonids are encountered during relocation, they shall be moved upstream to a location of perennial running water or the best available habitat determined by a qualified biologist. Collection and transport methods shall be determined based on site conditions. Methods shall also be selected to maximize the efficiency of the collection effort while minimizing handling and transport time and stress. Creek water from the site shall be used in all containers. The local transport of fish may be completed using various methods, including:
  - *Net Transfer:* Appropriate for short distances (less than 50 feet) where rapid transfer is possible.
  - *Live Car:* Appropriate for temporary holding in the stream and for short distances where a rapid transfer is required.
  - *Bucket:* Appropriate for temporary holding and transport over short to medium distances. Holding time should be minimized if possible and aeration should be supplied.
  - *Aerated Cooler:* Appropriate for temporary holding and transport for long distances. Temperature shall be maintained to be similar to the temperature of the source creek water, and if necessary, fish shall be sorted by size to reduce risks of predation.
- Species and collection/relocation sites shall be prioritized as follows: (1) Threatened species; and (2) other native fishes.
- A contact person at each of the appropriate resource agencies (CDFW, NMFS, and/or U.S. Fish and Wildlife Service) shall be identified in the relocation plan. At least 24 hours before fish relocation begins, the appropriate resource agencies shall be notified to communicate the details of the fish relocation and to confirm disposition instructions.

- Fish shall be relocated under the following conditions:
  - *Setup:* Upon arrival at the site, a qualified biologist shall review the operational sequence and logistics of the rescue and field assignments shall be designated. The fish relocation team shall review safety and operational methods.
  - *Live Well Operation:*
    - If necessary, live wells shall be set up early in the operation to stabilize tank conditions.
    - Local "native" water shall be used to fill live wells, if available and clean.
    - To lessen stress on fish, the temperature in live wells shall be reduced or managed to be compatible with the water temperatures in which the fish were encountered.
    - To ensure that sufficient oxygen is present during the adjustment period, the aeration system shall be started before fish are placed into the live well. When salmonids are placed in the live well, the live well shall be managed to the extent possible so that the dissolved oxygen concentration is greater than 6 milligrams per liter, but less than saturation.
  - *Electrofishing Operation:*
    - The electrofishing unit settings shall be adjusted to the conductivity and temperature of the water. Settings shall be adjusted for either varying width (wide to narrow) or varying frequency (high to low) to minimize possible fish injury when these settings elicit proper taxis (i.e., response of fish toward or away from stimulus) for fish capture.
    - The settings used and any incidental electrofishing mortalities shall be recorded in the field notebook. If electrofishing mortalities for salmonids and other species listed as threatened or endangered exceed 5 percent of the total capture, or as otherwise specified in any biological resource permits, a qualified biologist shall re-evaluate and possibly terminate electrofishing activities.
    - Fish other than salmonids experiencing mortality from electrofishing activities shall be noted and used as an indicator of the possible injury or mortality rates of salmonids and other fish.

- *General Collection Guidelines:*
  - Fish shall be collected in a manner to minimize handling time and stress, yet maintain the safety of personnel.
  - Multiple buckets and/or live cars shall be used to reduce crowding during collection and transfer.
  - Fish shall be pre-sorted as needed for transport.
  - Buckets that hold salmonids shall be equipped with portable aerators until the fish are transferred to a live well.
- *Transport:*
  - Fish shall be transported to minimize holding time and alternately sequenced in tandem with ongoing collection activities.
  - Normal live well operations shall continue during transport.
- *Records and Data:*
  - Fish shall be inventoried and pertinent data shall be recorded, including species, numbers of each species, disposition, and fork length. If conditions preclude a complete inventory, at a minimum, the species present and their disposition shall be documented and their abundance shall be estimated.
  - Information on ambient site conditions (available habitat/water quality) shall be recorded as appropriate, including photo documentation at collection and release sites and other information on collection, handling, and transport.
  - At completion, a qualified biologist shall conduct an assessment of the fish relocation to identify lessons learned, estimate the number of individual fish and fish species moved, and determine the mortality rate. The assessment report shall be forwarded to the appropriate resource agencies and to the Director of Planning, Building, and Code Enforcement or the Director's designee within a month of the completion of in-water work.

Mitigation Measure BI-1d: Western Pond Turtle Protection Measures

Prior to the start of any construction activities within 50 feet of the Los Gatos Creek riparian corridor (measured from the outer dripline of riparian vegetation or the top of bank, whichever is greater), the project applicant for the specific construction activity to be undertaken shall retain a qualified biologist to conduct pre-construction surveys for western pond turtles in all suitable habitats (i.e., aquatic and upland in the Los Gatos Creek riparian corridor) near the work site. Surveys shall take place no more than 72 hours

before the onset of site preparation and construction activities that have the potential to disturb turtles or their habitat and copies shall be provided to the Director of Planning, Building, and Code Enforcement or the Director's designee.

If pre-construction surveys identify active western pond turtle nests on the project site, the biologist shall establish no-disturbance buffer zones around each nest using temporary orange construction fencing. The demarcation shall be permeable to allow young turtles to move away from the nest after hatching. The radius of the buffer zone and the duration of exclusion shall be determined in consultation with the California Department of Fish and Wildlife (CDFW). The buffer zones and fencing shall remain in place until the young have left the nest, as determined by the qualified biologist.

A qualified biologist shall monitor construction activities near suitable habitat within which western pond turtle is found (either during the survey or observed during construction), and shall remove and relocate western pond turtles in proposed construction areas to suitable habitat outside the project limits, consistent with CDFW protocols and handling permits. Relocation sites shall be subject to CDFW approval.

If any turtles are found on the project site, construction activities shall halt within 50 feet of the turtle(s) and the qualified biologist shall be notified. If the biologist determines that the turtle is a western pond turtle, the turtle shall be relocated into nearby suitable habitat consistent with CDFW protocols and with approval from CDFW. The biologist shall submit a final report to the Director of Planning, Building, and Code Enforcement or the Director's designee following completion of construction and relocation.

Mitigation Measure BI-1e: Avoidance of Impacts on Nesting Birds

Prior to the issuance of any demolition, grading, or building permits, the project shall implement the following measures to avoid impacts on nesting migratory birds:

- **Avoidance:** The project applicant for the specific construction activity to be undertaken shall schedule demolition and construction activities to avoid commencement during the nesting season, if feasible. The nesting season for most birds, including most raptors in the San Francisco Bay Area, extends from February 1 through August 15 (inclusive), as amended.
- **Nesting Bird Surveys:** If demolition and construction cannot be scheduled to occur between August 16 and January 31 (inclusive), a qualified ornithologist shall complete pre-construction surveys for

nesting birds to ensure that no nests are disturbed during project implementation. This survey shall be completed no more than 14 days before the start of construction activities during the early part of the breeding season (February 1 through April 30 inclusive), and no more than 30 days before the start of construction activities during the late part of the breeding season (May 1 through August 15 inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

- **Buffer Zones:** If an active nest is found within 250 feet of work areas to be disturbed by construction, the ornithologist, in coordination with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet for raptors and 100 feet for songbirds, or an area determined to be adequate by the qualified ornithologist in coordination with CDFW, to ensure that raptor or migratory bird nests are not be disturbed during project construction. The no disturbance buffer shall remain in place until the ornithologist determines that the nest is no longer active or the nesting season ends. If construction ceases for 7 days or more, then resumes during the nesting season, an additional survey shall be necessary to avoid impacts on active bird nests that may be present.
- **Reporting:** The project applicant for the specific construction activity to be undertaken shall submit the ornithologist's report indicating the results of the surveys and any designated buffer zones to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to issuance of any grading or building permits or tree removal (whichever occurs first).
- The results of the surveys and any identified designated buffer zones shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

Mitigation Measure BI-1f: Roosting Bat Surveys

In advance of tree and structure removal or adaptive reuse, a qualified biologist shall conduct a pre-construction survey for special-status bats to characterize potential bat habitat and identify active roost sites within 100 feet of the project site. The results of the surveys and the locations of any designated buffer zones shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to issuance of any demolition or building permits. Should potential roosting habitat or active bat roosts be found in trees and/or

structures to be removed or renovated under the project or within a 100-foot buffer zone from these areas, the following measures shall be implemented:

- Removal of trees and structures with active roosts shall occur when bats are active, approximately between March 1 and April 15 inclusive and between September 1 and October 15 inclusive. To the extent feasible, removal shall occur outside of bat maternity roosting season (approximately April 15 to August 31 inclusive) and outside of the months of winter torpor (approximately October 16 to February 28 inclusive).
- If removing trees and structures during the periods when bats are active is not feasible and active bat roosts being used for maternity or hibernation purposes are found on or in the immediate vicinity of the project area where tree and structure removal is planned, a no-disturbance buffer shall be established around these roost sites, typically 100 feet, or an area determined to be adequate by the qualified biologist based on site conditions, construction activity, species, number of roosting individuals, and/or noise attenuation and frequency, along with coordination with CDFW, if necessary, until the qualified biologist has determined that they are no longer active.
- The qualified biologist shall be present during removal of trees and structures when active bat roosts not being used for maternity or hibernation purposes are present. Trees and structures with active roosts shall be removed only when no rain is occurring and rain is not forecast to occur for 3 days following removal of the roost, and when daytime temperatures are at least 50 degrees Fahrenheit.
- Removal of trees with active or potentially active roost sites shall follow a twostep removal process:

  (1) On the first day of tree removal and under the supervision of the qualified biologist, branches and limbs that do not contain cavities or fissures in which bats could roost shall be cut only using chainsaws. Removal of the canopy makes the tree unappealing for bats to return that evening to roost.

  (2) On the following day and under the supervision of the qualified biologist, after confirmation that bats have not returned, the remainder of the tree may be removed, using either chain saws or other equipment (e.g., excavator or backhoe).

Structures that contain or are suspected to contain active bat roosts, but that are not being used for maternity or hibernation purposes, shall be

dismantled under the supervision of the qualified biologist in the evening, after bats have emerged from the roost to forage. The structures shall be partially dismantled to substantially change roost conditions, causing the bats to abandon and not return to the roost.

Finding: Implementing Mitigation Measures BI-1a, General Avoidance and Protection Measures; BI-1b, In-Water Construction Schedule; BI-1c, Native Fish Capture and Relocation; BI-1d, Western Pond Turtle Protection Measures; BI-1e, Avoidance of Impacts on Nesting Birds; and BI-1f, Roosting Bat Surveys, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

Facts in Support of Finding: As discussed in Section 3.2 (pages 3.2-35, 3.2-42, and 3.2-43) of the Draft EIR, as amended, implementation of Mitigation Measures BI-1a through BI-1f would ensure that appropriate preventative and protective measures, surveys, avoidance, protection, and relocation (if necessary) would be undertaken in connection with project construction activities, thereby reducing potential adverse effects on special-status fish, western pond turtle, nesting birds, and special-status bats. For the above reason, the impact on candidate, sensitive, and special-status species would be reduced to a less-than-significant level with mitigation.

Impact: **Impact BI-2:** The proposed project could have a substantial adverse effect on riparian habitat or other sensitive natural communities identified in local or regional plans, policies, regulations, or by CDFW or USFWS.

Mitigation: **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)

Mitigation Measure BI-1b: In-Water Construction Schedule (refer to Impact BI-1)

Mitigation Measure BI-1c: Native Fish Capture and Relocation (refer to Impact BI-1)

Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat

The project applicant for the specific construction activity to be undertaken and its contractors shall implement the following measures.

For portions of the project site located within 50 feet of the riparian corridor—such as the new footbridge; multi-use trail and associated infrastructure; pedestrian boardwalks, viewing platforms, and signage; removal and replacement of fencing; replacement of the West San Fernando Street vehicle bridge; reconstruction of the existing storm drain; and building demolition, construction, and renovation—a qualified biologist shall clearly delineate the construction footprint in or within 50 feet of the riparian area with flagging before the start of construction to avoid the accidental removal or trampling of vegetation outside of the project limits. No noise-generating construction activity shall be permitted within 50 feet of the riparian corridor after 7 p.m. or after sunset, whichever is earlier.

The limits of construction within 50 feet of the riparian corridor shall be confined to the smallest possible area to complete the required work. The edge of construction in and near riparian areas shall be separated and protected from the work area through silt fencing, amphibian-friendly fiber rolls (i.e., no microfilament), or other appropriate erosion control material. Staging of materials and all other project-related activity shall be located at least 25 feet upslope from riparian areas.

Where disturbance to riparian habitat cannot be avoided, any temporarily affected riparian habitat shall be restored to pre-construction conditions or better at the end of construction, in accordance with the requirements of USACE, the San Francisco Bay Regional Water Quality Control Board, and CDFW permits. Live trees larger than 6 inches diameter at breast height (dbh) removed by the project shall be replaced at a minimum ratio of 3:1 (trees replaced: trees removed) for native species and 2:1 for non-native species. Removal of live trees with a dbh of less than 6 inches shall be mitigated at a minimum of 1:1 on an acreage basis for native trees and not mitigated for non-native trees. Removal of dead native trees shall be mitigated at a ratio of 1:1. Replacement trees shall consist of a combination of plantings of shade-tolerant riparian vegetation and other locally appropriate native species. No mitigation is proposed for the removal of invasive tree species regardless of dbh.

Compensation for permanent impacts on riparian habitat shall be provided at a 1:1 or greater ratio, or as specified by USACE, the San Francisco Bay Regional Water Quality Control Board, and CDFW. Compensation for loss of riparian habitat may be in the form of permanent on-site or off-site creation, restoration, enhancement, or preservation of habitat with the goal of returning temporarily affected areas to pre-project conditions or better. Mitigation for project impacts shall be undertaken within the City of San José and, to the extent practical, shall be adjacent to or in proximity to the project area (i.e.,

along the Guadalupe River, Los Gatos Creek, or other local waterway and in a location where, in the opinion of a qualified biologist, comparable riparian habitat exists or can successfully be created). To that end, the restoration or compensation sites shall, at a minimum, meet the following performance standards by the fifth year after restoration or as otherwise required by resource agency permits:

(1) Native vegetation cover shall be at least 70 percent of the baseline native vegetation cover in the impact area.

(2) No more cover by invasive species shall be present than in the baseline/impact area.

Restoration or compensation shall be detailed in a Riparian Habitat Mitigation and Monitoring Plan, which shall be developed before the start of construction and in coordination with permit applications and/or conditions from applicable regulatory agencies. At a minimum, the plan shall include:

(1) Name and contact information for the property owner of the land on which the mitigation will take place;

(2) Identification of the water source for supplemental irrigation, if needed;

(3) Identification of depth to groundwater;

(4) Topsoil salvage and storage methods for areas that support special-status plants;

(5) Site preparation guidelines to prepare for planting, including coarse and fine grading;

(6) Plant material procurement, including assessment of the risk of introduction of plant pathogens through the use of nursery-grown container stock vs. collection and propagation of site-specific plant materials, or use of seeds;

(7) A planting plan outlining species selection, planting locations, and spacing for each vegetation type to be restored. To the extent practical, the planting plan will follow the *Guidelines and Standards for Land Use Near Streams: A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County*;

(8) Planting methods, including containers, hydroseed or hydromulch, weed barriers, and cages, as needed;

(9) Soil amendment recommendations, if needed;

(10) An irrigation plan, with proposed rates (in gallons per minute), schedule (i.e., recurrence interval), and seasonal guidelines for watering;

(11) A site protection plan to prevent unauthorized access, accidental damage, and vandalism;

(12) Weeding and other vegetation maintenance tasks and schedule, with specific thresholds for acceptance of invasive species;

(13) Performance standards, as referenced above, by which successful completion of mitigation can be assessed relative to a relevant baseline or reference site, and by which remedial actions will be triggered;

(14) Success criteria that shall include the minimum performance standards described in Mitigation Measure BI-2a, Avoidance of Impacts on Riparian Habitat, and Mitigation Measure BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat;

(15) Monitoring methods and schedule;

(16) Reporting requirements and schedule;

(17) Adaptive management and corrective actions to achieve the established success criteria; and

(18) An educational outreach program to inform operations and maintenance departments of local land management and utility agencies of the mitigation purpose of restored areas to prevent accidental damages.

The Riparian Habitat Mitigation and Monitoring Plan shall be developed before the start of construction and in coordination with permit applications and/or conditions from applicable regulatory oversight agencies. 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, or building permit that would include construction activities that would have direct impacts on riparian habitat.

Mitigation Measure BI-2b: Frac-Out Contingency Plan

If jack-and-bore construction is implemented, the project applicant shall require the contractor to retain a licensed geotechnical engineer to develop a Frac-out Contingency Plan. The project applicant shall submit the contingency plan to the appropriate resource agencies (e.g., the California Department of Fish and Wildlife [CDFW], Regional Water Quality Control Board, U.S. Army Corps of Engineers [USACE], U.S. Fish and Wildlife

Service [USFWS], and National Marine Fisheries Service [NMFS]) for review and approval prior to the start of construction of any pipeline that requires jack-and-bore construction to avoid surface waters. The regulatory agency–approved Frac-Out Contingency Plan shall also be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee. The Frac-out Contingency Plan shall be implemented where jack-and-bore construction under a waterway will occur to avoid, minimize, or mitigate potential project impacts during jack-and-bore construction, as specified in the contingency plan. The Frac-out Contingency Plan shall include, at a minimum:

(1) Measures describing training of construction personnel about monitoring procedures, equipment, materials, and procedures in place for the prevention, containment, cleanup (creating a containment area and using a pump, using a vacuum truck, etc.), and disposal of released bentonite slurry, and agency notification protocols;

(2) Methods for preventing frac-out, including maintaining pressure in the borehole to avoid exceeding the strength of the overlying soil;

(3) Methods for detecting an accidental release of bentonite slurry that include:

  (a) Monitoring by a minimum of one qualified biological monitor throughout drilling operations to ensure swift response if a frac-out occurs;

  (b) Continuous monitoring of drilling pressures to ensure they do not exceed those needed to penetrate the formation;

  (c) Continuous monitoring of slurry returns at the exit and entry pits to determine if slurry circulation has been lost; and

  (d) Continuous monitoring by spotters to follow the progress of the drill bit during the pilot hole operation, and reaming and pull back operations;

(4) Protocols that the contractor would follow if there is a loss of circulation or other indicator of a release of slurry; and

(5) Cleanup and disposal procedures and equipment the contractor would use if a frac-out occurs.

If a frac-out occurs, the contractor shall immediately halt work and implement the measures outlined in the Frac-out Contingency Plan to contain, clean up, and dispose of the bentonite slurry. The project applicant and/or contractor shall also notify and coordinate with appropriate

regulatory agencies, as required by the Frac-Out Contingency Plan (e.g., CDFW, the Regional Water Quality Control Board, USACE, USFWS, and NMFS) before jack-and-bore activities can begin again.

Mitigation Measure BI-2c: Monitor Effects of Shading and Heat Island on Riparian Vegetation and Stream Temperature

To evaluate the effects of building shading on riparian vegetation and water temperature in Los Gatos Creek, the project applicant shall implement an annual monitoring program that includes a baseline assessment and continues annually for 15 years following construction between Auzerais Avenue and West Santa Clara Street. The baseline assessment shall begin prior to the issuance of permits for ground-disturbing activity in the designated area. Post-construction monitoring shall begin following completion of each submitted phase that includes development between Auzerais Avenue and West Santa Clara Street and is adjacent to Los Gatos Creek and continue for 15 consecutive years thereafter for each submitted phase within these bounds. Two or more unshaded reference sites shall be included for comparison to shaded areas to account for vegetation effects that are unrelated to the project, such as from drought. The following performance standards shall be used to evaluate vegetation and water temperature changes over time and determine whether project-related shading is negatively affecting the riparian corridor, or whether the increased urban footprint is negatively affecting water temperatures in Los Gatos Creek.

Aquatic monitoring. The project applicant shall use the following methodology to study water temperature in Los Gatos Creek during the 15-year monitoring period. Prior to project construction, water and ambient air temperature loggers shall be installed at three locations within and adjacent to the project site. One logger shall be installed in upstream Los Gatos Creek, one within the affected reach adjacent to building construction, and one downstream of the project site. Care shall be taken to ensure that each of these temperature loggers is installed in similar habitat types (e.g., pool, riffle, run) within similar habitat conditions (e.g., amount of cover, depth, flow rate). Loggers at these three locations shall record hourly water temperature values before, during, and after project construction. If the difference in water temperature between the upstream and downstream monitoring locations increases substantially over time, particularly above the threshold of concern (71.6 degrees Fahrenheit), then additional adaptive actions shall be implemented (e.g., riparian planting, increase in urban tree canopy, treatment of runoff) to compensate for any increase in stream temperature. All actions shall be consistent with the approved Habitat Enhancement Plan, described below.

Riparian monitoring. At a minimum, riparian vegetation shaded by project buildings shall meet the following performance standards by the 15th year of post-project monitoring:

(1) The loss of absolute cover of riparian canopy and understory cover relative to baseline conditions is less than or equal to 15 percent. (If the loss of cover exceeds this criterion, then the change shall be compared with changes measured in the reference site[s] to determine whether on-site shading is the causal factor as opposed to other external regional factors such as climate change, drought, and alterations to reservoir releases.)

(2) There is no more than a 5 percent reduction in native species relative to non-native species for tree and woody shrub species, measured both as species richness and relative cover.

The following approach shall be used to monitor vegetation conditions during the 15-year period:

(1) Prior to the start of building construction within 100 feet of the riparian corridor, the project applicant shall prepare a 15-Year Riparian Vegetation Monitoring Plan to assess the change in riparian vegetation canopy and understory cover in the Los Gatos Creek riparian corridor within 100 feet of the project. The Riparian Vegetation Monitoring Plan shall describe quantitative methods for measuring the canopy and understory vegetation cover of baseline on-site and reference site riparian habitat and changes in the extent and species composition of riparian vegetation canopy following the completion of building construction within 100 feet of the riparian corridor. This plan shall assess the impacts of shading by project buildings on the riparian vegetation. The plan shall have measures to track changes in the percentage of native tree species (thus revealing any changes towards more shade tolerant species) and the results of the monitoring shall be assessed to determine if any tree species shifts could potentially adversely affect the riparian ecosystem. The monitoring data shall be reviewed by a qualified wildlife biologist. If adverse effects on ecosystems are identified, corrective actions would be implemented as part of the Habitat Enhancement Plan described below, and could involve planting of either shade tolerant species (such as bigleaf maple or alder, or sun-loving species in mitigation areas where they would thrive). Reference sites shall be chosen that have comparable canopy coverage, species composition, hydrology, topography, and scale from locations on Los Gatos Creek or the Guadalupe River as close to the project site as possible. The Riparian Vegetation Monitoring Plan shall be submitted to the appropriate

regulatory agencies (e.g., the California Department of Fish and Wildlife [CDFW]) for review and subsequently to the Director of Planning, Building and Code Enforcement or the Director's designee. The Riparian Vegetation Monitoring Plan shall include, at a minimum, the following elements:

(a) Methods for monitoring and measuring composition (i.e., species), cover, and extent of existing riparian vegetation, which may include:

(1) Tree canopy and wood understory cover plots or transects; and

(2) Percent cover of non-native invasive species. Non-native species shall be based on the California Invasive Plant Council (Cal-IPC) and Valley Water's Invasive Plant Management Program list.

In addition, monitoring shall include qualitative indicators of riparian vegetation health such as photomonitoring and signs of early decline (e.g., yellowing of leaves, small leaves, poor growth) to allow for early indications that riparian canopy cover and understory vegetation is in decline. Monitoring will also include natural recruitment/succession of native riparian vegetation, by recording observations of seedling and sapling tree species, and tracking their persistence and growth each year.

(b) Pre-project conditions shall be assessed during the late summer before the start of each construction phase that includes construction within 100 feet of the riparian corridor. Post-project monitoring shall be conducted in years 1–15 following the conclusion of each construction phase that includes construction within 100 feet of the riparian corridor. Surveys shall be conducted during the late summer to capture riparian species during their maximum growth.

(c) The project applicant shall prepare and submit to the Director of Planning, Building and Code Enforcement, or the Director's designee, an annual report documenting the monitoring of riparian habitat and any associated habitat enhancement activities. The first-year report shall consist of baseline on-site and reference site monitoring and a plan for habitat enhancement. Reports shall be submitted by December 30 of each monitoring year.

(2) A failure to meet the performance standards defined above in year 5, 10, or 15 shall trigger implementation of the following habitat enhancement measures as mitigation for loss of existing riparian habitat:

(a) Repeat the monitoring the following year (e.g., if performance criteria are not met in year 5, repeat monitoring in year 6). If in the following

year (e.g., year 6), performance criteria are not met (i.e., for 2 years in a row), implement step (b), below.

(b) The project applicant shall develop a Habitat Enhancement Plan to be reviewed and approved by appropriate regulatory agencies (e.g., National Marine Fisheries Service), and submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee. The plan shall consist of a planting palette composed primarily of shade-tolerant riparian vegetation such as white alder (*Alnus rhombifolia*), bigleaf maple (*Acer macrophyllum*), box elder (*Acer negundo*), Oregon ash (*Fraxinus latifolia*), California buckeye (*Aesculus californica*), and other locally appropriate native species, as well as an invasive vegetation control plan (if appropriate based on monitoring findings). Shade-tolerant riparian vegetation selected for the planting palette shall be based on nearby reference sites.

(c) The area of plantings needed to offset losses of existing riparian vegetation shall be defined in the Habitat Enhancement Plan based on the documented difference in percent absolute cover of riparian vegetation between the baseline conditions and the percent absolute cover averaged over each year of annual monitoring to date.

(d) Mitigation gains in woody riparian vegetation shall be deemed successful when there is an 80 percent survival rate of plantings after 5 years of additional monitoring, and no increase in percent cover of invasive plant species in restored areas.

(e) If these criteria are not met, adaptive management and corrective actions shall be implemented to achieve the established success criteria, in coordination with the applicable regulatory agencies. These may include additional plantings, weeding, or provision of supplemental water. Monitoring within the corrective action area shall continue for up to 10 additional years, until the criteria are met, or as otherwise required by the applicable regulatory agencies.

(f) The project applicant shall prepare and submit an annual report to the Director of Planning, Building and Code Enforcement, or the Director's designee, documenting the annual monitoring of habitat enhancement activities to document that this performance standard has been satisfied.

Mitigation Measure BI-2d: Avoidance and Protection of Creeping Wild Rye Habitat

Prior to the start of construction within 20 feet of retained areas of creeping wild rye, the project applicant shall ensure that all areas that contain or

potentially contain creeping wild rye are clearly delineated, separated, and protected from the work area by environmentally sensitive area fencing, which shall be maintained throughout the construction period. A qualified biologist shall oversee the delineation and installation of fencing. Excavation, vehicular traffic, staging of materials, and all other project-related activity shall be located outside of the environmentally sensitive area.

If creeping wild rye cannot be avoided, any temporarily affected areas shall be restored to preconstruction conditions or better at the end of construction that occurs within 20 feet of the retained area of creeping wild rye in accordance with CDFW permits, as well as the requirements of USACE and the San Francisco Bay Regional Water Quality Control Board. Compensation for permanent impacts on creeping wild rye habitat shall be provided at a 1:1 or greater ratio, or as specified by USACE, the San Francisco Bay Regional Water Quality Control Board, and CDFW. Compensation for permanent impacts on riparian habitat shall be provided at a 1:1 or greater ratio, or as specified by USACE, the San Francisco Bay Regional Water Quality Control Board, and CDFW. If impacts to prior mitigation sites occur, resource agencies may require a greater ratio (e.g., 2:1 or higher). Compensation for loss of riparian habitat may be in the form of permanent on-site or off-site creation, restoration, enhancement, or preservation of habitat. To that end, the restoration sites shall, at a minimum, meet the following performance standards by the fifth year after restoration:

(1) Native vegetation cover shall be at least 70 percent of the baseline native vegetation cover in the impact area.

(2) No more cover by invasive species shall be present than in the baseline/impact area.

Restoration shall be detailed in a habitat mitigation and monitoring plan, which shall be developed before the start of construction and in coordination with permit applications and/or conditions. At a minimum, the plan shall include:

(1) Name and contact information for the property owner of the land on which the mitigation will take place;

(2) Identification of the water source for supplemental irrigation, if needed;

(3) Identification of depth to groundwater;

(4) Topsoil salvage and storage methods for areas that support special-status plants;

(5) Site preparation guidelines to prepare for planting, including coarse and fine grading;

(6) Plant material procurement, including assessment of the risk of introduction of plant pathogens through the use of nursery-grown container stock vs. collection and propagation of site-specific plant materials, or use of seeds;

(7) A planting plan outlining species selection, planting locations, and spacing for each vegetation type to be restored;

(8) Planting methods, including containers, hydroseed or hydromulch, weed barriers, and cages, as needed;

(9) Soil amendment recommendations, if needed;

(10) An irrigation plan, with proposed rates (in gallons per minute), schedule (i.e., recurrence interval), and seasonal guidelines for watering;

(11) A site protection plan to prevent unauthorized access, accidental damage, and vandalism;

(12) Weeding and other vegetation maintenance tasks and schedule, with specific thresholds for acceptance of invasive species;

(13) Performance standards by which successful completion of mitigation can be assessed relative to a relevant baseline or reference site, and by which remedial actions will be triggered;

(14) Success criteria that shall include the minimum performance standards described in Mitigation Measure BI-2a, Avoidance of Impacts on Riparian Habitat, and Mitigation Measure BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat;

(15) Monitoring methods and schedule;

(16) Reporting requirements and schedule;

(17) Adaptive management and corrective actions to achieve the established success criteria; and

(18) An educational outreach program to inform operations and maintenance departments of local land management and utility agencies of the mitigation purpose of restored areas to prevent accidental damages.

The Habitat Mitigation and Monitoring Plan and all field documentation, prepared in coordination with the appropriate regulatory agencies, shall be submitted to the Director of the City of Planning, Building and Code

Enforcement or the Director's designee for review and approval prior to the issuance of any demolition, grading, or building permit for construction that would occur within 20 feet of creeping wild rye habitat.

Finding: Implementing Mitigation Measures BI-1a, General Avoidance and Protection Measures; BI-1b, In-Water Construction Schedule; BI-1c, Native Fish Capture and Relocation; BI-1e, Avoidance of Impacts on Nesting Birds; BI-1f, Roosting Bat Surveys; BI-2a, Avoidance of Impacts on Riparian Habitat; BI-2b, Frac-Out Contingency Plan; BI-2c, Monitor Effects of Shading and Heat Island Effect on Riparian Vegetation and Stream Temperature; BI-2d, Avoidance and Protection of Creeping Wild Rye Habitat; HY-3b, Plan for Ongoing Creek Maintenance; and NO-1a, Operational Noise Performance Standard, would reduce this impact to a less-than-significant level. Accordingly, with adoption of these mitigation measures, changes or alterations have been required in, or incorporated into the project which avoid or substantially lessen the significant environmental effect as identified in the FEIR, and this impact would be reduced to a less-than-significant level.

Facts in Support of Finding: As discussed in Section 3.2 (pages 3.2-46, 3.2-50, 3.2-54, 3.2-56, 3.2-58, 3.2-61, 3.2-67, 3.2-71, and 3.2-73) of the Draft EIR, as amended, implementation of Mitigation Measures BI-1a through BI-1f, BI-2a through BI-2d, HY-3b, and NO-1a would ensure that appropriate preventative and protective measures, surveys, avoidance, relocation (if necessary), monitoring, maintenance, and noise control would be undertaken in connection with project construction activities and ongoing project operations, thereby reducing potential adverse effects on essential fish habitat, riparian habitat, and creeping wild rye sensitive natural community. For the above reason, the impact on riparian habitat or other sensitive natural communities would be reduced to a less-than-significant level with mitigation.

Impact: **Impact BI3:** The proposed project could 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.

Mitigation: **Mitigation Measure BI-1a: General Avoidance and Protection Measures** (refer to Impact BI-1)

Mitigation Measure BI-2a: Avoidance of Impacts on Riparian Habitat (refer to Impact BI-2)

Mitigation Measure BI-2d: Avoidance and Protection of Creeping Wild Rye Habitat (refer to Impact BI-2)

Mitigation Measure BI-3: Avoidance of Impacts on Wetlands and Waters

The project applicant for the specific construction activity to be undertaken and its contractors shall minimize impacts on waters of the United States and waters of the state, including wetlands, by implementing the following measures:

- A preliminary jurisdictional delineation of wetlands shall be prepared to determine the extent of waters of the United States and/or waters of the state within the project component footprints and anticipated construction disturbance areas. The results shall be summarized in a wetland delineation report to be submitted to the Director of the City of San José Department of Planning, Building and Code Enforcement, or the Director's designee, for review and approval before the issuance of any demolition, grading, or building permit for construction activity within the riparian corridor. Wetlands identified in the report shall be avoided through project design, if feasible. All identified avoidance and protection measures shall be included on the plans for proposed demolition, grading, and/or building permits for construction activities within the riparian corridor.
- The proposed project shall be designed to avoid, to the extent practical, work within wetlands and/or waters under the jurisdiction of U.S. Army Corps of Engineers (USACE), the San Francisco Bay Regional Water Quality Control Board, and/or the California Department of Fish and Wildlife (CDFW). If applicable, permits or approvals shall be sought from the above agencies, as required. Where wetlands or other water features must be disturbed, the minimum area of disturbance necessary for construction shall be identified and the area outside avoided.
- Before the start of construction within 50 feet of any wetlands and drainages, appropriate measures shall be taken to ensure protection of the wetland from construction runoff or direct impact from equipment or materials, such as the installation of a silt fence, and signs indicating the required avoidance shall be installed. No equipment mobilization, grading, clearing, or storage of equipment or machinery, or similar activity, shall occur until a qualified biologist has inspected and approved the fencing installed around these features. The construction contractor for the specific construction activity to be undertaken shall ensure that the temporary fencing is maintained until construction activities are complete. No