



PLANNING COMMISSION STAFF REPORT

File No.	C15-054, SP16-053 and V17-004
Applicant	Cilker Orchards Mgmt Corp
Location	1657 Alviso-Milpitas Road (APN: 015-31-054)
Existing Zoning	A(PD) Planned Development
General Plan Designation	Light Industrial
Council District	4
Historic Resource	Structure of Merit Eligible
Annexation Date	September 12, 2001
CEQA	237 Industrial Center Environmental Impact Report

APPLICATION SUMMARY:

The project is a request to rezone the project site from A(PD) Planned Development Zoning District to LI Light Industrial Zoning District, to construct six buildings for a data center use and to utilize different off-street parking standards on an approximately 64.59 gross acre site. This project also includes the off-site extension of water, sanitary sewer, stormwater, electrical, natural gas and fiber optics utilities, and up to three public streets from Zanker Road to the project site. The file numbers and purpose of each permit is described in greater detail below:

- File No. C15-054: Conforming Rezoning from the A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District;
- File No. SP16-053: Special Use Permit to remove eight ordinance sized and 14 non-ordinance sized trees and to allow 14 generators and the construction of six buildings for a data center use totaling approximately 376,519 square feet and on and off-site improvements; and
- File No. V17-004: Development Exception to allow an exception to the off-street parking requirements.

RECOMMENDATION:

Staff recommends that the Planning Commission recommend the City Council to:

1. Adopt a resolution certifying the 237 Industrial Center Environmental Impact Report and making certain findings concerning significant impacts, mitigation measures, alternatives, and adopting a Statement of Overriding Considerations and Mitigation, Monitoring and Reporting Program, all in accordance to the California Environmental Quality, Act, as amended (CEQA).
2. Approve an ordinance of the City of San José rezoning an approximately 64.59 gross acre parcel site, located northwest of Highway 237 and McCarthy Boulevard (1657

Alviso-Milpitas Road) from A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District (Cilker Carl A And Kathleen C Trustee, Owners).

3. Adopt a resolution approving (i) Special Use Permit No. SP16-053, subject to conditions, to allow the removal of eight ordinance sized and 14 non-ordinance sized trees, and construction of six buildings for a data center use totaling approximately 376,519 square feet with associated site improvements and 14 generators and off-site improvements on an approximately 49 acres, and (ii) a Development Exception pursuant to San Jose Municipal Code Section 20.100.1300B.1.d to allow for a reduction in off-street parking.

PROJECT DATA

GENERAL PLAN CONSISTENCY			
General Plan Designation		Light Industrial <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent	
Consistent Policies		LU-6.5, LU-6.8, IP-1.6, IP-1.7, IP-8.2, MS-2.10, ER-2.2, ER-2.3, CD-1.25, ER-6.7, ER-7.1, IN-6.1	
Inconsistent Policies		ER-2.1	
SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
North	Public/Quasi-Public	IP Industrial Park	Biosolid drying beds
South	Open Space, Parklands and Habitat and the City of Milpitas	IP Industrial Park	California State Route 237 and Office
East	City of Milpitas	City of Milpitas	Coyote Creek Trail and office buildings
West	Public/Quasi-Public	IP Industrial Park and A(PD) Planned Development	Los Esteros Energy Center and power plants
RELATED APPROVALS			
Date	Action		
04/03/2001	Planned Development Rezoning from A-20s (County designation) Zoning District to the A(PD) Planned Development District to allow 2.2 million square feet of industrial telecommunication equipment facility on a 140 gross acre site (file no. PDC00-048)		
05/03/2001	Planned Development Rezoning and Rezoning to A(PD) Planned Development to allow 2.2 million square feet of industrial telecommunication equipment facility on a 140 gross acre site (File No. PDC00-048)		
12/12/2001	Annexation into the City of San José		
11/06/2001	A General Plan amendment to amend the Alviso Master Plan to allow a maximum building height of 100 feet for certain properties (file no. GP01-T-05)		
02/19/2002	Planned Development Rezoning from A(PD) Planned Development District to A(PD) Planned Development District to allow installation of gas fired power plant in addition to previously approved 2.2 million square feet telecommunication equipment facility on a 174 gross acre site (File No. PDC01-088)		

SITE LOCATION AND PROJECT DESCRIPTION

The proposed project is in the Alviso/North San José area, north of California State Route 237 between Zanker Road and Coyote Creek (Figure 1). The site is a largely vacant site except for four existing structures consisting of two single-family residences, a prefabricated house and accessory structures located on the southern portion of the project site. The southern portion of the project site is not proposed for development at this time, and therefore, the four structures would remain.



Figure 1: Project Location

Adjacent to the project site are Coyote Creek, office buildings, and the City of Milpitas to the east, San José-Santa Clara Regional Wastewater Facility biosolid drying beds to the north, Los Esteros Energy Center to the west, and California State Route 237 to the south. The project site is located on the eastern edge within the Alviso Master Plan area and is not part of the Regional Wastewater Facility Master Plan area.

On October 9, 2015, the applicant applied for a Conforming Rezoning from the A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District. On November 3, 2016, the applicant applied for a Special Use Permit to remove eight ordinance sized and 14 non-ordinance sized trees and to allow construction of six buildings for a data center use totaling approximately 376,519 square feet, 14 generators and site improvements on an approximately 64.59 gross acre site (Figure 2). The data center would have minimal employees and operates 24 hours a day. On June 19, 2017, the applicant requested a Development Exception to reduce off-street parking requirements for the data center project.

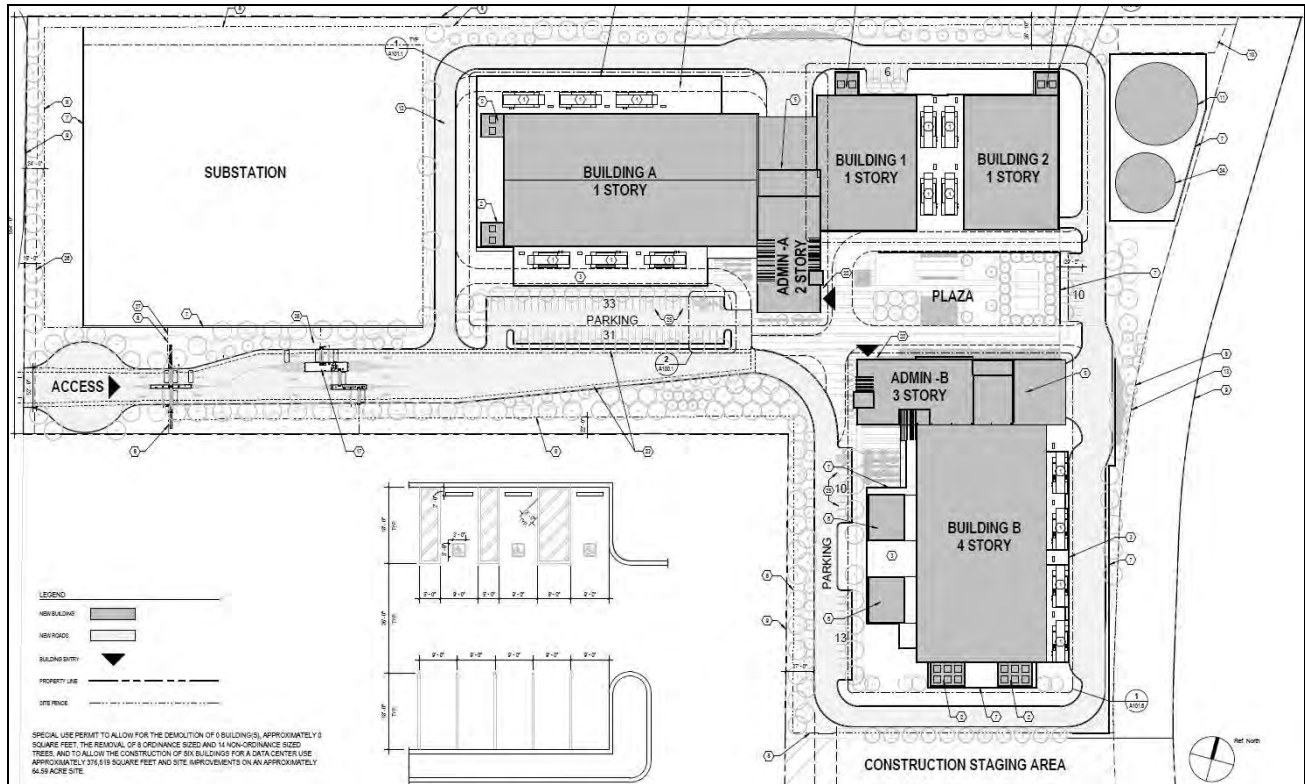


Figure 2: Enlarged Site Plan

The project also includes construction of new off-site public infrastructure including, but not limited to, a new public street (Nortech Parkway extension) with stormwater treatment methods and a sidewalk with a park strip, a new storm drain line, a pump station and a new outfall at Coyote Creek on an additional 49 acres.

Pursuant to Section 21.07.020 and Table 20-260 of Section 20.100.220 of the San José Municipal Code, the City Council is the initial decision-making body for this project since (i) the Environmental Impact Report identified one or more significant unavoidable environmental impacts under CEQA and (ii) consideration of a rezoning ordinance.

ANALYSIS

The proposed Conforming Rezoning, Special Use Permit and Development Exception were analyzed with respect to conformance with: 1) the Envision 2040 General Plan; 2) Alviso Master Plan; 3) Riparian Corridor Policy Study; 4) Riparian Corridor Projection and Bird-Safe Design Council Policy; 5) the Zoning Ordinance; 5) Industrial Design Guidelines, and 6) California Environmental Quality Act (CEQA).

Envision San José 2040 General Plan Conformance

The proposed project site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Light Industrial (Figure 3). This category is intended for a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects. Warehousing, wholesaling, and light manufacturing are examples of typical uses in this designation.



Figure 3: General Plan Land Use Designation

The proposed Conforming Rezoning, Special Use Permit and Development Exception would allow a use that will provide telecommunication services and cloud storage, and is consistent with the following General Plan policies:

Conforming Rezoning:

Implementation Policy IP-1.6: Ensure that proposals to rezone and prezone properties conform to the Land Use/Transportation Diagram and advance Envision General Plan vision, goals, and policies.

Implementation Policy IP-1.7: Use standard Zoning Districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard Zoning Districts, or to sites with unusual physical characteristics that require special consideration due to those constraints.

Implementation Policy IP-8.2: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective Envision General Plan land use designations, while providing greater detail as to the appropriate land uses and form of development.

Land Use Policy LU-6.5: Maintain and create Light Industrial and Heavy Industrial designated sites that are at least one acre in size in order to facilitate viable industrial uses.

Land Use Policy LU-6.8: Reserve industrial areas for industrial and compatible support uses, while recognizing that industrial uses come in a variety of types and forms. Allow non-industrial

uses which are only incidental to and totally compatible with primary industrial uses in exclusively industrial areas. Consider allowing supportive, non-industrial activities, such as retail sales of materials manufactured or stored on site.

Analysis for IP-1.6, IP-1.7, IP-8.2 and LU-6.5, LU-6.8: The Rezoning application is to rezone the property from a Planned Development Zoning to a conventional and standard zoning district of LI Light Industrial. The rezoning application conforms to and furthers the General Plan goals and policies. Table 20-270 contained in Section 20.120.110 of the San Jose Municipal Code states that the conforming zoning district to the General Plan land use designation of Light Industrial is the LI Light Industrial Zoning District. The LI Light Industrial Zoning District will allow for a range of industrial uses, such as, manufacturing and assembly, research and development, warehousing and distribution and data centers. The proposed project will help facilitate the development of a data center.

The proposed project is also consistent with the following General Plan policies:

Riparian Corridors Policy ER-2.2: Ensure that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.

Riparian Corridors Policy ER-2.3: Design new development to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise and toxic substances into the riparian zone.

Attractive City Policy CD-1.25: Apply Riparian Corridor Goals and Policies of this Plan when reviewing development adjacent to creeks. Development adjacent to creekside areas should incorporate compatible design and landscaping, including appropriate setbacks and plant species that are native to the area or are compatible with native species. Development should maximize visual and physical access to creeks from the public right-of-way while protecting the natural ecosystem. Consider whether designs could incorporate linear parks along creeks or accommodate them in the future.

Community Forest Policy MS-21.10: Prohibit London plane trees from being planted in the Coyote Planning Area, which is located near the most significant stands of sycamore alluvial woodland in the City. Planting of this species is discouraged elsewhere, particularly near riparian areas. Prohibit holly-leaved oaks from being planted in areas containing stands of native oaks or in proximity to native oak woodland habitat.

Analysis for MS-21.10, ER-2.2, ER-2.3, and CD-1.25: Because the site is located adjacent to Coyote Creek, development of the project site will incorporate a 100-foot setback from the riparian habitat, pursuant to the General Plan Riparian Corridor policies and the Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design. No London Plane trees will be planted on the subject site. All site lighting will be directed downward and away from riparian areas, in compliance with the above General Plan policies as well as the Council Policy 4-3 Outdoor Lighting on Private Developments. The photometric plan sheets contained in the project plan set largely indicates 0.00 lumens at the riparian setback area. Additional analysis is provided in the Riparian Corridor Policy Study and Riparian Corridor Protection and Bird-Safe Design Council Policy Section below.

Urban Natural Interface Policy ER-6.7: Include barriers to animal movement within new development and, when possible, within existing development, to prevent movement of animals (e.g., pets and wildlife) between developed areas and natural habitat areas where such barriers will help to protect sensitive species.

Wildlife Movement Policy ER-7.1: In the area north of Highway 237 design and construct buildings and structures using bird-friendly design and practices to reduce the potential for bird strikes for species associated with the baylands or the riparian habitats of lower Coyote Creek.

Analysis for ER-6.7 and ER-7.1: The project includes an eight foot wrought iron fence around the perimeter of the facility, including along the riparian edge. The project contains very minimal glazing elements (i.e. windows) which are primarily limited to the building entryways and at the ground floor level. The building material palette is primarily comprised of earth tones with non-glossy finishes and does not contain any glare elements. The minimal glazing proposed is a low-e glazing with limited reflectivity. Additional analysis is provided in the Riparian Corridor Policy Study and Riparian Corridor Protection and Bird-Safe Design Council Policy Section below.

Telecommunications Policy IN-6.1: Work with service providers to ensure access to and availability of a wide range of state-of-the-art telecommunication systems and services for households, businesses, institutions, and public agencies throughout the city.

Analysis for IN-6.1: The proposed data center use will provide and serve the region with telecommunication services, cloud storage and other technology-oriented services.

Inconsistent General Plan Policies:

The project does not fully comply with the following policies of the General Plan:

Riparian Corridors ER-2.1: Ensure that new public and private development adjacent to riparian corridors in San José are consistent with the provisions of the City's Riparian Corridor Policy Study and any adopted Santa Clara Valley Habitat Conservation Plan/ Natural Communities Conservation Plan (HCP/NCCP).

Analysis for ER-2.1: The project is consistent with the Riparian Corridor Policy Study as explained in detail below. As mentioned in the Riparian Corridor Policy Study Conformance section below. The project does not fully comply with Guidelines 1A, 2E, and 2F of the Policy Study, as it relates to the orientation of the site, noise and noise generating equipment and lighting. Guideline 1A states that site activity areas (i.e., loading and delivery areas) should be oriented to draw activity away from the riparian corridor. The project proposes one loading area with four loading docks oriented towards the riparian corridor; however, the project is also including a 100-foot riparian setback from Coyote Creek and the loading dock area is located approximately 180 feet from the top of bank. Directly adjacent to the riparian setback area is a landscaped edge measuring approximately 20 feet to 40 feet deep that will assist in providing a landscaped buffer from the riparian setback area. Additionally, the project has placed the lowest level of activity (i.e., the loading area) oriented towards the creek. Switching the location of the loading docks with the building entrance was considered, but was subsequently determined that that this would create increased activity since the loading area generally would be used less than a building entrance. Guideline 2E states that lighting within the riparian corridor and setback area should be avoided. While there is no lighting proposed within the corridor, there would be minimal lighting spillover in the 100-foot riparian setback area. Guideline 2F states that noise-producing stationary mechanical equipment should be located as far as necessary from riparian corridors. There are four stand-by/backup generators located approximately 135 feet from the property line and approximately 35 feet from the 100-foot riparian setback. These generators are not in constant operation and will only be used for approximately 30 minutes every month for testing with a maximum of 30 hours a year. Additionally, the generators are screened and placed in noise attenuating enclosures.

Additional analysis is provided in the Riparian Corridor Policy Study and Riparian Corridor Protection and Bird-Safe Design Council Policy Section below.

Alviso Master Plan Conformance

The project site is located within the Alviso Master Plan area. The Alviso Master Plan was adopted in December of 1998 as a Specific Plan for development in the Alviso planning area. The Master Plan contains guidelines that address height, setbacks, design, materials, architectural features, parking, orientation of truck docks and service areas, outdoor storage and flood mitigation for development within Alviso, as well as design guidelines to promote the preservation and enhancement of the existing small town quality. These design guidelines allow flexibility for larger-scale development provided that new development contributes to the unique design and architecture of Alviso.

On November 6, 2001, City Council adopted a General Plan text amendment to allow maximum building heights of 100 feet for a 140 acre site (includes the project site) north of State Route 237 and approximately 2,000 feet east of Zanker Road (File No. GP01-T-05). This allowed an increase in maximum building height from 50 feet up to 100 feet.

The project site is designated as Light Industrial in the Alviso Master Plan. Under this designation, a wide variety of industrial uses (excluding any uses with unmitigated hazardous or nuisance effects) are allowed. Only low intensity uses (i.e., those with low employment densities) are allowed in the Light Industrial area located near Coyote Creek. The project is consistent with the land use designation because it is considered a low intensity use in a data center use does not typically employ a large number of employees and does not typically generate a large amount of vehicular traffic.

The project also complies with several Industrial/Non-Industrial policies, specifically regarding setbacks/buffers from environmental resources (e.g., Coyote Creek) and mitigating potential negative environmental impacts to these resources. The project complies with these policies in that a 100 foot setback from the riparian corridor is provided and the project is mitigating environmental impacts to the riparian corridor through the Mitigation Measure Report Program (MMRP). Additionally, the project complies with a number of Environmental Protection Policies, including that certain activities (i.e. parking, circulation, loading, outdoor storage, utility, and other similar activities) must be located on paved surfaces with proper drainage and waterways or marshlands should never be used for storage, trash, or other environmental adverse uses. The project complies with these policies in that the project has been evaluated for stormwater compliance and the data center use is fully contained on the project site.

Furthermore, the project complies with the Alviso Master Plan in that the project is transferring intensity away from the baylands as it is located closer to California State Route 237 and is providing a 100-foot riparian setback, contains an architectural style that has simple volumes, and straight lines. Additionally, the project is locating the surface parking at the sides and rear of the buildings and not towards the public street and is locating the loading area behind the building while still providing a 100-foot setback from the riparian corridor. Lastly, the project is located in Flood Zone X, which is not a designated Federal Emergency Management Agency 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard and there are no city floodplain requirements for Zone X.

The project substantially conforms to the Alviso Master Plan in regards to the land use designation of Light Industrial, land use policies, industrial policies and industrial guidelines (as mentioned above), with the exception of the following:

- Community Character Policy 1: New buildings, particularly within the village area, should continue Alviso's small scale development pattern.
- Community Character Policy 2: New development should reflect Alviso's bayside character through the design of buildings and landscaping.
- Architectural Features: Architectural attention should be focused on the overall building volume and shape rather than overly decorating and detailing the structure.

The above three policies apply throughout the Alviso area and the overall intent is to guide new development so that it is compatible with the existing community. The underlying purposes of the land use policies are also expressed in the specific design guidelines contained in the Alviso Master Plan.

The buildings arguably balances a basic volume and shape with simply articulation and materials. The project does not continue nor reflect Alviso's small scale development as the project design is a modern architectural expression with materials that reinforce the modern appearance. However, the project site is located at the eastern edge of the Alviso Master Plan area and is located approximately three miles outside of the Village Area where there is a small scale development pattern. Although the project does not strictly satisfy the above Alviso Master Plan policies and guidelines, the project does satisfy a number of General Plan policies and it is consistent overall to the Alviso Master Plan and specifically in respect to the following: incorporating a 100 foot setback and buffer from Coyote Creek, the environmental impacts associated with light industrial areas with respect to the nearby natural resources are minimized, the landscaping is drought tolerant and primarily native species and a number of the environmental protection policies.

While the project is not consistent with Community Policy 1, 2 and Architectural Features of the Guidelines for Industrial Development, the project is consistent with land use designation, industrial/non-industrial policies, and guidelines for industrial development outside of the Village Area and therefore, overall is consistent with the Alviso Master Plan.

Riparian Corridor Policy Study & Riparian Corridor Protection and Bird-Safe Design Council Policy

As the proposed project is within 300 feet of a riparian corridor (as stated in the Riparian Corridor Protection and Bird-Safe Design Council Policy), the project must comply with the City Council approved Riparian Corridor Policy Study and City Council Policy 6-34 for Riparian Corridor Protection and Bird-Safe Design. The City Council adopted the Riparian Corridor Policy Study on May 17, 1994 (later revised on March 1999) and City Council Policy 6-34 entitled "Riparian Corridor Protection and Bird-Safe Design" on August 23, 2016 respectively. The purpose of the Council Policy and Study are to (i) protect, preserve, or restore riparian habitat; (ii) limit the creation of new impervious surface to minimize flooding; and (iii) encourage bird-safe design in baylands north of State Route 237.

The project substantially complies with both the Riparian Corridor Policy Study and the Riparian Corridor Protection and Bird-Safe Design Council Policy. The project is proposing a 100-foot riparian setback and is not proposing any structures, buildings, or activities in this area.

Guideline 1A, 1B and 1C: Orientation, Incompatible Land Use, and Setback Areas (pages 30-31)

The project is not considered an incompatible land use in that it is not a land use that generates littering or dumping activities, is not an off-road vehicle use and does not remove native vegetation and is not a use that creates noxious odors or stores/creates toxic materials. It also is not a use that generates high volumes of vehicular traffic. The project is also locating the sub-

station at the furthest location from the riparian area and is located more than 1,000 feet away. The project also complies with the setback requirement of a 100-foot setback from the riparian area and is not proposing any new impervious surface, building structure or outdoor activity areas within this setback.

The Policy states that if loading dock areas or outdoor storage areas cannot be oriented away from the riparian corridors, such use areas should be screened from the riparian corridor by 7-foot high solid or semi-solid fencing plus a vegetation buffer. The project includes a loading area located outside of the 100-foot riparian setback area but is orienting towards the riparian corridor and the project is proposing a wrought iron security fence around the perimeter of the project site. The project is also providing an approximate 25-foot landscape buffer from the riparian setback area.

Guideline 2A, 2B, 2C, 3A, and 3B: Building Appearance, Glare, Visual, Development Landscaping, Irrigation (pages 41-42)

In regards to the building design, the building material palette is primarily comprised of earth tones with non-glossy finishes and does not contain any glare elements. The project is proposing minimal glazing elements on the buildings (primarily limited to the building entryways) and exterior building materials will include precast concrete, core-ten metal panels and insulated metal panels. The minimal glazing proposed is a low-e glazing with limited reflectivity.

Lastly, the project is not proposing any landscaping or irrigation within the riparian setback area (aside from one bioretention area), and the landscape located adjacent to the riparian setback area is primarily native plant species. In regards to construction protection measures, best management practices will be utilized and will be utilized during construction.

As described above, the project substantially conforms to the Riparian Corridor Policy Study and the Riparian Corridor Protection and Bird-Safe Design Council Policy with the exception of the following:

- Guideline 1A Orientation: Site activities should be oriented to draw activity away from the riparian corridor, for example, entrances, loading and delivery areas, noise generating activities and equipment, and activities requiring night lighting should be oriented towards non-riparian property edges. Circulation and maneuvering areas serving loading docks and other similar major activity areas should be oriented away from the riparian setback area or should be separated from the setback area by a minimum 7 foot high fence and buffer area thickly planted with native species appropriate to the nearest riparian habitat type.
- Guideline 2E Lighting: For all other developments, lighting within the corridor and setback areas should be avoided. Lighting on development sites should be designed and sited to avoid light and glare impacts to wildlife within the riparian corridor, consistent with public safety considerations. Any lighting located adjacent to riparian areas should be as low as feasible in height and must be directed downward with light sources not visible from riparian areas.
- Guideline 2F Noise: Noise-producing stationary mechanical equipment should be located as far as necessary from riparian corridors to preclude exceeding the ambient noise levels in the corridors.

The project includes a loading area with four loading docks (one for recycling, one for refuse, and two for loading/deliveries) that is oriented to the riparian corridor. As stated previously, there is no activity proposed within the riparian setback, other than a stormwater treatment facility (i.e. bioretention area). While the Riparian Corridor Policy Study encourages loading activity to be oriented away from the riparian area, activity in this area will be infrequent and minimal. A condition of approval is placed on the project to restrict hours of loading activity.

The project is also proposing a 25-foot landscape buffer in addition to the 100-foot setback from the riparian corridor and the project has placed the lowest level of activity orienting towards the creek, as switching the location of the building entrance and the loading dock would create increased activity. The building entrance is utilized more frequently than the loading dock area. The project is also proposing 14 standby/back-up generators facing the riparian area; however, the screening mechanism for these generators are also sound attenuated and will not create nor exceed noise levels as specified in the Zoning Ordinance and General Plan. These standby/back-up generators only operate as a back-up power source and occasional testing. These generators are not in constant operation and will only be used for approximately 30 minutes every month for testing with a maximum of 30 hours a year.

The project is proposing perimeter lighting in the form of light poles, approximately 25-feet tall. There are four light fixtures that are located adjacent to the riparian setback area. There will be minimal lumens (ranging from 0.1 to 3.5) impact to the riparian setback area and there will be no light impacts to the riparian corridor. The small area that contains 3.5 lumens is located adjacent to Building B (facing riparian corridor) will not have any light impacts to the riparian corridor.

While the project does not strictly satisfy the above three riparian guidelines, the project is consistent overall with respect to the following: the project is a use that is not considered incompatible, provides a 100-foot riparian setback, provides a landscape buffer and fencing materials at the 100-foot riparian setback area, utilizes building materials that are earth toned, are not shiny or contain any glare and does not propose any activity within the riparian corridor or riparian setback area.

City of San Jose Interim Lighting Policy Broad Spectrum Lighting (LED) for Private Development

The project is proposing to utilize LED lighting on the project as opposed to Low Pressure Sodium Lighting, as required by City Council Policy 4-3 Outdoor Lighting on Private Developments. A project is able to utilize LED lighting should certain standards be met. The project is proposing pole mounted lighting that is approximately 25-feet tall and is in compliance with this Policy as the maximum height for ground mounted lighting is 25-feet tall. The lighting located adjacent to riparian areas and riparian setback areas is directed downwards and will have minimal spill over lighting, as detailed in the Riparian Corridor Policy Study & Riparian Corridor Protection and Bird-Safe Design Council Policy above.

Zoning Ordinance Conformance

Land Use

The proposed project is located in the A(PD) Planned Development Zoning District (Figure 4).



Figure 4: A(PD) Zoning District

This Planned Development Zone was never effected with a Planned Development Permit and therefore is under the A Agricultural zoning designation. This Planned Development Zoning District was approved by the City Council in 2001. The project proposes to rezone the property from the A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District. The LI Light Industrial Zoning District is intended for a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects allows for a range of uses, including, but not limited to light and medium manufacturing and assembly, research and development, warehouse/distribution facility, and data centers. Pursuant to Table 20-110 contained in Section 20.50.100 of the San Jose Municipal Code, a data center requires a Special Use Permit. The project was evaluated with the development standards of the LI Light Industrial Zoning District.

Setbacks

Pursuant to Table 20-120 (Industrial Zoning District Development Standards) contained in Section 20.50.100 of the SJMC, the front setback requirements is as follows:

- Front setback for buildings is 15 feet
- Front setback for parking and circulation for passenger vehicles is 20 feet
- Front setback for trucks and buses parking is 30 feet
- Front setback for loading docks is 60 feet from the property line, or 100 feet from residential districts (whichever is greater)

The project has a front setback of 24 feet and therefore complies with the setback requirements. There are no parking and circulation for passenger vehicles and trucks and buses parking in the front setback area. There are also no loading docks in the front setback area and there are no residential districts adjacent to the project site.

The side and rear setbacks requirements is as follows:

- Side and rear setbacks for buildings and structures is zero feet from the property line, or 25 feet from residential district, whichever is greater
- Side and rear setbacks for parking and circulation for passenger vehicles is zero feet from the property line, or 25 feet from residential district, whichever is greater
- Side and rear setbacks for parking for trucks and buses is zero feet from the property line, or 25 feet from residential district, whichever is greater
- Side setback for loading docks is zero feet from the property line or 100 feet from the residential district, whichever is greater

There are no residentially zoned properties adjacent to the project site, and therefore, the project is allowed a zero side setback for buildings and structures, parking and circulation for passenger vehicles, parking for trucks, and loading docks. The project complies with this requirement.

Height

The maximum height as stated in Table 20-120 of the San José Municipal Code is 50 feet, unless a different maximum is established as specified in Chapter 20.85. Section 20.85.010(C)(2) (Specific Height Restrictions) of Chapter 20.85 of the SJMC, states that the governing height restriction for properties that are located within specific plan areas are set by the height restrictions within that specific plan document. As discussed above, the project is located in the Alviso Master Plan, which as amended, allows heights for this site up to 100 feet. The project is proposing a maximum height of 91 feet and six inches and therefore, complies with the height requirement.

Off-Street Vehicle Parking

Section 20.90.060 (Number of Parking Spaces Required) of the SJMC sets forth the off-street vehicle parking requirements. A data center use requires one parking space per 250 square feet of office/meeting/technician work space, plus one parking space for each 5,000 square feet of floor area, or fraction thereof, devoted to computer equipment space. Based on 71,639 square feet for the office/meeting/technician work space, the project is required to provide 287 parking spaces. Based on 350,402 square feet of computer equipment space, the project is also required to provide 71 parking spaces for a total of 358 parking spaces.

On August 21, 2017, the applicant submitted a parking study prepared by Hexagon Transportation Consultants that evaluated the maximum parking demand for data centers. The parking study evaluated two existing data centers located in the City of Santa Clara. Parking counts were taken every hour between 8:00 am to 6:00 pm on August 8th, August 9th, and August 10th. The results of the parking study concluded that the data centers utilized a parking demand of 0.22 parking spaces per 1,000 square feet.

Section 20.100.1300(B)(1)(d) of the SJMC allows for a Development Exception Permit to be utilized for exceptions to the off-street parking and loading requirements and regulations of Title 20 (Zoning Ordinance). Based on the parking study submitted by the applicant, the analysis showed that data centers do not generate substantial trips due to the very low number of employees required for each building. There will be approximately 40 employees on-site at any given time. With reduced parking numbers come reduced square footage of impervious surfaces, which reduces the amount of runoff into the stormwater system.

Based on 422,041 square feet and utilizing the 0.22 parking spaces per 1,000 square feet, the parking requirement is 93 parking spaces. The project is providing 97 parking spaces with approval of the Development Exception Permit.

Bicycle Parking

Table 20-190 in Section 20.90.060 of the SJMC requires one bicycle parking space per 5,000 square feet of office/meeting/technician work space, plus one parking space for each 50,000 square feet of floor area, or fraction thereof devoted to computer equipment space. Based on 71,639 square feet of office/meeting/technician work space, the project is required to provide 15 bicycle parking spaces. Based on 350,702 square feet of computer equipment space, the project is also required to provide eight bicycle parking spaces. Overall, the project is required to provide a total of 23 bicycle parking spaces. The project complies with the bicycle parking requirement by providing 23 bicycle parking spaces.

Special Use Permit Findings

Chapter 20.100 of the San Jose Municipal Code establishes evaluation criteria for issuance of a permit to allow data center use. These criteria are applied to the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the permit. In order to make the Special Use Permit findings pursuant to Section 20.100.720 of the San Jose Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

1. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and
2. The Special Use Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project; and
3. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As described in the General Plan, Alviso Master Plan, Zoning Code and City Council Policy Conformance sections above, the project is consistent with and conforms to the General Plan, Alviso Master Plan, Zoning Code, and City Council Policies.

4. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety, or general welfare; and

Analysis: The project will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area as the data center facility has sound attenuation devices and insulation placed around the generators to reduce the noise levels associated with the data center use. Activities related to the data center buildings are primarily self-contained within the confines of the facility, with the exception of the passenger vehicles and deliveries made to the project site.

5. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

Analysis: The project site can physically accommodate the proposed data center and associated site improvements such as fences, parking and loading facilities, landscaping, buildings, power facilities, and water tanks. The data center structures and associated site improvements are fully contained on the project site.

6. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

Analysis: Currently, there are limited streets and service facilities located near the project site. As part of the project, new public infrastructure includes construction of a new public street (Nortech Parkway extension) with stormwater treatment methods and a sidewalk with a park strip, a new storm drain line, a pump station and a new outfall at Coyote Creek. These infrastructure improvements will serve the project site and nearby properties. The street widths were evaluated by the Department of Public Works and were found to be compliant with city standard specifications and of sufficient width to carry the type and quantity of traffic the data center use would generate.

7. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: As discussed in detail in the CEQA section below, an Environmental Impact Report (EIR), titled "237 Industrial Center," was prepared for the project and identified significant unavoidable impacts to the environment, specifically pertaining to the loss of agricultural lands, traffic impacts to highways, and greenhouse gas emissions. Prior to taking any action on this project, the City Council must consider the EIR and adopt a resolution (i) making the required findings under CEQA, (ii) adopting a related Mitigation Monitoring and Reporting program for the project, (iii) adopting a statement of overriding considerations, and (iv) certifying the EIR, all in compliance with CEQA.

Development Exception Findings

Chapter 20.100 of the San Jose Municipal Code establishes evaluation criteria for issuance of a permit to allow for an exception to the off-street parking and loading requirements and regulations of this title. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit. In order to make the Development Exception findings pursuant to Section 20.100.720 of the San Jose Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

1. The Development Exception will not impair the utility or value of adjacent property or the general welfare of the neighborhood; and

2. The Development Exception will not impair the integrity and character of the zoning district in which the subject property is situated.

Analysis: With a Development Exception, the project will be allowed to utilize a different parking ratio (0.22 parking spaces per every 1,000 square feet) than what is required in the San Jose Municipal Code (one parking space per 250 square feet of office/meeting/technician work space, plus one parking space per each 5,000 square feet of floor area, or fraction thereof, devoted to computer equipment space). The ratio of 0.22 parking spaces per every 1,000 square feet will not impair the utility or value of adjacent property or the general welfare of the neighborhood as the parking demand for a data center use, as supplemented by the parking study prepared by Hexagon Transportation Consultants, identifies a parking demand of 0.22 parking spaces per 1,000 square feet.

The surrounding parcels are zoned LI Light Industrial or IP Industrial Park and are primarily vacant parcels. This Development Exception will not impair the integrity and character of the zoning district because it does not prohibit or limit other LI Light Industrial properties from developing.

Tree Removal Findings

Chapter 13.32 of the San Jose Municipal Code establishes required findings for a Tree Removals which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit. In order to make the Tree Removal findings pursuant to Section 13.32.100 of the San Jose Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

1. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.

Analysis: The project proposes to remove eight ordinance sized and 14 non-ordinance sized trees from the project site. The trees identified as number 23, 37, 38, 39, 40, 49, 80, 81, 82, 3, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, and 95 in the tree evaluation table on Sheet A100.3 of the attached plan set are located in the areas of improvement and grading. The trees identified as number 23, 80, 81, 83, 84, 92, 94, and 95 are ordinance sized trees ranging from 57 inches to 141 inches in circumference. The trees identified as number 37, 38, 39, 40, 49, 82, 85, 86, 87, 88, 89, 90, 91, and 93 are non-ordinance sized trees ranging from 15 inches to 47 inches in circumference. Several trees have significant dieback and decay and a majority of the trees have poor structure. As a condition of approval, the project is required to abide by the City of San Jose standard tree replacement ratios, which requires replacement for ordinance sized trees, non-ordinance sized trees, native trees, non-native trees and orchards.

Industrial Design Guidelines Conformance

The project complies with the Industrial Design Guidelines in that the project is architecturally sound and incorporates a variety of high-quality materials that are not reflective or glare producing. Additionally, the project incorporates variation in wall planes by incorporating material that contains visual texture and provides depths and shadow lines to the buildings. The project also contains enhanced architectural elements and materials at the building entrances that assist in providing additional architectural interest. The project proposes a number of buildings that all share a unified architectural expression by utilizing similar massing forms and high-quality materials. The site design incorporates outdoor activity areas with pedestrian walkways to the buildings for the enjoyment of the employees along with a security kiosk/check point with adequate vehicle stacking and turnaround circulation.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A Draft Environmental Impact Report (DEIR) for the 237 Industrial Center Project was prepared by the Director of Planning, Building and Code Enforcement in accordance to CEQA. The project also relies upon the “Envision San José 2040 General Plan Final Program Environmental Impact Report,” adopted by City Council Resolution No. 76041 on November 1, 2011; and Supplemental Environmental Impact Report to the Envision San José 2040 General Plan Final Program Environmental Impact Report,” adopted by City Council Resolution No. 77617 on December 15, 2015, and Addenda thereto, all as explained in detail in the DEIR and separate resolution adopted by the City Council certifying the DEIR.

The 237 Industrial Center Project DEIR analyzed project level environmental impacts and discussed alternatives to the proposed project. A First Amendment to the Draft DEIR was prepared that provided responses to public comments submitted during the public circulation period and revisions to the text of the Draft SEIR. The First Amendment together with the DEIR constitute the Final Environmental Impact Report (FEIR) for the proposed project.

The DEIR evaluated the following development options:

- Option 1 – Development of approximately 1.2 million square feet of light industrial uses; and
- Option 2 –Development of a data center and a PG&E electrical substation on 26.5 acres of the 64.5-acre site in Phase 1 and approximately 728,000 square feet of light industrial uses in Phase 2.

The DEIR also evaluated off-site improvements comprising approximately 49 acres for the construction of utilities and roadways serving the project site.

The DEIR was circulated for public review and comment for the mandatory 45 days from Thursday June 1, 2017 to Monday July 17, 2017.

The proposed data center was analyzed as Option 2 Phase 1 in the DEIR. The following outlines the environmental impacts discussed in the DEIR for the proposed project and full build out of Option 1 and Option 2.

Edgar Jackson House Eligible as a Structure of Merit

Under full build out of Option 1 and Option 2, all existing structures would be removed from the project site. The Edgar Jackson House, located at 1657 Alviso-Milpitas, is recommended in the attached historic report (dated March 9, 2017) to be eligible on the San José Historic Resources Inventory as a Structure of Merit, but is not recommended as a candidate City Landmark.

Construction of Option 2 Phase 1 (the data center) would occur on the northern portion of the property would not result in the removal of the Edgar Jackson House, located on the southern portion of the 64.59-acre site. The City can consider placing the structure on the inventory list as a Structure of Merit during the entitlement phase of Phase 2. However, the City does not consider Structures of Merit a significant historic resources under CEQA.

The building is located on a 64.5-acre property (originally 640 acres) that has been in agricultural use (originally row crops and later orchards) for approximately 150 years. Since the mid-1950s, the building had been used as a rental property. The building was constructed circa 1929-1930 as a one-story Craftsman Prairie-style residence with some Mission Revival details in the arched multi-lite windows on the eastern facade. Distinguished Craftsman Prairie-style elements include a recessed entry patio, an ornate arched door within a stoop with a stucco-clad arch, and a hipped roof.

Though the building appears to be designed by Wolfe & Higgins, a prominent architecture firm in San Jose from the first half of the 20th century, it is not a distinctive example of their work and it is not associated with any significant personages from San José's past. The building was built as a residence on an agricultural site. The building has undergone minor alterations since the original construction including some window replacements and the rear door is sealed.

Significant and Unavoidable Impacts

The DEIR identified the following significant and unavoidable impacts:

1. Agricultural Resources – The proposed development and full buildout of Options 1 and 2 would result in a significant impact to State designated Prime Farmland through conversion of 64.5 acres of designated Prime Farmland land to a non-agricultural use. This would result in a significant and unavoidable and cumulatively considerable impact.
2. Transportation – Development of the data center would not result in significant and unavoidable transportation impacts. However, full buildout of Options 1 and 2 would contribute significant and unavoidable impacts to traffic congestion on State Route 237 and Interstate 880 and result in a cumulatively considerable contribution to the Zanker Road/Tasman Drive. The project applicant proposed transportation demand management measures to reduce these impacts, however impacts would remain significant and unavoidable.
3. Greenhouse Gas Emissions – The proposed data center would be operational prior to 2020 and would not result in significant and unavoidable GHG impacts. Full buildout of Options 1 and 2 would contribute significant and unavoidable and cumulatively considerable GHG impacts.

Less than Significant Impact with Mitigation

The following environmental impacts will be mitigated to less than significant level:

1. Impact AQ-1: The proposed project would result in a significant impact related to the production of NO_x during generator testing.
2. Impact BIO-1: Construction activities could result in significant impacts to nesting migratory and other protected bird species.
3. Impact BIO-2: Any actions related to site development that result in the mortality of burrowing owls shall constitute a violation of the Federal Migratory Bird Treaty Act and provisions of the California Fish and Game Code.
4. Impact BIO-3: The project would cause permanent impacts to riparian vegetation and seasonal wetlands as a result of installation of the potential stormwater outfall at Coyote Creek and project construction in the southwest corner of the site.
5. Impact BIO-4: Construction activities on-site could result in significant impacts to trees that may be retained.
6. Impact CUL-1: Construction of the proposed project could result in significant impacts to subsurface cultural resources should they be located on-site.
7. Impact HAZ-1: Implementation of the proposed project could release pesticide chemicals from on-site soils into the environment, and expose construction workers to residual agricultural soil contamination.

The proposed CEQA resolution, MMRP, and EIR further explains in detail how the mitigations reduce each identified above to a less than significant level.

Alternatives

As required under CEQA, the Draft DEIR evaluated five alternatives to the two development scenarios, including the proposed project (data center). These alternatives are as follows:

1. No Project – No Development Alternative: Assumes no construction of new buildings on the project site and would result in the retention of the existing buildings and structures.
2. No Project – Existing Zoning Alternative: Assumes that the proposed project is not approved, but that another future project is built consistent with existing plans and policies. According to the Alviso Master Plan and the General Plan, the site has a land use designation of LI – Light Industrial, which allows for a maximum FAR of 1.5. Existing zoning (Planned Development) allows for approximately 2.3 million square feet of data center communication facility uses on a 174-acre site. This zoning includes the Los Esteros Critical Energy Facility (LECEF) property, west of the project site.
3. Design Alternative – (Reduced Scale: Data Center Only Alternative): Assumes the development of an approximately 436,880 square foot data center on the northern portion of the 64.5-acre site without any additional light industrial uses.
4. Design Alternative – (Reduced Scale: Light Industrial Only Alternative): Assumes the reduction of proposed light industrial development from 1.2 millions square feet (Option 1) to 120,000 square feet (90 percent reduction).
5. Reduced Development – (Data Center and Reduced Light Industrial Alternative): Assumes an 85 percent reduction of light industrial development Option 2 from 728,000 square feet to 109,200 square feet would avoid both intersection and freeway impacts.

As further explained in the DEIR and draft CEQA resolution, these alternatives were rejected because they did not meet the project objectives, facilitate the maximum floor area ratio of 1.5 of light industrial development as identified by the light industrial designation on the 2040 General Plan Land Use/Transportation diagram, assist the General Plan goals of achieving the 1.1 jobs to employed resident ratio by the year 2040, or facilitate a comparable amount of economic growth as the Project.

Circulation and Public Comments

The City received 12 written comment letters during the public comment period. Issues raised in these comment letters include the following:

- Conversion of designated prime farmland;
- Effects to on-site historic structures;
- Impacts to freeway segments and roadways;
- Effects on vehicle miles travelled;
- Fair share fees for transportation improvements;
- Effects on trails;
- Impacts to the riparian corridor and wildlife;
- Effects of lighting on birds and wildlife;
- Infrastructure improvements;

- Insufficient evidence to support a statement of overriding considerations;
- Air quality impacts to public health;
- Growth inducement effects; and
- Measures to reduce effects to climate change.

The City responded to all comments received on the Draft EIR and incorporated them into the First Amendment to the Draft EIR. The First Amendment, taken together with the Draft EIR, constitutes the Final EIR. The DEIR and First Amendment to the DEIR are available for review on the City's Active EIRs website at: <http://www.sanjoseca.gov/ActiveEIRs>

EIR Recirculation Unnecessary

The comments received do not identify substantive inadequacies in the Draft EIR or new previously unidentified significant impacts that require recirculation. The recirculation of an EIR is required when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review but before certification. "Information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of meaningful opportunity to comment on a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (CEQA Guidelines Section 15088.5).

In accordance with CEQA Guidelines Section 15088, the First Amendment to the Draft EIR for the project includes written responses to all comments received during the public review period for the Draft EIR. As required by Section 15132 of the CEQA Guidelines, the responses in the First Amendment to the Draft EIR address significant environmental points and comments on the content and adequacy of the EIR. The responses and comments provide clarification and refinement of information presented in the Draft EIR and, in some cases, correct or update information in the Draft EIR. No significant new information has been added to the EIR since publication of the Draft EIR; therefore, the EIR does not need to be recirculated.

Recommended Actions

Staff recommends that the Planning Commission recommend that the City Council adopt a resolution certifying the Final EIR, including a Statement of Overriding Consideration for the identified significant and unavoidable impact, and adopt the Mitigation Monitoring and Reporting Program. The overriding benefits of the project and full buildout of Options 1 and Scenario 2 include:


- Increase Employment Opportunity within San José.
- Increase Economic Development.
- Expand Public Utility Infrastructure.
- Envision San José 2040 General Plan Strategies, Goals, and Policies, including Major Strategies #3 Focused Growth and #4 Innovation/Regional Employment Center.

PUBLIC HEARING NOTIFICATION

In order to inform the public of the proposed project, staff followed Council Policy 6-30: Public Outreach Policy. An Environmental Scoping Meeting was held on Thursday, June 9, 2016 and a community meeting was held on Thursday, April 6, 2017. There were approximately 13 people in attendance at the Environmental Scoping Meeting and approximately nine people in attendance at the community meeting. At both meetings, there were concerns and questions raised regarding public infrastructure and riparian protections. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Project Tracy Tam

Manager:

Approved by:  , Planning Official for Rosalynn Hughey,
Interim Planning Director

Date: 10/4/17

Attachments: Attachment A: Environmental Impact Report/Initial Study Attachment B: Draft CEQA Resolution Attachment C: Mitigation Measure Reporting Program Attachment D: City Council Draft Rezoning Ordinance Attachment E: Draft Resolution Attachment F: Plan Set Attachment G: Parking Study

Owner: Cilker Carl A and Kathleen C Trustee 1677 Isabel Drive, San Jose CA 95125	Applicant: Cilker Orchards Mgmt Corp 1631 Willow Street, San Jose, CA 95125
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