

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CERTIFYING THE CHARCOT AVENUE EXTENSION PROJECT 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 City proposes to construct the Charcot Avenue Extension between Paragon Drive on the west and Oakland Road on the east in the City of San José, California (referred to herein as the "Project"); and

**WHEREAS**, approval of the Project 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**, 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 the Final Environmental Impact Report is comprised of the Draft Environmental Impact Report for the Project (the "Draft EIR"), together with the First Amendment to the Draft EIR (collectively, all of said documents are referred to herein as the "FEIR"); 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 or monitoring

program and overriding statement of consideration for any impact that may not be reduced to a less than significant level.

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

1. That the above recitals are true and correct; and
2. That the City Council does hereby find and certify that the FEIR has been prepared and completed in compliance with CEQA; and
3. The City Council was presented with, and has independently reviewed and analyzed, the FEIR and other information in the record 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 has found that the FEIR represents the independent judgment of the City of San José ("City") as lead agency for the Project, and designated 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 record of proceedings on which the decision of the City is based; and
4. That the City Council does hereby find and recognize that the FEIR contains additions, clarifications, modifications, and other information in its response 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 that phrase is described under CEQA because such changes and additional information do not indicate that any of the following would result from approval and implementation of the Project: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft EIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented, or (iii) any feasible alternative considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented; and
5. 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

6. The City Council does hereby make the following findings with respect to the significant effects of 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 full administrative record should be consulted for the full details supporting these findings.

## CHARCOT AVENUE EXTENSION PROJECT SIGNIFICANT ENVIRONMENTAL IMPACTS

### Aesthetics

**Impact:** **Impact AES-3:** The project would substantially alter the visual character along Charcot Avenue between Paragon Drive and O’Toole Avenue by removing approximately 37 mature trees. The trees and adjacent raised berms dominate the existing setting and screen views of the office buildings and associated parking from the road, and vice-versa. This segment of Charcot Avenue is designated as a “Gateway” in the *Envision San José 2040 General Plan*.

**Mitigation:** None feasible.

**Finding:** Due to the constraints posed by the presence of existing utility lines and the adjacent business parks, the planting of replacement trees as mitigation for this visual/aesthetic impact is not feasible. **(Significant Unavoidable Impact)**

**Facts in Support of Finding:** While the project includes replacement trees along the proposed alignment to the extent feasible, this segment of the project alignment is located adjacent to a major utility corridor. This physical constraint prevents the project from planting trees along the northern and southern boundary of Charcot Avenue between Paragon Drive and O’Toole Avenue. Substantial additional rights-of-way would need to be purchased from the properties on the north and south sides of the alignment to accommodate the trees outside of the utility corridor. In some locations, parking for the adjacent businesses would be lost in order to accommodate the trees. For these reasons, the planting of replacement trees between Paragon Drive and O’Toole Avenue is considered infeasible.

**Impact:** **Impact AES-3:** The project would substantially change the visual character along existing Silk Wood Lane, especially views from the recreational facilities at Orchard School.

**Mitigation:** **MM AES-3.1:** As described in greater detail under mitigation measure MM NOI-1.2, the City shall construct a six-foot noise barrier along the Orchard School frontage of Silk Wood Lane. The noise barrier will also provide a visual barrier between the proposed roadway extension and Orchard School outdoor recreation areas.

**MM AES-3.2:** Any noise barrier constructed as part of the project shall include aesthetic treatment (e.g., color, texture, plantings, etc.) that are compatible with the surroundings.

**Finding:** Implementation of Mitigation Measures MM AES-3.1 and MM AES-3.2 would reduce aesthetic impacts along Silk Wood Lane to a less than significant level. **(Less than Significant Impact with Mitigation)**

**Facts in Support of Finding:** Construction of a noise barrier will largely block views of the roadway from the recreational facilities at Orchard School. The noise barrier itself will include aesthetic treatments. These measures would collectively reduce the aesthetic impacts to a less than significant level.

### Biological Resources

**Impact:** **Impact BIO-1:** If determined to be present, the Project could have a substantial adverse effect on nesting birds during the construction phase.

**Mitigation:** **MM BIO-1.1:** Avoidance and Inhibit Nesting. Construction and tree removal/pruning activities shall be scheduled to avoid the nesting season. Tree removal and/or pruning shall be completed before the start of the nesting season to help preclude nesting. The nesting season for most birds and raptors in the San Francisco Bay Area extends from February 1st through August 31st (inclusive).

**MM BIO-1.2:** Preconstruction Survey(s). If construction activities cannot be scheduled from September 1st through January 31st (inclusive), then a qualified ornithologist shall conduct a preconstruction survey for nesting raptors and other migratory birds within on-site trees as well as all trees within 250 feet of the site to identify active bird nests that may be disturbed during project construction. This survey shall be completed no more than fourteen (14) days prior to the initiation of demolition/construction activities (including tree removal and pruning). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests.

If the survey does not identify any nesting birds that would be affected by construction activities, no further mitigation is required.

If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist (in consultation with the CDFW) shall designate a construction-free buffer zone to be established around the nest to ensure that no nests of species protected by the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code will be disturbed during construction activities. The buffer shall remain in place until a qualified ornithologist has determined that the nest is no longer active.

**MM BIO-1.3: Reporting.** A final report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be completed to the satisfaction of the Director of Planning, Building, and Code Enforcement or the designee prior to the start of grading.

**Finding:** Implementation of mitigation measures MM BIO-1.1 through MM BIO-1.3 would reduce potential impacts to nesting birds to a less than significant level. **(Less than Significant Impact with Mitigation)**

**Facts in Support of Finding:** Scheduling construction and tree-removal/pruning activities outside of the nesting season would avoid disturbance to nesting birds. If construction activities cannot be scheduled to avoid the nesting season (February 1st through August 31st, inclusive), conducting pre-construction surveys and implementing a construction-free buffer zone around any migratory bird nests will ensure that raptor and migratory bird nests are not disturbed during project construction, under the MBTA and California Fish and Game Code. The size of the buffer zones will be determined by consultation between the qualified ornithologist and the CDFW and based on scientific evidence and best management practices. Compliance with Mitigation Measures MM BIO-1.1 through MM BIO-1.3 would avoid impacts to nesting birds.

### Cultural Resources

**Impact:** **Impact CUL-2:** The project corridor is considered archaeologically sensitive. Therefore, the construction of the project has the potential to impact undiscovered buried archaeological resources.

**Impact CUL-3:** Directly related to impact CUL-2, above, if any buried archaeological resources are impacted by the project, such resources could contain human remains.

**Mitigation: MM CUL-2.1:** Avoid trenching, digging, and grading below eight (8) feet.

**MM CUL-2.2:** If trenching, digging, or grading below eight (8) feet is needed, archaeological monitoring shall be performed by a qualified archaeologist during such excavation and ground-disturbing activities.

**MM CUL-2.3:** In the event prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of the City's Department of Planning, Building and Code Enforcement or his/her designee will be notified, and a qualified archaeologist will examine the find. The archaeologist will 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds. If the finds do not meet the definition of historical or archaeological resources, no further study or protection is necessary prior to project implementation. If the find(s) does meet the definition of a historical or archaeological resource, then it shall be avoided by project activities. Project personnel shall not collect or move any cultural material. Fill soils used for construction purposes shall not contain archaeological materials.

**MM CUL-2.4:** If the resource cannot be avoided, adverse effects to such resources shall be mitigated in accordance with the recommendations of the archaeologist. Recommendations may include, but are not limited to, collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of the City's Department of Planning, Building and Code Enforcement or his/her designee and Historic Preservation Officer of the City's Department of Planning, Building and Code Enforcement and the Northwest Information Center, Sonoma.

**MM CUL-2.5:** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The contractor shall immediately notify the Director of the

City's Department of Planning, Building, and Code Enforcement or his/her designee and the qualified archaeologist, who will then notify the Santa Clara County Coroner. The Coroner will determine if the remains are Native American.

**MM CUL-2.6:** If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts.

**MM CUL-2.7:** If one of the following conditions occurs, the Director of the City's Department of Planning, Building, and Code Enforcement or his/her designee shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- The NAHC is unable to identify a MLD; or
- The MLD failed to make a recommendation within 24 hours after being notified by the NAHC; or
- The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.

**Finding:** With the implementation of mitigation measures MM CUL-2.1 through MM CUL-2.4, the project would not result in significant impacts to archaeological resources during construction. With the implementation of mitigation measures MM CUL-2.5 through 2.7, the project would not result in significant impacts to human remains during construction. **(Less than Significant Impact with Mitigation)**

**Facts in Support of Finding:** A potential for buried archaeological resources below eight feet triggers the need for measures to evaluate and apply appropriate steps, if encountered. Therefore, a significant impact could occur if the Project disturbs an archaeological resource during earth-moving, grading and construction. Implementation of MM CUL-2.1 would avoid that potential by restricting work to the uppermost eight feet where the subsurface testing determined that resources are not present.

MM CUL 2-2 through CUL-2.4 would require monitoring of subsurface construction activity by an archaeologist and would require work to discontinue within a 50-foot radius if prehistoric or historic archaeological

resources are uncovered during construction activities. The archeologist would evaluate the find and identify mitigation as necessary. The mitigation would reduce potential risk to archaeological resources to a less than significant level. Implementation of MM CUL-2.5 through CUL-2.7 would mitigate impacts in the event human remains are encountered during construction.

### **Hazards and Hazardous Materials**

**Impact:** **Impact HAZ-2:** The project could create a significant risk if hazardous materials in sufficient concentrations are present in soils and those materials are, in turn, released into the environment during construction.

**Mitigation:** **MM HAZ-2.1:** Prior to demolition, grading, and excavation for the proposed road extension, soil within the project alignment shall be sampled and tested for organochlorine pesticides and lead to determine if soil contamination from previous agricultural use are above established RWQCB Environmental Screening Levels (ESLs) for construction worker safety and commercial/industrial standards. The result of soil sampling and testing will be provided to the Director of the City of San José Planning, Building, and Code Enforcement, or his/her designee, and the City's Environmental Compliance Officer for review.

If contaminated soils are found in concentrations above regulatory thresholds the project proponent shall obtain regulatory oversight from the SCCDEH or DTSC. The SCCDEH or DTSC will determine next steps including which documents are required such as a Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document which must be prepared by a qualified hazardous materials consultant. The plan must establish remedial measures and/or soil management practices to ensure construction worker safety and the health and safety of future workers and site users. The Plan and evidence of regulatory oversight shall be provided to the Director of the City of San José Planning, Building, and Code Enforcement or his/her designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

**Finding:** Implementation of mitigation measure MM HAZ-2.1 would reduce risks associated with the potential presence of contaminants in the soil within the project footprint to a less than significant level. **(Less than Significant Impact with Mitigation)**



**Facts in Support of Finding:** The presence of residues in soils related to legacy agricultural activities is a common feature in the Santa Clara Valley. In order to address soils residues and clean-up associated with other contaminations, DTSC and SCCDEH regulatory frameworks provide directives required for hazardous materials remediation. The Site Management Plan is a work plan that includes the soil sampling findings, remediation measures, implementation of remediation measures, and worker health and safety. The SMP is reviewed, approved and regulated by the SCCDEH, Site Mitigation Programs division. Compliance with these measures would reduce potential impacts from on-site soil contamination to construction workers to a less than significant level.

### Noise

**Impact:** **Impact NOI-1:** Over the long-term, the operational phase of the project would result in noise levels in the vicinity of the project in excess of standards established by San José.

**Mitigation:** **MM NOI-1.1:** At the start of project construction on the east side of I-880, the City shall replace the existing 5-foot high barrier along the north side of Silk Wood Lane with a 10-foot high noise barrier. The replacement barrier will be constructed at the side yard property line of 1820 Silk Wood Lane; at the rear yard property lines of 1052, 1058, 1064, 1070, and 1076 Bright Willow Lane; and at the rear property lines of 1931, 1937, and 1943 Bright Willow Circle.

**MM NOI-1.2:** At the start of project construction on the east side of I-880, the City shall construct a 10-foot high barrier at the side yard property line of 1813 Silk Wood Lane. In addition, the City shall construct an 8-foot high barrier at the rear property lines of 1813 and 1819 Silk Wood Lane.

**MM NOI-1.3:** At the start of project construction on the east side of I-880, the City shall construct a 6-foot high barrier at the proposed right-of-way line on the southern side of Charcot Avenue along the Orchard School frontage.

**Finding:** Implementation of mitigation measures MM NOI-1.1 through NOI-1.3 would reduce the operational noise impacts of the project to a less than significant level. **(Less than Significant Impact with Mitigation)**

**Facts in Support of Finding:** Per FHWA's Traffic Noise Model (TNM), implementation of mitigation measures MM NOI-1.1 and NOI-1.2 would reduce noise impacts from the project to adjacent residences on Silk Wood Lane to a less

than significant level. Per FHWA's TNM, implementation of mitigation measure MM NOI-1.3 would reduce noise impacts from the project to Orchard School to a less than significant level.

**Impact:** **Impact NOI-C:** The project will result in a cumulatively considerable contribution to a significant cumulative noise increase at the residences located along the north side of Silk Wood Lane. The project will also have a cumulatively considerable contribution to a significant cumulative noise increase at the Orchard School outdoor field area and playfield. These are the same locations where the noise impacts of the project would be significant.

**Mitigation:** **MM NOI-C.1:** At the start of project construction on the east side of I-880, the City shall increase the height of the existing 10-foot high barrier along the west side of Oakland Road to 12 feet. The higher barrier will be constructed at the rear yard property lines of 1949 and 1955 Bright Willow Circle.

**MM NOI-C.2:** The City shall implement MM NOI-1.1 through MM NOI-1.3, which consists of the construction of noise barriers adjacent to residences and Orchard School. The locations of the noise barriers are described in detail in MM NOI-1.1 through MM NOI-1.3.

**Finding:** Implementation of mitigation measures MM NOI-C.1 and NOI-C.2 would reduce the cumulative noise impacts of the project to a less than significant level. **(Less than Significant Impact with Mitigation)**

**Facts in Support of Finding:** Implementation of MM NOI-C.1 and NOI-C.2 would not only mitigate the significant noise impacts of the project but would also mitigate the significant cumulative noise impacts of the project. The mitigated noise levels will comply with the City's noise and land use compatibility guidelines of 60 dBA DNL or less for residences, 65 dBA DNL or less for the Orchard School outdoor field area and playground, and 60 dBA DNL or less (exterior) at the Orchard School primary classrooms.

### Recreation

**Impact:** **Impact REC-2:** The right-of-way required for the project would directly impact recreational facilities at Orchard Elementary School and reduce the area available for recreation.

**Mitigation:** **MM REC-2.1:** The City will reconfigure the existing recreational facilities at Orchard School that would be impacted by the project. The reconfiguration will meet the following performance standards: 1) one standard Little League baseball field with backstop to complement existing conditions; 2) a 6-foot wide perimeter running path around sports field; 3) an approximately 5,000 ft<sup>2</sup> playground structure appropriate for children ages 5 to 12 years old; 4) two 315 ft<sup>2</sup> tetherball games; 5) two 640 ft<sup>2</sup> ball walls; 6) four 6-foot long benches adjacent to the play area; and 7) a new irrigation system, sod lawn, perimeter tree planting and ornamental shrub planting around the school perimeter adjacent to the field fence and play yard.

**Finding:** While the implementation of MM REC-2.1 would mitigate the project's impact on the school's recreational facilities, it would not replace the lost parkland/recreational acreage. Further, there is no vacant land available contiguous to Orchard School that could be purchased and added to the school. Therefore, the loss of 0.44 acre of recreational land would constitute an unavoidable effect of the project. **(Significant Unavoidable Impact)**

**Facts in Support of Finding:** According to EIR Figure 3.16-3, there is sufficient space available to implement MM REC-2.1 on the Orchard School campus without impacting other facilities (e.g., nearby buildings). The reconfiguration will fully restore the recreational facilities to their existing function and capacity. The loss of 0.44 acre of recreational land from the school resulting from the right-of-way needed for the project cannot be mitigated as there is no vacant land available contiguous to Orchard School.

### Tribal Cultural Resources

**Impact:** **Impact TCR-1:** The project may impact buried archaeological resources, such resources that may be determined to be tribal cultural resources eligible for listing in the *California Register of Historical Resources*, or in a local register of historical resources as defined in Public Resources Code §5020.1(k).

**Impact TCR-2:** The project may impact buried archaeological resources, such resources that may be tribal cultural resources that are determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code §5024.1.

**Mitigation:** If a subsurface site or feature is found during project construction and it is determined to be a tribal cultural resource, implementation of mitigation

measures CUL-2.1 through CUL-2.7, described above, would reduce any impact to a less than significant level

**Finding:** With the implementation of mitigation measures MM CUL-2.1 through 2.7, the project would not result in significant impacts to tribal cultural resources during construction. **(Less than Significant Impact with Mitigation)**

**Facts in Support of Finding:** Similar to archaeological resources, a significant impact could occur if the Project disturbs a potential tribal cultural resource. Implementation of MM CUL-2.1 would avoid that potential by restricting work to the uppermost eight feet where the subsurface testing determined that resources are not present.

MM CUL 2-2 through CUL-2.4 would require monitoring of subsurface construction activity by an archaeologist and would require work to discontinue within a 50-foot radius if tribal cultural resources are uncovered during construction activities. The archaeologist would evaluate the find and identify mitigation/s as necessary. Implementation of MM CUL-2.5 through CUL-2.7 would mitigate impacts in the event human remains are encountered during construction. The mitigation would reduce potential risk to tribal cultural resources to a less than significant level.

## FINDINGS CONCERNING ALTERNATIVES

In order to comply with the purposes of CEQA, it is important to identify alternatives that reduce the significant impacts that are anticipated to occur if the Project is implemented and to try to meet as many of the Project's objectives as possible. The CEQA Guidelines emphasize a common sense approach -- the alternatives should be reasonable, should "foster informed decision making and public participation," and should focus on alternatives that avoid or substantially lessen the significant impacts.

The alternatives analyzed in the FEIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects. The following are evaluated as alternatives to the proposed Project:

Alternative A	Fox Lane Alignment
Alternative B	Widen Montague Expressway and/or Brokaw Road
Alternative C	New I-880 Overcrossing South of Brokaw Road
Alternative D	No Project
Alternative E	New Overcrossing for Bicycles and Pedestrians Only
Alternative F	Single Left-Turn Lane from Oakland Road to Charcot Avenue

Alternative G Single Turn Lane on Charcot Avenue at Oakland Road  
Alternative H Single Turn Lanes on Both Charcot Avenue and Oakland Road

### Alternative A – Fox Lane Alignment

1. **Description of Alternative:** Under the Fox Lane Alignment Alternative, the alignment for the Charcot Avenue Extension on the east side of I-880 would utilize Fox Lane instead of Silk Wood Lane. On the west side of I-880, this alternative would be identical to the proposed project.
2. **Comparison of Environmental Impacts:** The Fox Lane Alternative would meet the five objectives of the project to the same degree as the proposed design:

The Fox Lane alignment would require acquisition of right-of way and elimination of property access along the north side of Fox Lane. In addition, the Fox Lane alignment would require the removal of one or two buildings on the Super Micro campus on the east side of I-880 to accommodate the alignment alternative. Further, the use of Fox Lane for the Charcot Avenue Extension would result in increased traffic volumes along the Orchard School frontage, which provides access to the school's designated student drop-off/pick-up area.

The Fox Lane alignment also would result in a connection to Oakland Road that would be in proximity to the Union Pacific Railroad (UPRR) tracks that cross Oakland Road approximately 240 feet south of Fox Lane. Increased demand at the northbound left-turn movement from northbound Oakland Road to westbound Fox Lane (to the planned Charcot Extension) could result in vehicle queues that extend back from the Oakland Road/Fox Lane intersection and through the UPRR tracks.

On the west side of I-880, the Fox Lane Alternative would have the same environmental impacts as the proposed project design. However, this alternative would avoid the noise and tree removal impacts of the proposed alignment along Silk Wood Lane. No right-of-way from the Orchard School playground/ball field would be needed. Further, there would also be no increased traffic on Silk Wood Lane and no potential traffic diversion through the Silk Wood Lane/Rock Avenue neighborhood.

3. **Finding:** Alternative A is rejected for the following reasons:
  - There would be significant right-of-way costs associated with direct impacts to the Super Micro campus.

- This alternative could result in vehicle queues that extend back through the UPRR tracks from the Oakland Road/Fox Lane intersection.
- There would be significant impacts to Orchard School's designated student drop-off/pick-up area on Fox Lane because the more than 13,000 daily vehicles that would otherwise use the proposed Charcot/Silk Wood alignment would instead use Fox Lane.

### **Alternative B - Widen Montague Expressway and/or Brokaw Road**

1. **Description of Alternative:** Instead of constructing the Charcot Avenue Extension, Alternative B would widen Montague Expressway and/or Brokaw Road to improve east-west connectivity across I-880, which is one of the project objectives.
2. **Comparison of Environmental Impacts:** Montague Expressway has already been widened to eight lanes west of I-880, as identified in the *North San José Area Development Policy*. Additional widening to ten lanes west of I-880 to increase east-west capacity into the North San José area would require significant right-of-way and the acquisition of numerous businesses that are adjacent to the expressway.

Brokaw Road is already widened to its maximum within the physical limitations of its right-of-way. Additional widening to increase east-east capacity would require significant right-of-way and the acquisition of numerous businesses that are adjacent to this roadway.

Further, even if Alternative B could be implemented without the need to purchase significant right-of-way, the widening of Montague Expressway and Brokaw Road also may not improve the east-west travel due to capacity constraints at their connections to major regional freeways including their interchanges with I-880. It is likely that the capacity constraints (ramp meters) at freeway ramps and congestion on the freeway mainline could result in blockage of travel lanes on both roadways even with widening. The improvement of access to and from I-880 also would provide minimal benefit to operations along Brokaw Road and Montague Expressway due to congestion on the freeway mainline that restricts flow onto the freeway.

3. **Finding:** Alternative B is rejected for the following reasons:
  - There would be significant right-of-way costs associated with the widening of Montague Expressway or Brokaw Road.
  - There would be the need to acquire and relocate numerous businesses.

- There would be no new crossing of the I-880 corridor for bicyclists and pedestrians.
- As described above, the traffic operational benefits would be minimal due to congestion of the freeway that can result in the blockage of travel lanes on the local roadways.

### **Alternative C - New I-880 Overcrossing South of Brokaw Road**

1. **Description of Alternative:** Instead of constructing the Charcot Avenue Extension, Alternative C would construct a new I-880 overcrossing near Brokaw Road to improve east-west connectivity across I-880, which is one of the project objectives. On the east side of I-880, the overcrossing would utilize Ridder Park Drive along the south side of Lowe's. On the west side of I-880, the overcrossing would connect to Junction Avenue utilizing an existing access point and parking area for a business park.
2. **Comparison of Environmental Impacts:** Alternative C would require significant right-of-way and the acquisition of multiple businesses located along the east side of Junction Avenue. It would also sever access to Lowe's and an adjacent building that contains multiple businesses.

Further, even if Alternative C could be implemented without the need to purchase significant right-of-way its usefulness as an east-west route would be substantially less than with the Charcot Avenue Extension. Specifically, unlike the Charcot Avenue alignment, there would be no direct connection to major North San José roadways such as Zanker Road, North First Street, and SR 87.

3. **Finding:** Alternative C is rejected for the following reasons:
  - There would be significant right-of-way costs associated with a new I-880 overcrossing south of Brokaw Road.
  - There would be the need to acquire and relocate multiple businesses along the east side of Junction Avenue.
  - There would be no new direct connection to major North San José roadways such as Zanker Road, North First Street, and SR 87.

### **Alternative D - No Project**

1. **Description of Alternative:** Under the No Project Alternative, the proposed Charcot Avenue Extension would not be constructed. No new vehicular, bicycle,

and pedestrian crossing of I-880 in the Charcot Corridor would be built. None of the project components described in Section 2.3 of the EIR would be constructed.

2. **Comparison of Environmental Impacts:** The No Project Alternative would avoid all the identified significant impacts of the project, namely aesthetics/visual, biological, cultural (archaeological), hazardous materials, noise, and recreational.
3. **Finding:** The No Project Alternative would not meet any of the project objectives. It would also be inconsistent with 1) Policy TR-5.6 of the *Envision San José 2040 General Plan*, which states that the City should complete the buildout of the City's street system per its Land Use / Transportation Diagram, on which the Charcot Avenue Extension has been listed since 1994; 2) the *San José Bike Plan 2020*, which designates Charcot Avenue from Orchard Parkway on the west to Oakland Road on the east as a bikeway with Class II bike lanes; and 3) the *North San José Area Development Policy*, which identifies the Charcot Avenue Extension as a key roadway improvement project needed to serve the planned development of North San José. Therefore, this alternative is rejected.

#### **Alternative E - New Overcrossing for Bicycles and Pedestrians Only**

1. **Description of Alternative:** Alternative E would consist of constructing a new bicycle/pedestrian overcrossing of I-880/O'Toole Avenue on the same alignment as that proposed for the Charcot Avenue Extension. The overcrossing would connect to the existing bike lanes and sidewalks along Charcot Avenue west of O'Toole Avenue. On the east side of I-880, the overcrossing would connect to Silk Wood Lane.
2. **Comparison of Environmental Impacts:** Since this alternative would not include any travel lanes for motor vehicles, its cross-section/footprint would be much smaller than that of the proposed project. On the west side of I-880, this alternative would not require the elevation of Charcot Avenue between Paragon Drive and O'Toole Avenue and access to properties along this segment of Charcot Avenue would be maintained. Unlike the proposed project, this alternative would also not require the removal of most of the trees that line both sides of Charcot Avenue between Paragon Drive and O'Toole Avenue.

On the east side of I-880, the footprint of Alternative E would fit within the right-of-way reserved by Super Micro for the Charcot Avenue Extension and within the existing Silk Wood Lane right-of-way. No right-of-way from Orchard School would be required and there would be no direct impacts to the school's playground and playing field. The noise and air quality impacts of the project to the residences located on the north side of Silk Wood Lane and the school located on the south



side of Silk Wood Lane would not occur under this alternative since there would be no increase in traffic. Finally, tree removal along Silk Wood Lane would be minimal, if any.

3. **Finding:** Alternative E would meet the following objective of the project to the same degree as the proposed design: Provide a safe bicycle/pedestrian facility over I-880, in compliance with San José's Complete Streets Policy. Alternative E would not, however, meet the remaining four objectives of the project: 1) Improve connectivity between the east side of I-880 and the west side of I-880; 2) Increase the capacity for east/west travel across the I-880 corridor; 3) Implement a programmed roadway network improvement project identified in the *Envision San José 2040 General Plan*; and 4) Implement a planned major roadway improvement project, as set forth in the *North San José Area Development Policy* and the *North San José Deficiency Plan*. Therefore, this alternative is rejected.

### Alternative F - Single Left-Turn Lane from Oakland Road to Charcot Avenue

1. **Description of Alternative:** Alternative F would be the same as the proposed project except that it would eliminate one of two proposed left-turn lanes from northbound Oakland Road to westbound Charcot Avenue, which in turn would allow for a reduction in westbound lanes on Charcot Avenue from two to one. Therefore, the cross-section of Charcot Avenue at Oakland Road under Alternative F would be three lanes, as compared to the four lanes contemplated under the proposed project.
2. **Comparison of Environmental Impacts:** Alternative F would still require right-of-way from Orchard School but to a lesser extent than for the proposed project. The smaller amount right-of-way needed would, in turn, reduce impacts to the existing recreational facilities.

When Alternative F is compared to the proposed project design, the northbound left-turn queue at the Charcot Avenue/Oakland Road intersection is projected to increase from 325 feet to 575 feet because only a single left-turn lane would be provided. The projected queue would not extend back to the Fox Lane intersection with Oakland Road that is located approximately 900 feet south of Charcot Avenue. However, peak-hour delays will increase slightly on all approaches due to the additional green time that must be allocated to the northbound left-turn movement.

For noise, the DNL under Alternative F would be two decibels lower at one receiver, one decibel lower at four receivers, one decibel higher at one receiver, and the same at nine receivers, as compared to the proposed design. For air

quality, the health risks from TAC and PM<sub>2.5</sub> emissions would be slightly less under Alternative F, as compared to the proposed design.

Alternative F would meet all five project objectives. Alternative F would be consistent with the *Envision San José 2040 General Plan*, the *San José Bike Plan 2020*, and the *North San José Area Development Policy*.

3. **Finding:** As stated above, the overall environmental impacts of Alternative F would be similar to those of the Project. However, when compared to the proposed design, traffic operations at the Charcot Avenue/Oakland Road intersection under Alternative F would be less efficient due to the elimination of a turning lane.

Under Alternative F, left turns from northbound Oakland Road into the Orchard School Event Center driveway would be prohibited. Those motorists would need to make a U-turn at the Oakland Road/Charcot Avenue intersection to access the Event Center driveway. The City finds that, given the fact that Alternative F has environmental impacts that are similar to the proposed project, there is no basis to select Alternative F given the above-described diminution in the efficiency of traffic operations. Therefore, this alternative is rejected.

### **Alternative G - Single Turn Lane on Charcot Avenue at Oakland Road**

1. **Description of Alternative:** Alternative G would be the same as the proposed project except that it would eliminate the exclusive left-turn lane from eastbound Charcot Avenue to northbound Oakland Road; instead there would be only one eastbound lane from which both left-turns and right-turns would be made. Therefore, the cross-section of Charcot Avenue at Oakland Road under Alternative G would be three lanes, as compared to the four lanes contemplated under the proposed project.
2. **Comparison of Environmental Impacts:** Alternative G would still require right-of-way from Orchard School but to a lesser extent than for the proposed project. The smaller amount right-of-way needed would, in turn, reduce impacts to the existing recreational facilities.

When Alternative G is compared to the proposed project design, the eastbound queue on Charcot Avenue at Oakland Road would increase from 675 feet to 850 feet and the PM peak-hour LOS would degrade to LOS D should the planned exclusive left-turn lane not be provided. The extended queue along eastbound Charcot Avenue may not be clearly visible to drivers travelling eastbound along Charcot Avenue due to the vertical alignment of the Charcot Avenue overcrossing of I-880.

For noise, when compared to the proposed design, the DNL under Alternative G would be two decibels lower at one receiver, one decibel lower at four receivers, one decibel higher at one receiver, and the same at nine receivers. For air quality, the health risks from TAC and PM<sub>2.5</sub> emissions would be slightly less under Alternative G, as compared to the proposed design.

Alternative G would meet all five project objectives. Alternative G would be consistent with the *Envision San José 2040 General Plan*, the *San José Bike Plan 2020*, and the *North San José Area Development Policy*.

3. **Finding:** As stated above, the overall environmental impacts of Alternative G would be similar to those of the Project. However, when compared to the proposed design, traffic operations at the Charcot Avenue/Oakland Road intersection under Alternative G would be less efficient due to the elimination of a turning lane. The City finds that, given the fact that Alternative G has environmental impacts that are similar to the proposed project, there is no basis to select Alternative G given the above-described diminution in the efficiency of traffic operations. Therefore, this alternative is rejected.

### **Alternative H - Single Turn Lanes on Both Charcot Avenue and Oakland Road**

1. **Description of Alternative:** Alternative H would be the same as the proposed project except that it would 1) eliminate one of two proposed left-turn lanes from northbound Oakland Road to westbound Charcot Avenue and 2) would eliminate the exclusive left-turn lane from eastbound Charcot Avenue to northbound Oakland Road. Instead, there would be only one eastbound lane from which both left-turns and right-turns would be made and only one northbound left-turn lane. Therefore, the cross-section of Charcot Avenue at Oakland Road under Alternative H would be two lanes, as compared to the four lanes contemplated under the proposed project.
2. **Comparison of Environmental Impacts:** Alternative H would still require right-of-way from Orchard School but to a lesser extent than for the proposed project or Alternatives F and G. The smaller amount right-of-way needed would, in turn, reduce impacts to the existing recreational facilities.

For traffic operations, Alternative H would differ from the proposed project design in the following ways:

- The eastbound queue on Charcot Avenue on Oakland Road would increase from 675 feet to 850 feet and the PM peak-hour LOS would degrade to LOS D should the planned exclusive left-turn lane not be provided. The extended

queue along eastbound Charcot Avenue may not be clearly visible to drivers travelling eastbound along Charcot Avenue due to the vertical alignment of the Charcot Avenue overcrossing of I-880.

- The northbound left-turn queue at the Charcot Avenue/Oakland Road intersection is projected to increase from 325 feet to 575 feet because only a single left-turn lane would be provided. The projected queue would not extend back to the Fox Lane intersection with Oakland Road that is located approximately 900 feet south of Charcot Avenue. However, peak-hour delays will increase slightly on all approaches due to the additional green time that must be allocated to the northbound left-turn movement.

For noise, when compared to the proposed design, the DNL under Alternative H would be one decibel lower at two receivers, one decibel higher at two receivers, and the same at 11 receivers. For air quality, the health risks from TAC and PM<sub>2.5</sub> emissions would be slightly less under Alternative H, as compared to the proposed design.

Alternative H would meet all five project objectives. Alternative H would be consistent with the *Envision San José 2040 General Plan*, the *San José Bike Plan 2020*, and the *North San José Area Development Policy*.

3. **Finding:** As stated above, the overall environmental impacts of Alternative H would be similar to those of the Project. However, when compared to the proposed design, under Alternative H, the eastbound queue on Charcot Avenue on Oakland Road would increase from 675 feet to 850 feet and the PM peak-hour LOS would degrade to LOS D should the planned exclusive left-turn lane not be provided. The extended queue along eastbound Charcot Avenue may not be clearly visible to drivers travelling eastbound along Charcot Avenue due to the vertical alignment of the Charcot Avenue overcrossing of I-880. Further, when compared to the proposed design, under Alternative H, the northbound left-turn queue at the Charcot Avenue/Oakland Road intersection is projected to increase from 325 feet to 575 feet because only a single left-turn lane would be provided. The projected queue would not extend back to the Fox Lane intersection with Oakland Road that is located approximately 900 feet south of Charcot Avenue. However, peak-hour delays will increase slightly on all approaches due to the additional green time that must be allocated to the northbound left-turn movement.

The City finds that, given the fact that Alternative H has environmental impacts that are similar to the proposed project, there is no basis to select Alternative H given the above-described diminution in the efficiency of traffic operations. Therefore, this alternative is rejected.

### Environmentally Superior Alternative

CEQA Guidelines Section 15126.6(e)(1) states “if the environmentally superior alternative is the ‘no project’ alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.” In this case, the No Project Alternative is environmentally superior because it avoids all of the identified impacts of the project. The No Project Alternatives does not, however, meet any of the five project objectives.

Other than the No Project Alternative, Alternative E (New Overcrossing for Bicycles and Pedestrians Only) would have the fewest adverse environmental impacts. It would avoid the significant removal of trees, the long-term increases in noise, long-term emissions of criteria air pollutants and TACs, and impacts to the recreational land and facilities at Orchard School. Alternative E’s impacts would be mostly limited to those associated with the construction of the bicycle/pedestrian facility.

Alternative E would not meet four of the five project objectives and would be inconsistent with the *Envision San José 2040 General Plan*, *North San José Area Development Policy*, and *North San José Deficiency Plan*. The only objective that would be met would be the provision of a bicycle/pedestrian crossing of I-880.

Of the three remaining feasible alternatives (i.e., Alternatives F, G, and H), their environmental impacts are very similar to each other and to those of the proposed project. The overall differences in impacts are negligible. Further, the proposed project, Alternative F, Alternative G, and Alternative H each meet all five of the project objectives.

The previous paragraph notwithstanding, the one category where there is a notable difference between the proposed project and Alternatives F, G, and H is the impacts to the recreational land and facilities at Orchard School. While none of the alternatives completely avoid this significant impact, Alternative H has the smallest effect. Alternative H avoids the direct impact to the baseball field, the paved playground area, most of the trees along the northerly planting strip, and most of the paved spectator areas and pathway. In addition, in terms of net loss of recreational area, Alternative H has the smallest impact at 5,590 ft<sup>2</sup> (0.1 acre). This net loss compares to 19,410 ft<sup>2</sup> (0.44 acre) under the proposed project, 11,480 ft<sup>2</sup> (0.26 acre) under Alternative F, and 12,770 ft<sup>2</sup> (0.29 acre) under Alternative G.

In consideration of all of these factors, Alternative H is the environmentally superior alternative. However, for the reasons described above, Alternative H is rejected.

## MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution as Exhibit "A" and incorporated and adopted as part of this Resolution herein is the Mitigation Monitoring and Reporting Program ("MMRP") for the Project required under Section 21081.6 of the CEQA Statute and Section 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

## STATEMENT OF OVERRIDING CONSIDERATIONS

- A. **Significant Unavoidable Impacts.** With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the Project will result in significant unmitigated or unavoidable impacts, as set forth above, associated with aesthetic impacts between Paragon Drive and O'Toole Avenue, as well as the loss of recreational acreage at Orchard School.
- B. **Overriding Considerations.** The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the Project are acceptable in light of the economic, legal, environmental, social, technological or other considerations noted below, because the benefits of the Project outweigh its significant adverse environmental impact of the Project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent basis for finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan, North San José Area Development Plan, North San José Deficiency Plan, and the San José 2020 Bike Plan.
- C. **Benefits of the Project.** The City Council has considered the public record of proceedings on the proposed Project and other written materials presented to the City as well as oral and written testimony at all public hearings related to the Project, and does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits:
1. **Multimodal Transportation Improvements.** Consistent with the goals and policies of the *Envision San José 2040 General Plan*, as well as with the City's Complete Streets Policy, the Project will provide significant improvements for motorists, bicyclists, and pedestrians. Currently, North San Jose has very

limited access points and the only east-west connections in the Charcot area are Montague Expressway to the north and Brokaw Avenue to the south. Both of these major thoroughfares are heavily congested with many users accessing the freeway, and the bicycle/pedestrian facilities are less than ideal. The new Charcot extension will serve more as a local facility for those users traveling east to west in the area with robust Class IV bicycle facilities and wide sidewalks. Safety will be greatly improved with these new facilities and vehicles will be able to use a new two-lane roadway with less signalized intersections.

2. **Support of Existing and Planned Growth.** The Project is a transportation infrastructure improvement identified in the *Envision San José 2040 General Plan*, the *North San José Area Development Policy*, and the *North San José Deficiency Plan* to support the ongoing and planned growth of the area. North San Jose is an important employment center for the City and providing additional access is critical for serving the planned development and housing units for the area. Planned growth in North San Jose includes 26,700,000 square feet of industrial uses, 1,700,000 square feet of commercial/retail uses, and 32,000 residential dwelling units.
3. **Efficiency.** The Project will reduce travel time and vehicle hours traveled. By providing another access point in the North San Jose Area, local users will have another roadway to come into and out of the area. Dependent upon origin and destination, the estimated travel reduction would vary from one-nine minutes, which could equate to a sixty percent decrease in travel time, with the greatest reduction in travel times coming from trips with origins and destinations located between Montague Expressway and Brokaw Road.
4. **Reduction in GHG Emissions due to delay.** The Project will result in a reduction of greenhouse gas emissions due to the reductions in congestion and improvements in operational efficiencies associated with a new east-west connection across the I-880 corridor.
5. **Economic Benefits.** The project will result in economic benefits to the City of San José and the region by supporting the planned growth of North San José. As stated in Section 1 of the *North San José Area Development Policy*: “The North San José area plays a vital role in the achievement of San José’s economic goals. The Rincon de los Esteros Redevelopment Area and related policies were established to promote industrial growth in this northerly area of the City. Those goals are a critical part of the overall policies related to maintaining a healthy balanced economy and achieving a number of other objectives necessary to a large vital city. As a result of these policies, the North San José area has become the preeminent location for driving industrial uses within the City of San José. The core of this area, referred to as “Rincon de los Esteros,” the “Innovation Triangle,” or the San José portion of the “Golden Triangle,” is the industrial park land located within San José





ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

# MITIGATION MONITORING AND REPORTING PROGRAM

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## Charcot Avenue Extension Project

File No. PP18-044

May 2020

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## PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Environmental Impact Report (EIR) prepared for the Charcot Avenue Extension Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This MMRP addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the EIR concluded that the impacts from implementation of the project would be less than significant.



*Planning, Building and Code Enforcement*  
ROSALYNN HUGHEY, DIRECTOR

Charcot Avenue Extension Project  
File No. PP18-044

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Contractor Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<b>AESTHETICS</b>					
<b>Impact AES-3:</b> The project would substantially change the visual character along existing Silk Wood Lane.					
<b>MM AES-3.1:</b> As described in greater detail under mitigation measure MM NOI-1.2 in Section 3.13, <i>Noise</i> , and as shown on Figure 3.13-3, the City shall construct a six-foot noise barrier along the Orchard School frontage of Silk Wood Lane. The noise barrier will also provide a visual barrier between the proposed roadway extension and Orchard School outdoor recreation areas.	Construct a noise barrier along the Orchard School frontage.	During construction.	Department of Planning, Building and Code Enforcement Supervising Environmental Planner.	Confirm noise barrier included in the project plans.	Prior to initiating project construction activities.
<b>MM AES-3.2:</b> Any noise barrier constructed as part of the project shall include aesthetic treatment (e.g., color, texture, plantings, etc.) that are compatible with the surroundings.	Include aesthetic treatments on the noise barrier.	During construction.	Department of Planning, Building and Code Enforcement Supervising Environmental Planner.	Confirm noise barrier included in the project plans.	Prior to initiating project construction activities.



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<b>BIOLOGICAL RESOURCES</b>					
<b>Impact BIO-1:</b> The project could significantly impact protected nesting birds during the construction phase.					
<b>MM BIO-1.1:</b> <u>Avoidance and Inhibit Nesting.</u> Construction and tree removal/pruning activities shall be scheduled to avoid the nesting season. Tree removal and/or pruning shall be completed before the start of the nesting season to help preclude nesting. The nesting season for most birds and raptors in the San Francisco Bay Area extends from February 1 <sup>st</sup> through August 31 <sup>st</sup> (inclusive).	Avoidance of construction activities during nesting season.	Prior to initiating project construction activities.	Department of Planning, Building and Code Enforcement Supervising Environmental Planner.	Confirm demolition and construction activities are scheduled outside of the nesting season.	Prior to initiating project construction activities.
<b>MM BIO-1.2:</b> <u>Preconstruction Survey(s).</u> If construction activities cannot be scheduled from September 1 <sup>st</sup> through January 31 <sup>st</sup> (inclusive), then a qualified ornithologist shall conduct a preconstruction survey for nesting raptors and other migratory birds within on-site trees as well as all trees within 250 feet of the site to identify active bird nests that may be disturbed during project construction. This survey shall be completed no more than fourteen (14) days prior to the initiation of demolition/construction activities (including tree removal and pruning). During this survey, the ornithologist shall inspect all trees and	If avoidance of construction activities during nesting seasons is not feasible, a pre-construction nesting bird survey shall be conducted by a qualified ornithologist and, in consultation with the California Department of Fish and Wildlife, a construction-free buffer	Prior to initiating project construction activities.	Department of Planning, Building and Code Enforcement Supervising Environmental Planner.	Review and approve ornithologist's report.	Prior to issuance of any tree removal, or grading activities.



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<p>other possible nesting habitats in and immediately adjacent to the construction areas for nests.</p> <p>If the survey does not identify any nesting birds that would be affected by construction activities, no further mitigation is required.</p> <p>If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist (in consultation with the CDFW) shall designate a construction-free buffer zone to be established around the nest to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during construction activities. The buffer shall remain in place until a qualified ornithologist has determined that the nest is no longer active.</p>	<p>zone shall be designated around any discovered nest.</p>				
<p><b>MM BIO-1.3: Reporting.</b> A final report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be completed to the satisfaction of the Director of Planning, Building, and Code Enforcement or the designee prior to the start of grading.</p>	<p>The ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the City's Supervising Environmental Planner of</p>	<p>Prior to initiating project construction activities.</p>	<p>Department of Planning, Building and Code Enforcement Director or his/her designee.</p>	<p>Review and approve ornithologist's report.</p>	<p>Prior to issuance of any tree removal, or grading activities.</p>



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	the Department of Planning, Building and Code Enforcement.				
<b>CULTURAL RESOURCES</b>					
<p><b>Impact CUL-2:</b> The project corridor is considered archaeologically sensitive. Therefore, the construction of the project has the potential to impact undiscovered buried archaeological resources.</p> <p><b>Impact CUL-3:</b> Directly related to impact CUL-2, above, if any buried archaeological resources are impacted by the project, such resources could contain human remains. Mitigation for this impact is included in the project.</p>					
<b>MM CUL-2.1:</b> Avoid trenching, digging, and grading below eight (8) feet.	Avoid trenching, digging, and grading below eight (8) feet.	During construction.	Department of Planning, Building and Code Enforcement Supervising Environmental Planner.	Review grading plans to ensure trenching, digging, and grading work do not extend below eight (8) feet.	During construction.
<b>MM CUL-2.2:</b> If trenching, digging, or grading below eight (8) feet is needed, archaeological monitoring shall be performed by a qualified archaeologist during such excavation and ground-disturbing activities.	If trenching, digging, or grading below eight (8) feet is needed, the City shall retain a qualified archaeologist to perform archaeological monitoring. The contractor shall coordinate	During construction period when trenching, digging, or grading is below eight (8) feet.	Department of Planning, Building and Code Enforcement Supervising Environmental Planner.	Retain a qualified archaeologist to perform archaeological monitoring, and review the archaeological	During construction period when trenching, digging, or grading is below eight (8) feet deep.



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	with the monitor.			monitoring report prepared by the archaeologist.	
<b>MM CUL-2.3:</b> In the event prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of the City's Department of Planning, Building and Code Enforcement or his/her designee will be notified, and a qualified archaeologist will examine the find. The archaeologist will 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds. If the finds do not meet the definition of historical or archaeological resources, no further study or protection is necessary prior to project implementation. If the find(s) does meet the definition of a historical or archaeological resource, then it shall be avoided by project activities. Project personnel shall not collect or move any cultural material. Fill soils used for construction purposes shall not contain archaeological materials.	Stop construction and immediately notify the Director of the City's Department of Planning, Building, and Code Enforcement.	If prehistoric or historic resources are encountered.	Department of Planning, Building and Code Enforcement Director or his/her designee, and Historic Preservation Officer.	Review archeologist's evaluation and recommendation report.	If prehistoric or historic resources are encountered.





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<p><b>MM CUL-2.4:</b> If the resource cannot be avoided, adverse effects to such resources shall be mitigated in accordance with the recommendations of the archaeologist. Recommendations may include, but are not limited to, collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of the City’s Department of Planning, Building and Code Enforcement or his/her designee and Historic Preservation Officer of the City’s Department of Planning, Building and Code Enforcement and the Northwest Information Center, Sonoma.</p>	<p>If the resource cannot be avoided, incorporate recommendations by the archaeologist.</p>	<p>If prehistoric or historic resources are encountered.</p>	<p>Department of Planning, Building and Code Enforcement Director or his/her designee, and Historic Preservation Officer.</p>	<p>Review archaeologist’s report of findings documenting data recovery.</p>	<p>If prehistoric or historic resources are encountered.</p>
<p><b>MM CUL-2.5:</b> If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably</p>	<p>Stop construction and immediately notify the Department of Planning, Building, and Code Enforcement Director.</p>	<p>If human remains are encountered.</p>	<p>Department of Planning, Building, and Code Enforcement Director or his/her designee.</p>	<p>Contact the Santa Clara County Coroner.</p>	<p>If human remains are encountered.</p>



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<p>suspected to overlie adjacent remains. The contractor shall immediately notify the Director of the City’s Department of Planning, Building, and Code Enforcement or his/her designee and the qualified archaeologist, who will then notify the Santa Clara County Coroner. The Coroner will determine if the remains are Native American.</p>					
<p><b>MM CUL-2.6:</b> If the remains are believed to be Native American, the Coroner will contact the NAHC within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts.</p>	<p>Implement the MLD’s recommendations.</p>	<p>Upon receiving MLD recommendations.</p>	<p>Department of Planning, Building, and Code Enforcement Director or his/her designee.</p>	<p>Work with the MLD to inspect the remains and record MLD’s recommendation on the treatment of the remains and associated artifacts.</p>	<p>Upon receiving MLD recommendations.</p>
<p><b>MM CUL-2.7:</b> If one of the following conditions occurs, the Director of the City’s Department of Planning, Building, and Code Enforcement or his/her designee shall work with the Coroner to reinter the Native American human remains and associated grave</p>	<p>Reinter the Native American human remains and associated grave goods with appropriate dignity in a location determined by the</p>	<p>Once location is identified by the Department of Planning, Building, and Code Enforcement</p>	<p>Department of Planning, Building, and Code Enforcement Director or his/her designee.</p>	<p>Work with the Coroner to reinter the Native American human remains and associated grave</p>	<p>When one of the conditions identified in mitigation measure MM CUL-2.7 occurs.</p>



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<p>goods with appropriate dignity in a location not subject to further subsurface disturbance:</p> <ul style="list-style-type: none"> <li>The NAHC is unable to identify a MLD; or</li> <li>The MLD failed to make a recommendation within 24 hours after being notified by the NAHC; or</li> <li>The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.</li> </ul>	<p>Department of Planning, Building, and Code Enforcement Director or his/her designee.</p>	<p>Director or his/her designee.</p>		<p>goods with appropriate dignity in a location not subject to further subsurface disturbance.</p>	
<b>HAZARDS AND HAZARDOUS MATERIALS</b>					
<p><b>Impact HAZ-2:</b> The project could create a significant risk if hazardous materials in sufficient concentrations are present in soils and those materials are, in turn, released into the environment during construction.</p>					
<p><b>MM HAZ-2.1:</b> Prior to demolition, grading, and excavation for the proposed road extension, soil within the project alignment shall be sampled and tested for organochlorine pesticides and lead to determine if soil contamination from previous agricultural use are above established RWQCB Environmental Screening Levels</p>	<p>Soil sampling shall be completed along the project alignment and tested for organochlorine pesticides and lead.</p>	<p>Prior to issuance of grading permits.  If soils are found to contain levels of</p>	<p>Department of Planning, Building and Code Enforcement Supervising Environmental Planner or his/her designee and</p>	<p>Review soil sampling report. Confirm regulatory agency</p>	<p>Prior to initiating project construction activities.</p>



*Planning, Building and Code Enforcement*  
ROSALYNN HUGHEY, DIRECTOR

Charcot Avenue Extension Project  
File No. PP18-044

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>(ESLs) for construction worker safety and commercial/industrial standards. The result of soil sampling and testing will be provided to the Director of the City of San José Planning, Building, and Code Enforcement, or his/her designee, and the City's Environmental Compliance Officer for review.</p> <p>If contaminated soils are found in concentrations above regulatory thresholds the applicant shall obtain regulatory oversight from the SCCDEH or DTSC. The SCCDEH or DTSC will determine next steps including which documents are required such as a Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document which must be prepared by a qualified hazardous materials consultant. The plan must establish remedial measures and/or soil management practices to ensure construction worker safety and the health and safety of future workers and site users. The Plan and evidence of regulatory oversight shall be provided to the Director of the City of San José Planning, Building, and Code Enforcement or his/her designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.</p>	<p>Implement remedial measures and/or soil management practices to ensure construction worker safety and the health and safety of future workers and site users.</p>	<p>organochlorine pesticides and lead above the RWQCB ESLs.</p>	<p>the City of San José Environmental Compliance Officer. Santa Clara County Department of Environmental Health or State Department of Toxic Substances Control.</p>	<p>oversight, if necessary.  Approval of the appropriate cleanup plan.</p>	



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<b>NOISE</b>					
<p><b>Impact NOI-1:</b> Over the long-term, the operational phase of the project would result in noise levels in the vicinity of the project in excess of standards established by San José.  <b>Impact NOI.C:</b> The project would result in a cumulatively considerable contribution to a significant noise impact.</p>					
<p><b>MM NOI-1.1:</b> At the start of project construction on the east side of I-880, the City shall replace the existing 5-foot high barrier along the north side of Silk Wood Lane with a 10-foot high noise barrier. The replacement barrier will be constructed at the side yard property line of 1820 Silk Wood Lane; at the rear yard property lines of 1052, 1058, 1064, 1070, and 1076 Bright Willow Lane; and at the rear property lines of 1931, 1937, and 1943 Bright Willow Circle.</p>	Construct noise barriers.	During construction.	Department of Planning, Building and Code Enforcement Supervising Environmental Planner.	Confirm noise barriers plans included.	Prior to initiating project construction activities.
<p><b>MM NOI-1.2:</b> At the start of project construction on the east side of I-880, the City shall construct a 10-foot high barrier at the side yard property line of 1813 Silk</p>	Construct noise barriers.	During construction.	Department of Planning, Building and Code Enforcement	Confirm noise barriers plans included.	Prior to initiating project



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Wood Lane. In addition, the City shall construct an 8-foot high barrier at the rear property lines of 1813 and 1819 Silk Wood Lane.			Supervising Environmental Planner.		construction activities.
<b>MM NOI-1.3:</b> At the start of project construction on the east side of I-880, the City shall construct a 6-foot high barrier at the proposed right-of-way line on the southern side of Charcot Avenue along the Orchard School frontage.	Construct noise barriers.	During construction.	Department of Planning, Building and Code Enforcement Supervising Environmental Planner.	Confirm noise barriers plans included.	Prior to initiating project construction activities.
<b>MM NOI-C.1:</b> At the start of project construction on the east side of I-880, the City shall increase the height of the existing 10-foot high barrier along the west side of Oakland Road to 12 feet. The higher barrier will be constructed at the rear yard property lines of 1949 and 1955 Bright Willow Circle. Per FHWA's Traffic Noise Model, this 12-foot high barrier, which is shown on	Construct noise barriers.	During construction.	Department of Planning, Building and Code Enforcement Supervising Environmental Planner.	Confirm noise barriers plans included.	Prior to initiating project construction activities.



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Figure 3.13-3, will reduce noise levels at these residences to acceptable levels of 60 dBA DNL or less.					
<b>MM NOI-C.2:</b> The City shall implement MM NOI-1.1 through MM NOI-1.3, which consists of the construction of noise barriers adjacent to residences and Orchard School. The locations of the noise barriers are described in detail in MM NOI-1.1 through MM NOI-1.3 and are shown on Figure 3.13-3.	Construct noise barriers.	During construction.	Department of Planning, Building and Code Enforcement Supervising Environmental Planner.	Confirm noise barriers plans included.	Prior to initiating project construction activities.
<b>RECREATION</b>					
<b>Impact REC-2:</b> The right-of-way required for the project would directly impact recreational facilities at Orchard Elementary School and reduce the area available for recreation.					
<b>MM REC-2.1:</b> The City will reconfigure the existing recreational facilities at Orchard School that would be impacted by the project. The reconfiguration will meet the following performance standards: 1) one standard Little League baseball field with backstop to complement existing conditions; 2) a 6-foot wide perimeter running path around sports field; 3) an approximately 5,000 ft <sup>2</sup> playground structure appropriate for children ages 5 to 12 years old; 4) two 315 ft <sup>2</sup> tetherball games; 5) two 640 ft <sup>2</sup> ball walls; 6) four 6-foot long benches adjacent to the play area; and 7) a new irrigation system, sod lawn, perimeter tree	City shall implement mitigation measure MM REC-2.1.	City shall coordinate with Orchard School District to determine the schedule for implementing mitigation measure MM REC-2.1.	Department of Planning, Building and Code Enforcement Director or his/her designee.	Ensure appropriate legal agreement or legal authority to enter school property.	City shall coordinate with Orchard School District to determine the schedule for implementing mitigation measure MM REC-2.1.



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planting and ornamental shrub planting around the school perimeter adjacent to the field fence and play yard.					
<b>TRIBAL CULTURAL RESOURCES</b>					
<p><b>Impact TCR-1:</b> The project may impact buried archaeological resources, such resources that may be determined to be tribal cultural resources eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code §5020.1(k).</p> <p><b>Impact TCR-2:</b> The project may impact buried archaeological resources, such resources that may be tribal cultural resources that are determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code §5024.1.</p> <p><b>MM CUL-2.1 through MM CUL-2.7,</b> that are listed above for Cultural Resources, will also serve as mitigation for impacts to tribal cultural resources.</p>					

*Source:* City of San José. Environmental Impact Report. Charcot Avenue Extension Project. August 2019.