RESOLUTION NO._____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CERTIFYING THE SAN JOSE FLEA MARKET SOUTHSIDE REZONING ENVIRONMENTAL IMPACT REPORT AND MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT IMPACTS, MITIGATION MEASURES AND ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND A RELATED MITIGATION MONITORING AND REPORTING PROGRAM, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED

WHEREAS, the proposed San Jose Flea Market Southside Rezoning Project (File No. PDC17-051) includes a Planned Development Zoning to allow up to 3,400,000 square feet of commercial development and up to 3,400 residential units to develop a mixed-use, Transit-Oriented Development project on the South side of Berryessa Road, approximately 1,100 feet Westerly of North King Road; all on an approximately 61-acre site in the City in San José, California (collectively referred to herein as the “Project”); and

WHEREAS, approval of the San Jose Flea Market Southside Rezoning 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, on May 12, 2021, the Planning Commission of the City of San José reviewed the FEIR prepared for the San Jose Flea Market Southside Rezoning Project and recommended to the City Council that it find the environmental clearance for the proposed Project was completed in accordance with the requirements of CEQA and further recommended the City Council adopt this Resolution; 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.

FLEA MARKET PLANNED DEVELOPMENT REZONING PROJECT SIGNIFICANT ENVIRONMENTAL IMPACTS

Air Quality

Impact: **Impact AIR-1:** Construction period emissions would exceed BAAQMD thresholds for ROG and NO_x exhaust.

Mitigation: **MM AIR-1.1:** The following best management practices shall be implemented by the project applicant prior to issuance of any demolition or grading permits and/or during construction activities to reduce DPM and PM_{10} to avoid short-term health impacts to nearby sensitive receptors during construction:

1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.

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

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

4. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).

5. Exposed stockpiles (dirt, sand, etc.) shall be enclosed, covered, watered twice daily, or applied with non-toxic soil binders.

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

7. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

8. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.

9. Post a publicly visible sign with the telephone number and person to contact at the City of San José regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.

10. All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph and visible dust extends beyond site boundaries.

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

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

13. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the number of disturbed surfaces at any one time.

14. Avoid tracking of visible soil material onto public roadways by employing the following measures if necessary: 1) Site access to a distance of 100 feet from public paved roads shall be treated with a 0.5- to one-foot compacted layer of wood chips, mulch, or gravel; and 2) wash truck tires and construction equipment prior to leaving the site.

15. Sandbags of other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.

Mitigation: **MM AIR-1.2:** Prior to the issuance of any demolition or grading permits, the project applicant shall utilize construction equipment that has low DPM exhaust and NO_x emissions, according to the following criteria:

1. All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet EPA Tier 4 emission standards for NO_x and PM (PM_{10} and $PM_{2.5}$), if feasible, otherwise:
    a. If use of Tier 4 equipment is not available, alternatively use equipment that meets EPA emissions standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve an 85 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; or,
    b. Use alternatively fueled equipment with lower NO_x emissions that meet the NO_x and PM reduction requirements above.

2. Diesel engines, whether for off-road equipment or on-road vehicles, shall not be left idling for more than two minutes, except as provided in exceptions to the applicable state regulations (e.g., traffic conditions, safe operating conditions). The construction sites shall have posted

legible and visible signs in designated queuing areas and at the construction site to clearly notify operators of the idling limit.

3. All on-road heavy-duty diesel trucks with a gross vehicle weight rating of 33,000 pounds or greater used at the project site (such as haul trucks, water trucks, dump trucks, and concrete trucks) shall be model year 2014 or newer.

4. Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment, such as generators.

Mitigation: **MM AIR-1.3:** At least 80 percent of the residential and non-residential buildings constructed shall use low-VOC (i.e., ROG) exterior paints that are below current BAAQMD requirements (Regulation 8, Rule 3: Architectural Coatings). This includes all architectural coatings applied during both construction and reapplication throughout the project's operational lifetime. At least 80 percent of coatings applied must meet a "super-compliant" VOC standard of less than 10 grams of VOC per liter of paint. For reapplication of coatings during the project's operational lifetime, the Declaration of Covenants, Conditions, and Restrictions shall contain a stipulation for low-VOC coatings to be used.

Finding: With implementation of Mitigation Measures MM AIR-1.1 through MM AIR-1.3, NO_x and ROG emissions during project construction activities (both Option 1 and Option 2) would be reduced to less-than-significant levels. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: As discussed in Section 3.3.2.1 of the DEIR and the Air Quality, Community Risk, and Greenhouse Gas Assessment, with the implementation of mitigation measures MM AIR-1.1 through 1.3, construction period ROG, NO_x, PM_{10}, and $PM_{2.5}$ emissions would be reduced to levels below the thresholds of significance established by the Bay Area Air Quality Management District (BAAQMD), for both project Options 1 and 2. The BAAQMD threshold for ROG, NO_X, and $PM_{2.5}$ emissions is 54 pounds per day, while the threshold for PM_{10} exhaust is 82 pounds per day.

Without mitigation, both project options would exceed BAAQMD thresholds for ROG and NO_x emissions. Unmitigated, project Option 1 would emit 60.5 pounds per day of ROG, 69.4 pounds per day of NO_x, 7.5 pounds per day of PM_{10}, and 5.6 pounds per day of $PM_{2.5}$. With mitigation, Option 1's emissions would be reduced to 30.1 pounds per day of ROG, 50.4 pounds

per day of NO_x, 7.0 pounds per day of PM_{10}, and 5.1 pounds per day of $PM_{2.5}$.

Project Option 2, unmitigated, would emit 69.4 pounds per day of ROG, 79.5 pounds per day of NO_x, .5 pounds per day of PM_{10}, and 5.6 pounds per day of $PM_{2.5}$. With mitigation, Option 2's emissions would be reduced to 35.0 pounds per day of ROG, 50.4 pounds per day of NO_x, 7.0 pounds per day of PM_{10}, and 5.1 pounds per day of $PM_{2.5}$.

With the proposed mitigation measures, construction period NO_x emissions would be reduced by 80 percent and ROG emissions would be reduced by 55 percent. ROG construction emissions from architectural coatings, which make up approximately 86 percent of total construction ROG emissions, would be reduced by 55 percent with mitigation measure MM AIR-1.3. For these reasons, construction period NO_x and ROG emission impacts would be less-than-significant.

Impact: **Impact AIR-2:** Operational period emissions would exceed BAAQMD thresholds for ROG (Option 1 and Option 2), NO_x (Option 1 and Option 2), and PM_{10} (Option 2 only).

Mitigation: **MM AIR-2.1:** Prior to any approval of a Planned Development Permit for the construction of the residential and/or commercial buildings and structures, the project applicant shall implement a Transportation Demand Management (TDM) plan consistent with City requirements.

A traffic engineer shall prepare and submit the TDM plan for review and approval to the Director of Planning, Building and Code Enforcement or the Director's designee and the Director of Public Works or the Director's designee. Trips shall be reduced by at least 48 percent for Option 1 and at least 53 percent for Option 2, as compared to unmitigated conditions.

Finding: While implementation of mitigation measure MM AIR-2.1 could reduce operational emissions, the measure would not reduce the impact to a less-than-significant level. **(Significant and Unavoidable Impact)**

Facts in Support of Finding: As discussed in Section 3.3.2.2 of the DEIR and the Air Quality, Community Risk, and Greenhouse Gas Assessment, the operational emissions of both project options would exceed the BAAQMD significance thresholds of 54 pounds per day for ROG and NO_x, with or without mitigation implemented. Project Option 2 would also exceed the BAAQMD significance threshold of 82 pounds per day for PM_{10}.

Unmitigated, project Option 1 would emit 193.3 pounds per day of ROG and 94.5 pounds per day of NO_x. Implementation of MM AIR-2.1 would reduce ROG emissions to 163.9 pounds per day, and NO_x emissions would remain at approximately 94.5 pounds per day. Project Option 2, unmitigated, would emit 232.7 pounds per day of ROG, 116.5 pounds per day of NO_x, and 95.3 pounds per day of PM_{10}. With mitigation, project Option 2's ROG emissions would be reduced to 228.1 pounds per day, NO_x emissions would remain at 116.5 pounds per day, and PM_{10} emissions would remain at 82 pounds per day.

Operational air emissions would be generated primarily from vehicle trips associated with the project. With the implementation of mitigation MM AIR-2.1, project traffic would be reduced by at least 48 percent for Option 1 and at least 52 percent for Option 2. However, there is no singular reduction percentage that would reduce NO_X and PM_{10} emissions to a level below the BAAQMD thresholds of 54 and 83 pounds per day, respectively. Additionally, operational ROG emissions would exceed the BAAQMD threshold of 54 pounds per day, even with mitigation. With implementation of mitigation measure MM AIR-2.1, operational ROG (Option 1 and Option 2), NO_x (Option 1 and Option 2), and PM_{10} (Option 2 only) emissions would continue to exceed the BAAQMD thresholds of significance. For these reasons, the project would have a significant and unavoidable impact with regards to operational period criteria pollutant emissions.

Biological Resources

Impact: **Impact BIO-1:** Dewatering and the modification or reconstruction of outfalls on the creeks during project construction could result in the loss of individual special-status fish.

Mitigation: **MM BIO-1.1:** Dewatering of Upper Penitencia Creek and Coyote Creek shall occur only during the period of June 15 through October 15 (or as otherwise specified by resource agency permits for the project) when special-status fish are least likely to be present. Prior to dewatering activities, the project applicant shall hire a qualified biologist who will use block nets to exclude fish from the reach of Upper Penitencia Creek to be dewatered during removal of the existing bridges (and, if necessary, from the segment of Upper Penitencia Creek and/or Coyote Creek that would be dewatered for outfall modification or construction). If the entire reach is going to be dewatered, such as for bridge removal, a block net will be placed at the upper end of the reach to be dewatered. Subsequently, qualified biologists will walk from the upper to lower end of the reach with a seine stretched across the channel to encourage fish to move out of the

construction area. When the lower end of the construction area is reached, a second block net will be installed to isolate the construction reach. This procedure will be repeated a minimum of three times on each dewatered reach to ensure that no fish remain in the construction area. The coffer dam used for dewatering will then be constructed within the limits delineated by the two block nets.

If only a small portion of one side of the channel needs to be dewatered, such as for outfall construction, a block net shall be used to encourage fish to move out of the dewatering area by expanding the net from the shoreline where outfall construction will occur outward into the channel. Both ends of the net shall be anchored to the shoreline, and the weighted net bottom shall be moved outward until it reaches the limits of dewatering. This shall be repeated a minimum of three times to ensure that no fish remain in the area to be dewatered. The coffer dam used for dewatering shall then be constructed within the area delineated by the block net.

In each case, a qualified biologist shall inspect the area within the block nets thoroughly to ensure that no fish are present prior to coffer dam construction and dewatering.

Mitigation: **MM BIO-1.2:** In determining whether modification or reconstruction of the existing outfalls is necessary in coordination with Valley Water, and designing new outfalls, the applicant's design team shall avoid and minimize any impacts to aquatic and riparian habitat. If complete avoidance of impacts to these sensitive habitats is determined to be infeasible by the applicant, the City will review the outfall designs and work with the applicant to ensure that no further avoidance or minimization of impacts to aquatic and riparian habitat can be achieved. In particular, permanent impacts, such as placement of hardened structures such as concrete or riprap, in the channel shall be avoided or minimized. If concrete is placed in an area where it will come into contact with the creek, it shall be allowed to cure before it comes into contact with creek waters. Energy dissipation shall be provided to minimize erosion and scour from water emanating from the outfall, but the amount of riprap or other hardened structures placed in aquatic habitat for energy dissipation shall be minimized with respect to the volume or cross-sectional area of the channel occupied by such structures.

Finding: Implementation of Mitigation Measures MM BIO-1.1 and MM BIO-1.2 would reduce impacts to special-status fish to a less than significant level. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: Dewatering at a time when special-status fish are least likely to be present (June 15 through October 15 [or as otherwise specified by resource agency permits for the project]) and hiring qualified biologists to exclude fish from the construction area will reduce impacts to special-status fish species. The project will comply with City, Valley Water, and Habitat Plan requirements to minimize impacts from construction or erosion. For example, as discussed above, reconstruction of the existing outfalls could result in construction impacts that could result in the loss of special-status fish species. The applicant's design team is required to avoid impacts to sensitive habitats by ensuring no hardened structures are placed in the channel. If complete avoidance is determined to be infeasible, the applicant will submit the designs to the City for review and determination of further avoidance or minimization measures. Compliance with the NPDES Construction General Permit will require the project to implement erosion-control measures such as covering disturbed land surfaces during construction and utilizing stabilized construction entrances. For these reasons, implementation of Mitigation Measures MM BIO-1.1 and 1-.2 will avoid project impacts to special-status fish.

Impact: **Impact BIO-2:** Project development under both Option 1 and Option 2 would encroach into and impact the minimum 35-foot Habitat Plan allowable setback of the Coyote Creek and Upper Penitencia Creek riparian corridors.

Mitigation: **MM BIO-2.1:** Prior to issuance of a Planned Development permit for the construction of any non-exempt uses (i.e., the recreational area, arterial roadway, and non-native landscaping) within the City's 100-foot setback and the Santa Clara Valley Habitat Plan's 35-foot setback (Santa Clara Valley Habitat Plan, Condition 11), the project applicant shall request and obtain a riparian setback exception from the City in accordance with City Council Policy 6-34 and the outlined factors of the Habitat Plan. As part of the exception review process and prior to a determination of the setback exception request, the Director of Planning, Building and Code Enforcement or the Director's designee shall provide the exception request and proposed decision to the Wildlife Agencies for review and comment.

MM BIO-2.2: To compensate for the degradation of setback functions in this area, the project applicant shall restore native habitat at a two to one (restored area to impacted area) ratio, on an acreage basis, within other planned open space areas in the 100-foot riparian setbacks on the site (e.g., within portions of the setback where hardscape will be removed). Native trees and shrubs appropriate to this area, such as coast live oak and coyote brush, shall be planted and maintained to provide additional wildlife habitat adjacent to the creeks. A qualified restoration ecologist shall develop a

Riparian Setback Enhancement and Monitoring Plan, which shall contain the following components (or as otherwise modified by regulatory agency permitting conditions):

1. Goal of the restoration to achieve no net loss of habitat functions and values.
2. Restoration design:
    a. Planting plan
    b. Soil amendments and other site preparation elements as appropriate
    c. Maintenance plan
    d. Remedial measures/adaptive management
3. Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc.). At a minimum, success criteria will include elimination of non-native woody species from the enhancement area and establishment of a native tree and shrub canopy providing at least 50 percent canopy coverage of the mitigation area within 10 years of mitigation implementation.
4. Contingency plan for mitigation elements that do not meet performance or final success criteria.

The Riparian Setback Enhancement and Monitoring Plan must be approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first) within the currently undeveloped habitat within the riparian corridor.

Finding: With implementation of mitigation measures MM BIO-2.1 and MM BIO-2.2, the proposed project (both Option 1 and 2) would not result in significant impacts related to riparian encroachment. **(Less than Significant Impact with Mitigation Incorporated)**

Facts in Support of Finding: The project applicant shall comply with City and Habitat Plan requirements to obtain an exception request. The City would be justified in permitting such a riparian setback reduction should the Wildlife Agencies concur that the project, in its entirety, and the reduced setback do not conflict with the goals and intent of the SCVHP. Additionally, the restoration required under mitigation measure MM BIO-2.2 for the encroachment into the riparian setbacks will substantially improve habitat

quality compared to existing conditions. This includes the replacement of approximately ten acres of disturbed land within 100-feet of both Penetencia and Coyote Creeks, including approximately 7.52 acres of pavement for the Flea Market parking lot, with open space and riparian compatible landscaping. As the project will significantly increase open space and riparian habitat compared with existing baseline conditions, the overall impacts related to riparian encroachment into the 100-foot setback would be less than significant.

Impact: **Impact BIO-3:** Project construction (both Option 1 and Option 2) could result in the spread of invasive plant species already present on the project site or introduce new invasive plant species to the site, which would adversely impact the on-site riparian habitat.

Mitigation: **MM BIO-3.1:** The project applicant shall employ the following best management practices for weed control to avoid and minimize the spread of invasive plant species:

- Prior to grading or soil disturbance, infestations of Algerian ivy and giant reed within areas of direct permanent or temporary disturbance will be removed and all vegetative material will be incinerated off-site or disposed of in a high-temperature composting facility that can compost using methods known to kill weed seeds, taking care to prevent any seed dispersal during the process by bagging material or covering trucks transporting such material from the site.
- All ground disturbing equipment used adjacent to the riparian corridors will be washed (including wheels, tracks, and undercarriages) at a legally operating equipment yard both before and after being used at the site.
- All applicable construction materials used on-site, such as straw wattles, mulch, and fill material, will be certified weed free.
- The project will follow a Stormwater Pollution Prevention Plan as per the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Water Board Order No. 2009-0009-DWQ).
- All disturbed soils will be stabilized and planted with a native seed mix from a local source following construction.
- If excavating, soil and vegetation removed from weed-infested areas will not be used in general soil stockpiles and will not be redistributed as topsoil cover for the newly filled areas. All weed-infested soil will

be disposed of off-site at a landfill or buried at least 2.5 feet below final grade.

Finding: With implementation of mitigation measure MM BIO-3.1, the proposed project (both Option 1 and Option 2) would not result in significant impacts related to non-native and invasive species. **(Less than Significant Impact with Mitigation Incorporated)**

Facts in Support of Finding: The measures required under Mitigation Measure MM BIO-3.1 are based on best management practices for weed control and best management practices required by the NPDES permit, in order to ensure protection of native flora and minimize the spread of invasive plant species during project construction activities.

Impact: **Impact BIO-4:** The proposed buildings along Coyote Creek and Upper Penitencia Creek, which would include glass facades and interior and exterior lighting, could result in bird strikes.

Mitigation: **MM BIO-4.1:** Due to the potential for the proposed buildings to result in high numbers of bird collisions, the project applicant shall implement the following bird-safe design considerations, which shall be reviewed and approved for effectiveness by a qualified ornithologist:

- On the buildings that front on Coyote Creek or Upper Penitencia Creek, no more than 10 percent of the surface area of the exterior building facades facing either creek will have untreated glazing between the ground and 60 feet above ground. Bird-safe glazing treatments may include fritting, netting, permanent stencils, frosted glass, exterior screens, and/or physical grids placed on the exterior of glazing or ultraviolet patterns visible to birds. Vertical elements of the window patterns shall be at least 0.25 inch wide at a maximum spacing of four inches or have horizontal elements at least 1/8-inch wide at a maximum spacing of two inches.
- All glazing panels at corners facing Coyote Creek or Upper Penitencia Creek between the ground and 60 feet above ground will be 100 percent treated.
- For the residential building H5, located on the southwest side of the proposed arterial road, the requirements in the two previous bullets will be implemented for all facades of the building, from the ground to the top floor.
- Any free-standing glass walls, wind barriers, skywalks, balconies, greenhouses, or similar structures that are included as part of the project

design and that have unbroken glazed segments 24 square feet or larger in size will be 100 percent treated with bird-safe features, regardless of their location on the project site.

- Exterior lighting on the northern and western perimeters of the development footprint will be minimized to the extent feasible, except as needed for safety. All exterior lights will be directed towards facilities on the project site (e.g., rather than directed upward or outward) and shielded to ensure that light is not directed outward toward Coyote Creek or Upper Penitencia Creek.
- Exterior up-lighting will be avoided.
- Occupancy sensors or other switch control devices will be installed on interior lights of office buildings, with the exception of emergency lights or lights needed for safety purposes. These lights will be programmed to shut off during non-work hours and between 10:00 PM and sunrise.

Finding: With implementation of mitigation measure MM BIO-4.1, the proposed project (Option 1 and Option 2) would not result in significant impacts to wildlife movement. **(Less than Significant Impact with Mitigation Incorporated)**

Facts in Support of Finding: The proposed bird-safe design measures, included under mitigation measure MM BIO-4.1, have been developed based on research into bird collisions (as referenced in the Biological Resources Report prepared by H.T. Harvey & Associates dated September 23, 2020 (Appendix C to the Draft EIR). Bird-safe design measures will be implemented during the City's design review process for individual buildings and as part of the Planned Development Permit. Implementing bird-safe glazing treatments on the exterior of buildings would deter birds from windows or glass areas by making the glass visible to them, reducing the number of collisions that could otherwise occur. By avoiding up-lighting, the project would minimize the amount of lighting spillover into the natural environment, reducing bird disorientation that could contribute to collisions, and would be consistent with the City of San José's Riparian Area and Bird Collisions Policy, and American Bird Conservancy's Bird-Friendly Building Design. Specific building designs will be reviewed and approved for effectiveness by a qualified ornithologist to ensure protection of bird species and reduce the number of bird collisions resulting from the project.

Impact: **Impact BIO-5:** Implementation of the project (both Option 1 and Option 2) would require tree removal, in conflict with the City of San José Municipal Code.

Mitigation: **MM BIO-5.1:** Prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first), the project applicant shall ensure trees that are intended to remain on the project site are protected during project construction. Protection shall include the establishment of Tree Protection Zones (TPZs), which at a minimum shall include the installation of a fence around the drip line of ordinance-sized trees, restricted construction activity within the dripline, and the posting of appropriate signage on the fence. These measures create an area of protection around the trees and reduce the threat of damage. Trees that are subject to ground-disturbing construction activities within any portion of their dripline shall be considered lost, unless a certified arborist determines that the tree is unlikely to be severely damaged or killed by such activities.

MM BIO-5.2: Prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first), the project applicant shall depict all trees to be removed, avoided, or protected on project plans. A Tree Protection Plan (TPP) shall be generated by a certified arborist to include all trees that are to be avoided or protected on the project site. The project applicant shall submit the TPP to the Director of Planning, Building and Code Enforcement or the Director's designee for approval.

Standard Condition: The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table 3.4-1 in the DEIR. The total number and species of replacement trees to be planted would be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement. In the event that the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:

- The size of a 15-gallon replacement tree may be increased to a 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.

- Pay off-site tree replacement fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council-approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

Finding: With implementation of mitigation measures MM BIO-5.1 and MM BIO-5.2 and the standard permit conditions listed above, the proposed project (both Option 1 and 2) would not conflict with policies or ordinances protecting

biological resources. **(Less than Significant Impact with Mitigation Incorporated)**

Facts in Support of Finding: A Tree Protection Plan (TPP) will be generated by a certified arborist to include all trees that are to be avoided or protected on the project site. The TPP will be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for approval prior to any ground disturbing permits. The project will comply with the City's required tree mitigation, by either complying with the required tree replacement ratios, or paying off-site tree replacement fees. The establishment of tree protection measures, including the establishment of Tree Protection Zones and implementation of a TPP and on-going monitoring of pruning activities by a certified arborist would ensure protection of trees proposed to remain on site.

Impact: **Impact BIO-6:** Both Option 1 and Option 2 project construction and tree removal during the avian breeding season could result in direct or indirect impacts to eggs and nestlings.

Mitigation: **MM BIO-6.1:** Avoidance. To the extent feasible, construction activities shall be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the federal Migratory Bird Treaty Act (MBTA) and the California Fish and Game Code will be avoided. The nesting season for most birds in Santa Clara County extends from February 1 through August 31, inclusive.

MM BIO-6.2: Preconstruction Surveys. If construction activities and/or tree removal cannot be scheduled to occur between September 1 and January 31, preconstruction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. These surveys will be conducted no more than seven days prior to the initiation of demolition or construction activities including tree removal and pruning. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, ruderal grasslands, buildings) in and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.

MM BIO-6.3: Reporting. Prior to issuance of any grading or building permit, the project applicant shall submit to the Director of Planning, Building and Code Enforcement or the Director's designee, a plan prepared by a qualified biologist for completing the preconstruction surveys to meet the requirements set out above. Subsequent to the preconstruction surveys, and prior to ground disturbance, the qualified biologist or ornithologist shall submit a written report indicating the results of the survey, a map of identified active nests, and any designated buffer zones or other protective measures to the Director of Planning, Building and Code Enforcement or the Director's designee.

Finding: With implementation of mitigation measures MM BIO-6.1 through MM BIO-6.3, the proposed project (both Option 1 and 2) would not result in impacts to nesting raptors or other migratory birds. **(Less than Significant Impact with Mitigation Incorporated)**

Facts in Support of Finding: As discussed in Section 3.5 Biological Resources of the DEIR, construction disturbance and project tree removal during the avian breeding season could result in the incidental loss of eggs or nestlings, either directly through the destruction or disturbance of active nests, or indirectly by causing the abandonment of nests. Conducting pre-construction surveys and implementing a construction-free buffer zone around any migratory bird nests will ensure that raptor or migratory bird nests are not disturbed during Project construction. Establishing a buffer zone of approximately 300 feet for raptors and 100 feet for other species (as recommended by a qualified ornithologist) would ensure protection of nests by providing fencing around them that would limit exposure to construction activity. This would be consistent with 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 California Department of Fish and Wildlife (CDFW) and based on best management practices (i.e., avoidance of construction activities during nesting season, and preconstruction survey requirements) established by the MBTA and CDFW. Compliance with Mitigation Measure MM BIO-6.1 through 6.3 will avoid impacts to nesting birds.

Cultural Resources

Impact: **Impact CUL-1:** The project would demolish the Flea Market structures and open space, which are eligible for listing in the California Register of Historic Resources (CRHR) and eligible for local listing as a City Landmark.

Mitigation: **MM CUL-1.1:** Prior to the issuance of demolition permits, the project applicant shall develop a Mitigation Implementation Program to the satisfaction of the Director of Planning, Building and Code Enforcement. The program shall specifically focus on the significant historical patterns of development and important personages and include public outreach, and could include the following:

- Document the culture and use of the site, not solely the structures on the site, according to the Level III procedures outlined in the National Park Service Standards and Guidelines for Architectural and Engineering Documentation, including the updated Historic American Building Survey/Historic American Engineering Record (HABS/HAER) Guidelines, which could include using a combination of photos, video, and oral interviews.
- Incorporate physical attributes of the Flea Market into the proposed project, such as signs and logos.
- Incorporate historic names (e.g., Bumb) and other exhibits into the new buildings on the project site.
- Based on additional historical research and personal interviews, develop a public exhibit/education program to present interpretive information on the historic patterns of development in the area.

Finding: While implementation of the proposed mitigation measure described above in MM CUL-1.1 would memorialize the loss of the San José Flea Market through documentation and incorporation of attributes of the Flea Market into the Project, the measures would not reduce the impact to a less-than-significant level. **(Significant and Unavoidable Impact)**

Facts in Support of Finding: As evaluated in the Historic Resources by Archives & Architecture dated July 21, 2006 (Appendix D to the Draft EIR), and the Archaeological Literature Searched by Holman & Associates dated February 7, 2020, the San José Flea Market is a historically significant resource and is eligible for listing in the CRHR and local listing as a City Historic Landmark, and no mitigation is capable of reducing the loss of an historic resource under CEQA to less than significant levels.

The Secretary of Interior's (SOI's) standards for the Treatment of Historic Properties includes four treatments: preservation, rehabilitation, restoration, and reconstruction. Preservation refers to sustaining the existing form, integrity, and materials of a historic property. Rehabilitation allows for a compatible use for a property through repair, alterations, and additions, while preserving its historical features. Restoration is the act of accurately depicting a property as it appeared at a particular period of time.

Reconstruction refers to constructing a new building for the purpose of replicating a historic building's appearance at a specific period of time.

The proposed project (both Option 1 and 2) would demolish the San José Flea Market structures, without preserving, rehabilitation, restoring, or reconstructing any portion of it. Therefore, the project would not meet the SOI's guidelines and would constitute a significant and unavoidable impact.

Impact: **Impact CUL-2:** Subsurface archaeological resources could be encountered during project construction.

Mitigation: **MM CUL-2.1:** Once the site has been cleared, a qualified archaeologist shall complete mechanical trenching to explore for buried historical and Native American resources. Trenching shall be completed for the lands surrounding the location where two early 20th century houses were in the northern half of the project site. Exploration shall focus on the "artifact scatter" area east of Coyote Creek to determine if it is a meaningful archaeological deposit that could be eligible for listing on the CRHR. Additionally, trenching shall be completed throughout the project site because of its high sensitivity for prehistoric deposits and cultural materials. Subsurface exploration shall be completed by an archaeologist trained in current California methods for prehistoric and historic archaeological resources. Narrow, deep trenches shall be created to search for Native American use of this site, and shallower, wide trenches employed near the potentially sensitive historic areas.

This investigation shall be completed prior to any construction or other ground disturbing activities required as part of the project. The results of the presence/absence exploration shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval prior to issuance of any grading permit. Based on the findings of the presence/absence exploration, an archaeological resources treatment plan (as described in MM CUL-2.2) shall be prepared by a qualified archaeologist, if necessary.

MM CUL-2.2: If required by MM CUL-2.1, the project applicant shall retain a qualified archaeologist to prepare a treatment plan that reflects the permit-level detail pertaining to depths and locations of all ground disturbing activities. The treatment plan shall be prepared and submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer prior to approval of any grading permit. The treatment plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.
- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).
- Detailed field strategy to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc.

Implementation of the plan, by a qualified archaeologist, shall be required prior to the issuance of any grading permits. The treatment plan shall utilize data recovery methods to reduce impacts to subsurface resources. The project applicant shall submit copies of the treatment plan to the Director of Planning, Building and Code Enforcement or the Director's designee.

Finding: Implementation of mitigation measures MM CUL-2.1 and MM CUL-2.2 would reduce impacts to unknown buried archaeological resources (if present on-site) to a less than significant level. **(Less than Significant Impact with Mitigation Incorporated)**

Facts in Support of Finding: As discussed in Section 3.5.2.1 of the DEIR and in the Archaeological Literature Searched by Holman & Associates dated February 7, 2020, the project site is located within an area of high archaeological sensitivity at depth, due to its proximity to Coyote Creek and Upper Penitencia Creek. Construction activities such as grading and excavation could result in the accidental destruction or disturbance of archaeological sites.

Conducting mechanical trenching and subsurface exploration by a qualified archaeologist prior to ground disturbing activities would minimize any potential impacts to archaeological resources by ensuring no cultural

materials or artifacts are located on the project site prior to any grading. If cultural materials are found, an archaeological resources treatment plan would be developed and implemented by a qualified archaeologist to reduce impacts to resources by analyzing the artifact(s) and creating a plan to recover or avoid them. With incorporation of a presence/absence exploration using mechanical trenching, and implementation of a treatment plan if needed, impacts to any undiscovered subsurface resources will be reduced to less-than-significant levels.

Hazards and Hazardous Materials

Impact: **Impact HAZ-1:** Redevelopment of the project site would require removal of the existing dual compartment underground storage tank (UST). Hazardous materials concentrations in soil and groundwater, resulting from USTs and aboveground storage tanks previously located on the site, may be encountered during construction.

Mitigation: **MM HAZ-1.1:** The project applicant shall obtain proper permits from the Santa Clara County Department of Environmental Health (SCCDEH) and San José Fire Department (SJFD) prior to removal of the existing UST, and shall collect and analyze soil and groundwater (if encountered) beneath the UST after the removal under the direction of the SCCDEH. If the SCCDEH has determined the UST has leaked, the project applicant shall perform all subsequent investigation and remediation as required under SCCDEH oversight.

During removal of the existing UST, underlying soil and groundwater samples shall be collected in the vicinity of the UST. The results of soil and groundwater sampling and testing shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José for review.

MM HAZ-1.2: In areas of residual contamination from the previous UST and AST, prepare a Site Management Plan (SMP) or similar document to manage the cleanup of potential contamination to ensure there are no health risks to construction workers and future residences and site workers. Contact the SCCDEH to determine if the applicant needs to enter into the SCCDEH's Site Cleanup Program for oversight.

The SMP shall be prepared prior to construction to establish appropriate management practices for handling impacted soil, soil vapor, and groundwater, and shall include the following at a minimum:

- A detailed discussion of the site background;

- Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program;
- Procedures to follow if evidence of an unknown historic release of hazardous materials is discovered during excavation or demolition; and
- A health and safety plan (HSP) for each contractor working at the site, in an area below grade, that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction.

Finding: With implementation of mitigation measures MM HAZ-1.1 and MM HAZ-1.2, the proposed project (both Option 1 and Option 2) would not result in impacts related to historic or existing USTs or ASTs. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: The project (both options 1 and 2) would require excavation of up to 25 feet below grade. As discussed in Section 3.9.1.2 of the DEIR, gasoline and diesel are currently stored within a dual compartment 8,000-gallon underground storage tank (UST) on the site, which would be removed by the proposed project. Additionally, previous USTs and above-ground storage tanks (ASTs) were removed in 1993 and 1999. The Phase I Environmental Site Assessment (ESA) detected concentrations of petroleum hydrocarbons and benzene exceeding residential screening levels near the former UST locations.

Implementation of remediation measures in an SMP approved by either the SCCDEH, including worker protection measures in a SCCDEH-approved HSP, will reduce potential impacts from on-site soil contamination to construction workers and future site occupants by establishing appropriate practices for soil handling procedures during construction, and ensuring proper cleanup of potential contamination from previous USTs and ASTs. Therefore, with mitigation, impacts would be considered less than significant.

Impact: **Impact HAZ-2:** To avoid impacts related to disposal of hazardous materials, the project applicant would be required to implement a facility closure plan, including removal of existing hydraulic lifts.

Mitigation: **MM HAZ-2.1:** Prior to issuance of a grading permit, the project applicant shall coordinate facility closure with the SJFD and SCCDEH to ensure that required closure activities are completed.

MM HAZ-2.2: The two subgrade hydraulic lifts in the corporate yard, including associated piping and hydraulic fluid reservoirs, shall be appropriately removed prior to issuance of a grading permit. Following removal of the lifts, verification soil samples shall be collected to document soil quality. Additional soil samples shall be collected at the locations of the trains associated with the two steam cleaning areas. Removal and sampling activities shall be observed and documented by an Environmental Professional. Remediation shall be completed to applicable regulatory standards, if necessary, to the satisfaction of the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José.

Finding: With implementation of Mitigation Measures MM HAZ-2.1 and MM HAZ-2.2, the proposed project (both Option 1 and Option 2) would not result in significant impacts related to facility closure. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: As discussed in Section 3.9.1.2 of the DEIR, a variety of hazardous materials (including automotive-related products, paint-related products, printing supplies, oils, and flammable storage cabinets) are currently used and stored on-site. No evidence of significant hazardous spills has been identified in the corporation yard or facility maintenance area of the existing site. These materials will be removed from the project site.

Following removal of any hazardous materials on site, the project applicant will submit a closure plan to the SJFD and SCCDEH that describes required closure activities, such as removal of remaining hazardous materials, cleaning of hazardous material handling equipment, decontamination of building surfaces, and waste disposal practices. Coordination with the SJFD and SCCDEH will reduce potential impacts related to facility closure to a less than significant level, by ensuring required facility closure activities are completed, and that site remediation was completed to the satisfaction of regulatory standards required by the City of San José's Environmental Compliance Officer and Director of Planning, Building and Code Enforcement or the Director's designee.

Impact: **Impact HAZ-3:** Soil imported to the project site for grading activities may result in contamination of the site.

Mitigation: **MM HAZ-3.1:** If the project requires importing soil for site grading, the project applicant shall evaluate the source and quality of imported soil consistent with the recommendations in the DTSC's October 2001 Clean Imported Fill Material Information Advisory. Evaluation of imported fill includes, but is not limited to, sourcing fill material from non-industrial sites, collection and analysis of fill samples, and documentation of the site selection and testing results. This documentation shall be provided to and approved by the Director of Planning, Building and Code Enforcement and the Environmental Compliance Officer of the City of San José prior to issuance of a grading permit and any soil import.

Finding: With implementation of mitigation measure MM HAZ-3.1, the proposed project (both Option 1 and Option 2) would not result in significant hazardous material impacts related to imported soil. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: DTSC's Clean Imported Fill Material Information Advisory lists recommended procedures to minimize the possibility of introducing contaminated soil onto a site that requires imported fill material. Recommendations include selecting fill material from previously undeveloped sites, analyzing fill material for potential contaminants, and keeping documentation of fill testing results.

Site grading is expected to require up to 70,000 cubic yards of soil to be imported from off-site to raise and level the site. The project would be required to document the source and quality of the soil imported to site, in accordance with DTSC recommendations. Evaluation of imported soils in accordance with the DTSC recommendations will ensure that hazardous material impacts related to imported soil are avoided.

Impact: **Impact HAZ-4:** Project implementation may encounter residual concentrations of chemicals, including total petroleum hydrocarbons as diesel (TPHd), total petroleum hydrocarbons as oil (TPHo), benzene, lead, and pesticide-related metals that could expose construction workers, neighboring uses, and the environment to hazardous materials.

Mitigation: **MM HAZ-4.1:** Prior to the issuance of any demolition or grading permits, the project applicant shall enter into an agreement with the SCCDEH's Site Cleanup Program to provide regulatory oversight. The applicant shall meet with the SCCDEH and perform additional soil and groundwater sampling and testing to adequately define the known and suspected contamination. A Remedial Action Work Plan and/or Soil Management Plan shall be prepared and submitted to the agency for their approval to demonstrate that

cleanup standards will be met for the development of the site. All measures identified in the plan(s) shall be implemented during all phases of construction, as applicable.

Additional sampling and remediation shall include, at a minimum, the following areas: 1) TPHd, TPHo, and benzene groundwater sampling in the vicinity of the former feed lot/meat packing facility; 2) lead sampling in shallow soil surrounding former on-site structures; 3) shallow soil sampling near wood framed structures for organochlorine pesticides and pesticide-related metals (arsenic, lead, and mercury); 4) shallow soil sampling on parcel 254-17-007 to define the extent of elevated dieldrin concentrations; and 5) soil sampling at planned earthwork locations within the fill area near Coyote Creek.

Evidence of regulatory oversight and approved plan(s) shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José for approval prior to the issuance of any grading permits.

Finding: With implementation of mitigation measure MM HAZ-4.1, as well as MM HAZ-1.1 through MM HAZ-1.2 above, the proposed project (both Option 1 and Option 2) would not result in significant impacts related to soil and groundwater quality. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: As discussed in Section 3.9 Hazards and Hazardous Materials of the DEIR, the Phase I Environmental Site Assessment (ESA) detected TPHd, TPHo, and benzene at concentrations exceeding the RWQCB's Tier 1 environmental screening levels (ESLs). The Phase I ESA also detected several elevated lead concentrations, with two samples exceeding the residential screening level. The Phase I ESA also detected dieldrin concentrations exceeding the residential screening level. Historically, there were residences and associated outbuildings on-site, that could have been painted with lead-containing paint. It is possible that soil adjacent to these structures has become impacted with lead as a result of weathering or peeling of painted surfaces. Additionally, the project site has an agricultural history, which could have impacted the structures and soils with pesticides.

Since project implementation could encounter residual concentrations of TPHd, TPHo, benzene, lead, and pesticides, the project could have a potentially significant impact by exposing construction workers, neighboring uses, and the environment to these materials. Regulatory oversight and

monitoring by the SCCDEH, implementation of a Remedial Action Work Plan and/or Soil Management Plan, and groundwater and soil sampling will ensure that impacts related to soil and groundwater quality are less than significant.

Impact: **Impact HAZ-5:** Groundwater monitoring wells, historic water supply wells, and septic systems associated with previous development may remain on the site, and could be encountered during or after project construction. If encountered, these structures could expose construction workers, neighboring uses, and the environment to hazardous materials.

Mitigation: **MM HAZ-5.1:** Prior to issuance of a grading permit, the project applicant shall research well records from Valley Water and attempt to locate abandoned wells at the site. If the wells are identified, or subsequently encountered during earthwork activities, the wells shall be properly destroyed in accordance with Valley Water Ordinance 90-1. If septic systems are encountered during earthwork activities, those systems shall be abandoned in accordance with SCCDEH requirements.

Finding: With implementation of mitigation measure MM HAZ-5.1, the project would not result in significant hazardous material impacts due to the potential presence of groundwater monitoring wells, historic water supply wells, and/or septic systems on the project site. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: Several groundwater monitoring wells historically were installed near underground storage tanks. Abandoned wells can act as a conduit for the vertical migration of groundwater contamination. If groundwater levels rise, an abandoned well can become an artisan well with uncontrolled water flow that can adversely impact future developments. Conducting a records search and destroying historic wells in accordance with Valley Water Ordinance 90-1 and/or abandoning septic systems in accordance with SCCDEH requirements will reduce potential impacts from historic wells and septic systems on-site to a less than significant level.

Noise and Vibration

Impact: **Impact NOI-1:** Redevelopment of the project site would result in elevated noise levels at nearby residences for a period exceeding one year.

Mitigation: **MM NOI-1.1**: An acoustic engineer shall prepare and implement a construction noise logistics plan, in accordance with General Plan Policy EC-1.7, prior to issuance of any demolition or grading permits. A typical

construction noise logistics plan will include, but not be limited to, the following measures to reduce construction noise levels:

- Utilize “quiet” models of air compressors and other stationary noise sources where technology exists.
- Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment.
- Construct temporary noise barriers, where feasible, to screen stationary noise-generating equipment when located within 200 feet of adjoining sensitive land uses. Temporary noise barrier fences will provide a five dBA noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receptor and if the barrier is constructed in a manner that eliminates any cracks or gaps.
- If stationary noise-generating equipment must be located near receptors, adequate muffling (with enclosures where feasible and appropriate) shall be used. Any enclosure openings or venting shall face away from sensitive receptors.
- Ensure that generators, compressors, and pumps are housed in acoustical enclosures.
- Locate cranes as far from adjoining noise-sensitive receptors as possible.
- During final grading, substitute graders for bulldozers, where feasible. Wheeled heavy equipment are quieter than track equipment and shall be used where feasible.
- Substitute nail guns for manual hammering, where feasible.
- Substitute electrically powered tools for noisier pneumatic tools, where feasible.
- The project applicant shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plans shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.

A copy of the construction noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement prior to the issuance of any demolition or grading permits.

Finding: With implementation of mitigation measure MM NOI-1.1 and standard permit conditions, noise generated during project (both Option 1 and Option

2) construction activities would not result in a significant impact. **(Less than Significant Impact with Mitigation Incorporated)**

Facts in Support of Finding: As discussed in Section 3.13.2.1 of the DEIR and the supporting Noise and Vibration Assessment prepared for the Project by Illingworth & Rodkin, dated September 17, 2020 (Appendix G to the DEIR), the Project would be constructed over a period of six years under both Option 1 and Option 2. During construction, construction noise levels would vary between 60 to dBA L_{eq}.

The City's General Plan and Municipal code do not have noise thresholds for temporary construction. However, based on the analysis in the Project's Noise Report by Illingworth & Rodkin, Inc. dated September 17, 2020, assuming a 15 dBA exterior-to-interior reduction for standard residential construction and a 25 dBA exterior-to-interior reduction for standard commercial construction, this would correlate to an exterior threshold of 60 dBA Leq at residential land uses and 70 dBA Leq at commercial land uses. Additionally, temporary construction would be annoying to surrounding land uses if the ambient noise environment increased by at least 5 dBA Leq for an extended period of time. Therefore, the temporary construction noise impact would be considered significant because construction activities exceeded 60 dBA Leq at nearby residences or exceeded 70 dBA Leq at nearby commercial land uses and exceeded the ambient noise environment by 5 dBA Leq or more for a period longer than one year.

Since a construction noise logistics plan, including noise barriers and quieter equipment, would be prepared and implemented in accordance with General Plan Policy EC-1.7, project impacts resulting from construction noise would be reduced to less-than-significant levels.

Cumulative Impacts

Impact: **Impact AIR-C:** The Project would result in cumulatively considerable criteria pollutant emissions impacts.

Mitigation: Same mitigation as MM AIR-1.1.

Finding: As discussed in Section 3.3.3.1 of the DEIR and the Air Quality and Greenhouse Gas Assessment prepared by Illingworth & Rodkin, dated July 7, 2020 (Appendix B to the DEIR), even with incorporation of mitigation measures MM AIR-1.1 through MM-AIR 2.1, both project options would increase emissions above BAAQMD thresholds of 54 pounds per day (for ROG and NO_x) and 82 pounds per day (for PM_{10}), resulting in a significant

and unavoidable impact. **(Significant and Unavoidable Cumulative Impact)**

Facts in Support of Finding: When evaluated using the thresholds in the 2017 BAAQMD CEQA Air Quality Guidelines, the project would have significant emissions of ozone precursor pollutants, ROG, and NO_x during construction and operation. Significant emissions of these pollutants result in a cumulatively considerable net increase of criteria pollutants for which the project region is non-attainment under the applicable ambient air quality standard. Because the project would have emissions of ROG and NO_x that would exceed emission-based significance thresholds, the project would result in a cumulatively considerable net increase in pollutant emissions that contribute to elevated ozone concentrations that exceed ambient air quality standards. The project would also result in a cumulatively considerable net increase in PM_{10} emissions that exceed ambient air quality standards. Project emissions would be less than 0.1 percent of the regional inventory, and the project would not cause regional pollutant levels to measurably change. As a result, the project would not measurably increase ozone levels nor PM_{10} levels. Even with incorporation of mitigation measures MM AIR-1.1 through MM AIR-2.1, both project options would increase emissions above BAAQMD thresholds of 54 pounds per day (for ROG and NO_x) and 82 pounds per day (for PM_{10}). Option 1 would result in ROG and NO_x emissions of 163.9 pounds and 94.5 pounds per day, respectively. Option 2 would result in ROG, NO_x, and PM_{10} emissions of 228.1 pounds, 116.5 pounds, and 95.3 pounds per day, respectively.

Impact: **Impact BIO-C:** The Project would result in cumulatively considerable impacts to special-status species.

Mitigation: Same mitigation as MM BIO-1.1 through MM BIO-6.3, presented above.

Finding: As discussed in Section 3.4.2.1 of the DEIR, incorporation of mitigation measures MM BIO-1.1 through MM BIO-6.3 and adherence to standard permit conditions and conditions of approval would reduce impacts to less than significant levels. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

Facts in Support of Finding: The project, in combination with other projects in the area, could contribute to cumulative effects to special-status species. Other projects in the area include both development and maintenance projects that could adversely affect these species. The cumulative impact to biological resources resulting from implementation of the project, in combination with other projects in the region, would be dependent on the

relative magnitude of adverse effects of these projects on biological resources compared to the relative benefit of impact avoidance and minimization efforts.

Impact: **Impact CUL-C:** The Project would result in cumulatively considerable impacts to archaeological resources.

Mitigation: Same mitigation as MM CUL-2.1 and MM CUL-2.2.

Finding: As discussed in Section 3.5.2.1 of the DEIR, incorporation of mitigation measures MM CUL-2.1 and MM CUL-2.2 would reduce impacts to buried cultural resources to less than significant levels. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

Facts in Support of Finding: In San José, Native American sites have been identified adjacent to springs or within a half mile of Coyote Creek, Guadalupe River, and their major tributaries. As discussed in Section 3.5 Cultural Resources of the DEIR and as evaluated in the Archaeological Literature Search by Holman & Associates dated February 7, 2020, the project site is within an area of high archaeological sensitivity at depth, due to its proximity to Coyote Creek and Upper Penitencia Creek. Conducting mechanical trenching and subsurface exploration by a qualified archaeologist prior to ground disturbing activities would minimize any potential impacts to archaeological resources. Additionally, the treatment plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's designee, and the City's Historic Preservation Officer prior to approval of a grading permit. Impacts will be reduced to less-than-significant levels.

Impact: **Impact HAZ-C:** The Project would result in cumulatively considerable impacts to hazards and hazardous materials impacts.

Mitigation: Same mitigation as MM HAZ-1.1 through MM HAZ-5.1.

Finding: As discussed in Section 3.9.2.1 of the DEIR, incorporation of mitigation measures MM HAZ-1.1 through MM HAZ 5-.1 would reduce impacts to less than significant levels **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

Facts in Support of Finding: It is likely that hazardous materials may have been stored and used on, and/or transported to and from, some of the cumulative properties. In addition, many of the properties in San José were used for agricultural purposes prior to their urban development, and agricultural

chemicals such as pesticides and fertilizers may have been used on these sites. The use of these chemicals can result in residual soil contamination, sometimes in concentrations that exceed regulatory thresholds. Further, development and redevelopment of some of the cumulative project sites would require demolition of existing buildings that may contain lead-based paint and/or ACMs. Demolition of these structures could expose construction workers to harmful levels of lead and/or ACMs.

Impact: **Impact NOI-C:** The Project would result in cumulatively considerable construction impacts to noise.

Mitigation: Same mitigation as MM NOI-1.1 and standard permit conditions.

Finding: As discussed in Section 3.13.2.1 of the DEIR, incorporation of mitigation measure MM NOI-1.1 and standard permit conditions would reduce impacts to less than significant levels. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

Facts in Support of Finding: The geographic area for cumulative noise impacts includes the project site and surrounding area. The project site is located within an urban area exposed to noise from vehicular traffic along Berryessa and Mabury Roads, industrial activities at sites to the west across Coyote Creek, and BART train pass-bys to the east. While cumulative projects could be constructed at the same time as the proposed project and result in a temporary construction noise increase, all projects will be required to implement construction noise standard permit conditions. Each of the cumulative development projects and future development under the Berryessa BART Urban Village Plan will implement mitigation measures to reduce construction noise impacts, and will comply with General Plan policies. Thus, with implementation of mitigation measures and standard permit conditions, the proposed project (both Option 1 and 2) would have a less-than-significant cumulatively considerable contribution to cumulative noise impacts.

Impact: **Impact TCR-C:** The Project would result in cumulatively considerable impacts to tribal cultural resources.

Mitigation: Same mitigation as MM CUL-2.1 and MM CUL-2.2.

Finding: As discussed in Section 3.18.2.1 of the DEIR, incorporation of mitigation measures CUL-2.1 and MM CUL-2.2 would reduce impacts to less than significant levels. **(Less than Significant Cumulative Impact with Mitigation Incorporated)**

Facts in Support of Finding: Due to the project site's proximity to Coyote Creek and Upper Penitencia Creek, the proposed project site has a high potential for archaeological deposits, including tribal cultural objects and artifacts. Cumulative impacts to unknown tribal cultural resources could occur as a result of ground-disturbing activities from construction of projects within the vicinity of the proposed project site, if any subsurface artifacts are uncovered during construction.

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:

1. No Project – No Development Alternative
2. Existing Entitlement Alternative
3. Reduced Footprint Alternative

1. No Project Alternative

A. **Description of Alternative:** The No Project Alternative assumes the project site would remain as it is today with predominantly impervious surfaces (surface parking lots) and would continue to operate as the San José Flea Market.

B. **Comparison of Environmental Impacts:** The No Project Alternative would avoid all of the project's environmental impacts, including the significant unavoidable impacts related to air quality (operational emissions of ROG, NO_x, and PM_{10}) and cultural resources (demolition of the Flea Market development, which is eligible for listing in the CRHR). Project impacts that would be less than significant with mitigation measures, including air quality, biology, cultural resources, hazardous materials, noise, and tribal cultural resources impacts, would also be avoided under the No Project Alternative.

C. **Finding:** Because the No Project Alternative would not result in any new development on the site, this alternative would avoid all environmental impacts of the project. This alternative would not, however, meet any of the applicant's or City's project objectives. The No Project Alternative is an environmentally superior alternative to the proposed project; however, due to the inability of this alternative to meet any of the project objectives, this alternative is rejected as infeasible.

2. Existing Entitlement Alternative

A. **Description of Alternative:** An "Existing Entitlement" Alternative would allow for the redevelopment of the site consistent with the existing capacity and density permitted by the A(PD) Zoning District on-site. This alternative would not require a Planned Development Rezoning. In 2007, the City of San José approved a General Plan land use designation of Urban Village (UV) and a Planned Development Rezoning (established by File No. PDC03-108) on the 120-acre Flea Market property (both north and south of Berryessa Road) allowing a total of 2,818 dwelling units and 365,622 square feet of commercial uses. Since the 2007 approval, the property north of Berryessa Road has been developed with 1,000 dwelling units and 118,580 square feet of commercial uses. The remaining development capacity for the project site (south of Berryessa Road) is 1,818 residential units and 247,042 square feet of commercial development. A Planned Development Permit would require review and approval by the City of San José for the specific design of the remaining growth permitted under the existing A(PD) Zoning District.

B. **Comparison of Environmental Impacts:** The existing entitlement allows the construction of up to 1,818 residential units and 247,042 square feet of commercial development on the site, compared to the current proposal of up to 3,450 units and 2.2 million square feet of commercial development under Option 1 and 3.4 million square feet of commercial development under Option 2. Due to its smaller size, less construction activity would be needed and this alternative would reduce impacts related to construction air quality emissions, fugitive dust, and construction noise to a less-than-significant level. Operational air quality emissions would be reduced to a less-than-significant level with mitigation incorporated under this alternative.

Development under the existing entitlement would still require mitigation related to biological resources (invasive species and nesting birds), cultural resources (subsurface archaeological resources), and hazards and hazardous materials (soil and groundwater contamination and facility closure). In addition, this alternative would continue to result in the significant unavoidable impact caused by removal

of the San José Flea Market, which is eligible for listing in the CRHR and eligible for local listing as a City Landmark.

C. **Finding:** Because the Existing Entitlement Alternative would provide lower-density residential and commercial development on-site, some of the project objectives would be met while avoiding and reducing several environmental impacts. Specifically, this alternative would result in reduced impacts related to construction and operational air quality, fugitive dust, and construction noise.

The Existing Entitlement Alternative includes the same mix of uses as the proposed project, and would therefore meet project objectives related to connecting residential and commercial development, open space and creeks, and public transit. However, the objective of providing Transit Oriented Development adjacent to the BART station would not be met to the same degree as under the proposed project (both Option 1 and Option 2). This alternative would not be consistent with the development densities of the Berryessa BART Urban Village Plan, which call for residential development at densities ranging between 55 and 300 units per acre and commercial development at intensities between 0.2 and 5.0 FAR, while the existing entitlement alternative provides residential density of only up to 60 dwelling units per acre (du/ac) and significantly less commercial development, which is inconsistent with the Urban Village Plan and does not advance Objectives 1 and 2 as well as the proposed Project. Therefore, this alternative is rejected.

3. Reduced Footprint Alternative

A. **Description of Alternative:** The Reduced Footprint Alternative would allow for the same types of uses as proposed by the project but would reduce the development site to the surface parking lots south of the Flea Market buildings. The portion of the 61.5-acre project site utilized under this alternative would be approximately 16 acres in size. This alternative would allow the Flea Market to continue operations and retain all existing buildings on the site. Impacts to the Upper Penitencia Creek corridor and northern portion of the Coyote Creek corridor would be avoided. The existing Flea Market surface parking would be reduced by approximately one-half under this alternative. Project development would be limited to the locations of residential building H4 and office buildings O4, O5, and O6 with associated parking structures (see Figure 2.2-4 in the DEIR) for a total of 395 residential units and up to 1.875 million square feet of commercial office development. Under this alternative, site access would be provided via Mabury Road only.

B. **Comparison of Environmental Impacts:** Under the Reduced Footprint Alternative, construction air quality impacts and construction noise impacts would be reduced due to the reduced size of the project; however, this alternative would still result in a significant unavoidable operational air quality impact. Construction duration would be shorter because of the alternative's smaller size, and the development site would be farther from sensitive residential uses to the north. In addition, due to its location on the southern portion of the site, this alternative would avoid project impacts to Upper Penitencia Creek including dewatering and riparian corridor encroachment, and would reduce impacts related to bird collisions and tree removal. The Reduced Footprint Alternative would eliminate the significant unavoidable impact caused by removal of the San José Flea Market, which is eligible for listing in the CRHR. Mitigation would still be required for hazards and hazardous materials impacts, including soil and groundwater contamination and facility closure.

C. **Finding:** The Reduced Footprint Alternative would reduce the project size to 395 residential units (from 3,450 units) and up to 1.5 million square feet of commercial space (from 2.2 to 3.4 million square feet under Option 1 and Option 2, respectively) on the southern portion of the project site, allowing continued operation of the San José Flea Market. This alternative would avoid biological impacts to Upper Penitencia Creek and cultural resources impacts due to demolition of the Flea Market. Construction-related impacts would also be reduced. Despite its smaller size, this alternative would support several of the project objectives including construction of Transit Oriented Development adjacent to the Berryessa BART Station. However, this alternative would not support the objectives to the same degree as both Option 1 and Option 2, and Flea Market operations could be limited due to the removal of one-half of the existing surface parking. This alternative would provide enough commercial space under the Berryessa BART Urban Village Plan. However, by only providing about 11% of the proposed housing, this alternative would not be consistent with the development densities of the Berryessa BART Urban Village Plan, which call for residential development at densities ranging between 55 and 300 units per acre. Therefore, this alternative is rejected as infeasible.

Environmentally Superior Alternative

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative to the proposed project is the No Project Alternative because all of the project's significant environmental impacts would be avoided. However, Section 15126(e)(2) states that "if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. In addition

to the No Project Alternative, the Reduced Footprint Alternative would avoid the project's significant unavoidable cultural resources impact[1] and would meet some of the proposed project's objectives. These alternatives, however, would not fully realize the project objectives and Berryessa BART Urban Village Plan's goals to develop a Transit Oriented Development adjacent to the Berryessa BART Station.

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

Pursuant to the provisions of CEQA, the City Council of the City of San José hereby adopts and makes the following statement of overriding considerations regarding the significant and unavoidable impact of the Project as outlined above and the anticipated economic, social, and other benefits of the Project.

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 operational air quality and historical resources due to impacts to the Berryessa Flea Market.

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

[1] The project's significant unavoidable operational air quality impact would not be avoided under the Reduced Footprint Alternative.

the record that includes, but is not limited to, the Envision San José 2040 General Plan and the Berryessa BART Urban Village 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) **The Project will Advance Major Strategies and Policies of the Envision San Jose 2040 General Plan.** Due to the project's unique location adjacent to the Berryessa BART station, the project is critical to advancing the following major strategies and policies in the Envision San Jose 2040 General Plan:

a. Major Strategy #3 – Focused Growth: This project is located within the Berryessa BART Urban Village (BBUV) Plan. Urban Villages are areas of focused growth in the City of San Jose. The project is consistent with this Strategy in that it will facilitate the maximum number units allowed under the zoning to be constructed, further supporting transit ridership at BART Station currently in operation, as well as providing more transit-accessible housing options in the community. The proposed project also concentrates a significant amount of commercial uses immediately adjacent to the BART station, which is critical to encouraging workers to commute by transit. The proposed commercial uses are consistent with the vision of the BBUV plan regarding employment generation, particularly office and Research and Development (R&D) land uses. Employment opportunities adjacent to the BART station are also important to support transit ridership and reducing employee vehicle-miles traveled and GHG emissions by providing a viable alternative to single-occupancy vehicle trips. Overall, the project proposes a combination of residential and commercial development in a horizontal mixed-use development pattern that supports the goals of the BBUV Plan. This development pattern fosters the creation of more complete neighborhoods with services and more land use options that meet the daily needs of a diverse population within walking distance from the BART station.

b. Major Strategy #5 – Urban Villages: The Project would advance this strategy by providing a significant amount of commercial and residential development within the Berryessa BART Urban Village (BBUV). The BBUV Plan concentrates the planned capacities in larger opportunity

sites called sub- areas or Districts. These Districts can accommodate the planned capacities adequately while preserving the surrounding established single-family neighborhoods and other areas in the Urban Village that have been recently developed (i.e. Flea Market north site). The proposed rezoning is fully contained within the Flea Market South District of the BBUV Plan. The rezoning proposes a balance of commercial and residential development in a horizontal mixed-use development pattern. This development pattern facilitates the construction of residential and commercial projects independent from each other, yet close to each other, consistent with BBUV's vision for a mixed- use development that can support BART ridership. The proposed rezoning is also consistent with the BBUV Plan because the balance of commercial and residential uses supports the fiscal and social benefits of shifting to a more compact and dense urban form, by encouraging new commercial and residential development at specific areas at higher residential densities and job intensities. The horizontal mixed-use approach of the proposed rezoning fosters the creation of more complete neighborhoods with services and more land use options that meet the daily needs of a diverse population within walking distance from the BART station, supporting BART ridership and encouraging people within the Urban Village to meet more of their needs on foot or by bicycle.

c. Land Use Policy LU-2.4 – Increase Employment and Residences Adjacent to the Berryessa BART Station: The Project significantly increases the amount of residential and commercial development that would be allowed on the Flea Market site above what was allowed under the previous Planned Development Zoning by allowing up to 3,450 housing units and up to 3.4 million square feet of commercial uses. In contrast the original A(PD) Planned Development Zoning District (File No. PDC09-006) only allowed up to 2,818 dwelling units and up to 365,622 million square feet of commercial development.

2) **Project will Advance Principles of the Berryessa BART Urban Village Plan.** The development of high density residential and commercial/office development and development of 17 acres of parks and open space will advance the Principles of the Berryessa BART Urban Village Plan: Principle 1 (Prioritize Connectivity and Accessibility), Principle 2 (Foster Alternative Forms of Transportation), Principle 3 (Sustainability as an Overarching Principle), Principle 4 (Open Space Enhancement and Protection), and Principle 5 (A Mixed-Income, Mixed-Use Urban Village).

3) **Provision of a Parks, Open Space, and Plazas.** The Project will provide approximately 17 acres of parks and open space. This includes approximately 10 acres of open space along Upper Penetencia and Coyote creeks for passive recreation (pedestrian and biking trails) and riparian compatible landscaping, and approximately 4.9 acres of neighborhood parks and plazas.

4) **Provision of Housing in an Identified Growth Area.** Development of the Project would result in the construction of up to 3,450 residential units (an increase of 1,632 units from the previous Planned Development Zoning), advancing Major Strategy No. 3 (Focused Growth) in the Envision San José 2040 General Plan. Provision of increased density in an identified growth area will advance General Plan policies to encourage infill development.

5) **Development along High-Frequency Transit Services.** The Project supports goals of the Envision San José 2040 General Plan to focus jobs and high-density housing within proximity to existing high-frequency transit (BART and VTA bus lines). The development supports increased ridership and use of BART and VTA bus lines by placing more destinations and potential users within a half-mile of the Berryessa BART station and bus stops.

The City Council has weighed each of the above benefits of the proposed Project against its unavoidable environmental risks and adverse environmental effects identified in the Final Environmental Impact Report and hereby determines that those benefits outweigh the risks and adverse environmental effects of the Project and, therefore, further determines that these risks and adverse environmental effects are acceptable and overridden.

LOCATION AND CUSTODIAN OF RECORDS

The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the Project are located at the City's Department of Planning, Building and Code Enforcement, San José City Hall, 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and are available electronically on the Planning Department's website. The City Council hereby designates the City's Director of Planning, Building, and Code Enforcement at the Director's office at 200 East Santa Clara Street, 3rd Floor Tower, San José California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT "A"
(File No. PDC17-051)

MITIGATION MONITORING AND REPORTING PROGRAM

San José Flea Market Planned Development Rezoning Project

File No. PDC17-051

March 2021

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program 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 San José Flea Market Planned Development Rezoning 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 Mitigation Monitoring and Reporting Program 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.

I, Loran B. Vaccarezza, the applicant, on the behalf of The Flea Market, Inc., hereby agree to fully implement the mitigation measures described below which have been developed in conjunction with the preparation of an EIR for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level.

Project Applicant's Signature Loran B. Vaccarezza. Date 2 March 2021

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Planning, Building and Code Enforcement
ROSALYNN HUGHEY, DIRECTOR

San José Flea Market Planned Development Rezoning Project
File No. PDC17-051

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
AIR QUALITY					
Impact AIR-1: Construction period emissions would exceed Bay Area Air Quality Management District (BAAQMD) thresholds for reactive organic gases (ROG) and nitrogen oxide (NO_x) exhaust.					
MM AIR-1.1: The following best management practices shall be implemented by the project applicant prior to issuance of any demolition or grading permits and/or during construction activities to reduce diesel particulate matter (DPM) and coarse particulate matter (PM_{10}) to avoid short-term health impacts to nearby sensitive receptors during construction. • All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. • All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).	Follow best management practices during all phases of construction to reduce DPM and PM_{10} emissions. All measures shall be printed on all construction documents, contracts, and project plans.	Construction documents and plans shall be submitted for review and approval prior to issuance of any demolition or grading permits. Best management practices shall be implemented during construction.	Director of Planning, Building and Code Enforcement or Director's designee.	Ensure that all measures are printed on all construction documents, contracts, and project plans.	Prior to issuance of any demolition or grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
• Exposed stockpiles (dirt, sand, etc.) shall be enclosed, covered, watered twice daily, or applied with non-toxic soil binders. • All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of the California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. • All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. (continued)					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
• Post a publicly visible sign with the telephone number and person to contact at the City of San José regarding dust complaints. This person shall respond and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations. • All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph and visible dust extends beyond site boundaries. • Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction adjacent to sensitive receptors. Wind breaks shall have at maximum 50 percent air porosity. • Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established. • The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the number of disturbed surfaces at any one time. (continued)					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
• Avoid tracking of visible soil material onto public roadways by employing the following measures if necessary: 1) Site accesses to a distance of 100 feet from public paved roads shall be treated with a 0.5- to one-foot compacted layer of wood chips, mulch, or gravel; and 2) wash truck tires and construction equipment prior to leaving the site. • Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than one percent.					
MM AIR-1.2: Prior to the issuance of any demolition or grading permits, the project applicant shall utilize construction equipment that has low DPM exhaust and NO_x emissions, according to the following criteria: 1. All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet Environmental Protection Agency (EPA) Tier 4 emission standards for NO_x and particulate matter (PM_{10} and $PM_{2.5}$ [fine particulate matter]), if feasible, otherwise: (continued)	Prepare and submit a Construction Operations Plan that includes specifications of the equipment to be used during construction for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee. Construction equipment shall be selected and utilized in accordance with the listed measures to reduce DPM and NO_x emissions.	Construction Operations Plan, construction documents, and plans shall be submitted for review and approval prior to issuance of any demolition or grading permits. Equipment selection and utilization measures shall be	Director of Planning, Building and Code Enforcement or Director's designee.	Receive Construction Operations Plan and documents and ensure that all measures are met and printed on all construction documents, contracts, and project plans.	Prior to issuance of any demolition or grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
a. If use of Tier 4 equipment is not available, alternatively use equipment that meets EPA emissions standards for Tier 3 engines and include particulate matter emissions control equivalent to California Air Resources Board (CARB) Level 3 verifiable diesel emission control devices that altogether achieve an 85 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; or, b. Use alternatively fueled equipment with lower NO_x emissions that meet the NO_x and PM reduction requirements above. 2. Diesel engines, whether for off-road equipment or on-road vehicles, shall not be left idling for more than two minutes, except as provided in exceptions to the applicable state regulations (e.g., traffic conditions, safe operating conditions). The construction sites shall have posted legible and visible signs in designated queuing areas and at the construction site to clearly notify operators of the idling limit. (continued)	All measures shall be printed on all construction documents, contracts, and project plans.	implemented during construction.			

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
3. All on-road heavy-duty diesel trucks with a gross vehicle weight rating of 33,000 pounds or greater used at the project site (such as haul trucks, water trucks, dump trucks, and concrete trucks) shall be model year 2014 or newer. 4. Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment, such as generators.					
MM AIR-1.3: At least 80 percent of the residential and non-residential buildings constructed shall use low-volatile organic compound (VOC; i.e., ROG) exterior paints that are below current BAAQMD requirements (Regulation 8, Rule 3: Architectural Coatings). This includes all architectural coatings applied during both construction and reapplication throughout the project's operational lifetime. At least 80 percent of coatings applied must meet a "super-compliant" VOC standard of less than 10 grams of VOC per liter of paint. For reapplication of coatings during the project's operational lifetime, the Declaration of Covenants, Conditions, and Restrictions shall contain a stipulation for low-VOC coatings to be used.	Low-VOC coatings shall be used for exterior paints, with 80 percent of coatings meeting a "super-compliant" VOC standard. All measures shall be printed on all construction documents, contracts, and project plans.	Construction documents and plans shall be submitted for review and approval prior to issuance of any building permits. Low-VOC coatings shall be applied during construction.	Director of Planning, Building and Code Enforcement or Director's designee.	Ensure that all measures are printed on all construction documents, contracts, and project plans.	Prior to issuance of any building permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
Impact AIR-2: Operational period emissions would exceed BAAQMD thresholds for ROG (Option 1 and Option 2), NO_x (Option 1 and Option 2), and PM_{10} (Option 2 only).					
MM AIR-2.1: Prior to any approval of a Planned Development Permit for the construction of the residential and/or commercial buildings and structures, the project applicant shall implement a Transportation Demand Management (TDM) plan consistent with City requirements. A traffic engineer shall prepare and submit the TDM plan for review and approval to the Director of Planning, Building and Code Enforcement or the Director's designee and the Director of Public Works or the Director's designee. Trips shall be reduced by at least 48 percent for Option 1 and at least 53 percent for Option 2, as compared to unmitigated conditions.	A traffic engineer shall prepare and submit to the Director of Planning, Building and Code Enforcement or the Director's designee and the Director of Public Works or Director's designee a TDM plan to reduce project trips by at least 48 percent for Option 1 and at least 53 percent for Option 2. The TDM shall include annual monitoring during project operation to ensure the project meets the necessary reductions. The project applicant shall implement the approved TDM. A follow up report shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Director of Public Works or the Director's designee,	The TDM plan shall be submitted for review and approval prior to issuance of any Public Works clearances. The approved TDM measures shall be subject to annual monitoring during project operation.	Director of Planning, Building and Code Enforcement or Director's designee. Director of Public Works or Director's designee.	Review and approve the TDM plan. Conduct annual monitoring of approved TDM measures during project operation.	Prior to issuance of any Public Works clearances, and annually during project operation.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
	detailing the effectiveness of the TDM measures to meet the trip reduction and identifying any additional TDM measures to be implemented, as necessary.				
BIOLOGICAL RESOURCES					
Impact BIO-1: Dewatering and the modification or reconstruction of outfalls on the creeks during project construction could result in the loss of individual special-status fish.					
MM BIO-1.1: Dewatering of Upper Penitencia Creek and Coyote Creek shall occur only during the period of June 15 through October 15 (or as otherwise specified by resource agency permits for the project) when special-status fish are least likely to be present. Prior to dewatering activities, the project applicant shall retain a qualified biologist who will use block nets to exclude fish from the reach of Upper Penitencia Creek to be dewatered during removal of the existing bridges (and, if necessary, from the segment of Upper Penitencia Creek and/or Coyote Creek that would be dewatered for outfall modification or construction). If the entire reach is going to be dewatered, such as for bridge removal, a block net will be placed at the upper end of the reach to be dewatered. Subsequently, qualified biologists will walk from the upper to lower end of the reach with a seine stretched across the channel to encourage fish to move out of the construction area. When the lower end of the construction area is reached, a second block net will be installed to isolate the	Complete dewatering activities between June 15 and October 15. Retain a qualified biologist to use block nets to ensure no fish are present prior to dewatering activities. All measures shall be printed on all construction documents, contracts, and project plans.	Construction documents and plans shall be submitted for review and approval prior to issuance of any ground disturbing permits. Block nets shall be utilized and inspected by a qualified biologist during construction dewatering activities.	Director of Planning, Building and Code Enforcement or Director's designee.	Ensure that all measures are printed on all construction documents, contracts, and project plans.	Prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first).

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
construction reach. This procedure will be repeated a minimum of three times on each dewatered reach to ensure that no fish remain in the construction area. The coffer dam used for dewatering will then be constructed within the limits delineated by the two block nets. If only a small portion of one side of the channel needs to be dewatered, such as for outfall construction, a block net shall be used to encourage fish to move out of the dewatering area by expanding the net from the shoreline where outfall construction will occur outward into the channel. Both ends of the net shall be anchored to the shoreline, and the weighted net bottom shall be moved outward until it reaches the limits of dewatering. This shall be repeated a minimum of three times to ensure that no fish remain in the area to be dewatered. The coffer dam used for dewatering shall then be constructed within the area delineated by the block net. In each case, a qualified biologist shall inspect the area within the block nets thoroughly to ensure that no fish are present prior to coffer dam construction and dewatering.					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
MM BIO-1.2: In determining whether modification or reconstruction of the existing outfalls is necessary in coordination with the Santa Clara Valley Water District (Valley Water), and designing new outfalls, the applicant's design team shall avoid and minimize any impacts to aquatic and riparian habitat. If complete avoidance of impacts to these sensitive habitats is determined to be infeasible by the applicant, the City will review the outfall designs and work with the applicant to ensure that no further avoidance or minimization of impacts to aquatic and riparian habitat can be achieved. In particular, permanent impacts, such as placement of hardened structures such as concrete or riprap, in the channel shall be avoided or minimized. If concrete is placed in an area where it will come into contact with the creek, it shall be allowed to cure before it comes into contact with creek waters. Energy dissipation shall be provided to minimize erosion and scour from water emanating from the outfall, but the amount of riprap or other hardened structures placed in aquatic habitat for energy dissipation shall be minimized with respect to the volume or cross-sectional area of the channel occupied by such structures.	Design outfall modification or reconstruction to avoid or minimize impacts to aquatic and riparian habitat.	Outfall modification or reconstruction plans shall be submitted prior to the issuance of any ground disturbing permits.	Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve the design of any proposed outfall modification or reconstruction.	Prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first) within the riparian corridor.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
Impact BIO-2: Project development under both Option 1 and Option 2 would encroach into and impact the minimum 35-foot Habitat Plan allowable setback of the Coyote Creek and Upper Penitencia Creek riparian corridors.					
MM BIO-2.1: Prior to issuance of a Planned Development permit for the construction of any non-exempt uses (i.e., the recreational area, arterial roadway, and non-native landscaping) within the City's 100-foot setback and the Santa Clara Valley Habitat Plan's 35-foot setback (Santa Clara Valley Habitat Plan Condition 11), the project applicant shall request and obtain a riparian setback exception in accordance with City Council Policy 6-34 and the outlined factors of the Habitat Plan. As part of the exception review process and prior to a determination of the setback exception request, the Director of Planning, Building and Code Enforcement or the Director's designee shall provide the exception request and proposed decision to the Wildlife Agencies for review and comment.	Request a riparian setback exception during the Santa Clara Valley Habitat Plan application process.	The riparian setback exception must be obtained prior to issuance of a Planned Development permit for the construction of any non-exempt uses within the riparian corridor.	Director of Planning, Building and Code Enforcement or Director's designee. Santa Clara Valley Habitat Agency.	Ensure that a riparian setback exception was obtained as part of the Santa Clara Valley Habitat Plan application.	Prior to issuance of a Planned Development permit for the construction of any non-exempt uses within the riparian corridor.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
MM BIO-2.2: To compensate for the degradation of setback functions in this area, the project applicant shall restore native habitat at a two to one (restored area to impacted area) ratio, on an acreage basis, within other planned open space areas in the 100-foot riparian setbacks on the site (e.g., within portions of the setback where hardscape will be removed). Native trees and shrubs appropriate to this area, such as coast live oak and coyote brush, shall be planted and maintained to provide additional wildlife habitat adjacent to the creeks. A qualified restoration ecologist shall develop a Riparian Setback Enhancement and Monitoring Plan, which shall contain the following components (or as otherwise modified by regulatory agency permitting conditions): 1. Goal of the restoration to achieve no net loss of habitat functions and values. 2. Restoration design: • Planting plan • Soil amendments and other site preparation elements as appropriate • Maintenance plan • Remedial measures/adaptive management 3. Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc.). At a minimum,	A Riparian Setback Enhancement and Monitoring Plan for restoring native habitat shall be prepared by a qualified restoration ecologist. All measures shall be printed on all construction documents, contracts, and project plans.	The Riparian Setback Enhancement and Monitoring Plan shall be submitted prior to the issuance of any grading, demolition, tree removal, or ground disturbing permits within the riparian corridor.	Director of Planning, Building and Code Enforcement or Director's designee.	Ensure that all measures are printed on all construction documents, contracts, and project plans. Review and approve the Riparian Setback Enhancement and Monitoring Plan.	Prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first) within the riparian corridor.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
success criteria will include elimination of non-native woody species from the enhancement area and establishment of a native tree and shrub canopy providing at least 50 percent canopy coverage of the mitigation area within 10 years of mitigation implementation. 4. Contingency plan for mitigation elements that do not meet performance or final success criteria. The Riparian Setback Enhancement and Monitoring Plan must be approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first) within the currently undeveloped habitat within the riparian corridor.					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
Impact BIO-3: Project construction (both Option 1 and Option 2) could result in the spread of invasive plant species already present on the project site or introduce new invasive plant species to the site, which would adversely impact the on-site riparian habitat.					
MM BIO-3.1: The project applicant shall employ the following best management practices for weed control to avoid and minimize the spread of invasive plant species: • Prior to grading or soil disturbance, infestations of Algerian ivy and giant reed within areas of direct permanent or temporary disturbance will be removed and all vegetative material will be incinerated off-site or disposed of in a high-temperature composting facility that can compost using methods known to kill weed seeds, taking care to prevent any seed dispersal during the process by bagging material or covering trucks transporting such material from the site. • All ground disturbing equipment used adjacent to the riparian corridors will be washed (including wheels, tracks, and undercarriages) at a legally operating equipment yard both before and after being used at the site. • All applicable construction materials used on site, such as straw wattles, mulch, and fill material, will be certified weed free. (continued)	Follow best management practices during all phases of construction for weed control to avoid and minimize the spread of invasive plant species. All measures shall be printed on all construction documents, contracts, and project plans.	Prior to issuance of any grading or ground disturbing permits, construction documents and plans shall be submitted for review and approval. Best management practices shall be implemented during construction.	Director of Planning, Building and Code Enforcement or Director's designee.	Ensure that all measures are printed on all construction documents, contracts, and project plans.	Prior to the issuance of any grading or ground disturbing permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
• The project will follow a Stormwater Pollution Prevention Plan as per the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Water Board Order No. 2009-0009-DWQ). • All disturbed soils will be stabilized and planted with a native seed mix from a local source following construction. • If excavating, soil and vegetation removed from weed-infested areas will not be used in general soil stockpiles and will not be redistributed as topsoil cover for the newly filled areas. All weed-infested soil will be disposed of off-site at a landfill or buried at least 2.5 feet below final grade.					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
Impact BIO-4: The proposed buildings along Coyote Creek and Upper Penitencia Creek, which would include glass facades and interior and exterior lighting, could result in bird strikes.					
MM BIO-4.1: Due to the potential for the proposed buildings to result in high numbers of bird collisions, the project applicant shall implement the following bird-safe design considerations, which shall be reviewed and approved for effectiveness by a qualified ornithologist: • On the buildings that front on Coyote Creek or Upper Penitencia Creek, no more than 10 percent of the surface area of the exterior building facades facing either creek will have untreated glazing between the ground and 60 feet above ground. Bird-safe glazing treatments may include fritting, netting, permanent stencils, frosted glass, exterior screens, and/or physical grids placed on the exterior of glazing or ultraviolet patterns visible to birds. Vertical elements of the window patterns shall be at least 0.25 inch wide at a maximum spacing of four inches or have horizontal elements at least ⅛-inch wide at a maximum spacing of two inches. • All glazing panels at corners of facades facing Coyote Creek or Upper Penitencia Creek between the ground and 60 feet above ground will be 100 percent treated.	Design buildings and lighting to incorporate bird-safe design considerations, which shall be reviewed and approved by a qualified ornithologist. Submit for review and approval a bird-safe building and lighting plan with a letter from the ornithologist confirming review to the Director of Planning, Building and Code Enforcement or the Director's designee.	Bird-safe building and lighting plans shall be submitted for review and approval prior to issuance of any building permits.	Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve the bird-safe design considerations and qualified ornithologist approval.	Prior to issuance of any building permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
• For the residential building H5, located on the southwest side of the proposed arterial road, the requirements in the two previous bullets will be implemented for all facades of the building, from the ground to the top floor. • Any free-standing glass walls, wind barriers, skywalks, balconies, greenhouses, or similar structures that are included as part of the project design and that have unbroken glazed segments 24 square feet or larger in size will be 100 percent treated with bird-safe features, regardless of their location on the project site. • Exterior lighting on the northern and western perimeters of the development footprint will be minimized to the extent feasible, except as needed for safety. All exterior lights will be directed toward facilities on the project site (e.g., rather than directed upward or outward) and shielded to ensure that light is not directed outward toward Coyote Creek or Upper Penitencia Creek. • Exterior up-lighting will be avoided. (continued)					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
• Occupancy sensors or other switch control devices will be installed on interior lights of office buildings, with the exception of emergency lights or lights needed for safety purposes. These lights will be programmed to shut off during non-work hours and between 10:00 PM and sunrise.					
Impact BIO-5: Implementation of the project (both Option 1 and Option 2) would require tree removal, in conflict with the City of San José Municipal Code.					
MM BIO-5.1: Prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first), the project applicant shall ensure trees that are intended to remain on the project site are protected during project construction. Protection shall include the establishment of Tree Protection Zones (TPZs), which at a minimum shall include the installation of a fence around the drip line of ordinance-sized trees, restricted construction activity within the dripline, and the posting of appropriate signage on the fence. These measures create an area of protection around the trees and reduce the threat of damage. Trees that are subject to ground-disturbing construction activities within any portion of their dripline shall be considered lost, unless a certified arborist determines that the tree is unlikely to be severely damaged or killed by such activities.	Protect trees intended to remain on the site by establishing Tree Protection Zones during construction. All measures shall be printed on all construction documents, contracts, and project plans.	Construction documents and plans shall be submitted for review and approval prior to issuance of any tree removal or ground disturbing permits. Tree Protection Zones shall be implemented during ground disturbing activities (tree removal, grading, and ongoing construction).	Director of Planning, Building and Code Enforcement or Director's designee.	Ensure that all measures are printed on all construction documents, contracts, and project plans. The project arborist shall confirm in writing to the Director of Planning, Building and Code Enforcement or Director's designee the installation of the TPZs.	Prior to the issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first).

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
MM BIO-5.2: Prior to issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first), the project applicant shall depict all trees to be removed, avoided, or protected on project plans. A Tree Protection Plan (TPP) shall be generated by a certified arborist to include all trees that are to be avoided or protected on the project site. The project applicant shall submit the TPP to the Director of Planning, Building and Code Enforcement or the Director's designee for approval.	Retain a qualified arborist to generate a Tree Protection Plan including all trees to be avoided or protected on the site. All measures shall be printed on all construction documents, contracts, and project plans.	The Tree Protection Plan shall be submitted for review and approval prior to issuance of any tree removal or ground disturbing permits.	Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve the Tree Protection Plan.	Prior to the issuance of any ground disturbing permits (tree removal, demolition, or grading permit, whichever occurs first).
Impact BIO-6: Both Option 1 and Option 2 project construction and tree removal during the avian breeding season could result in direct or indirect impacts to eggs and nestlings.					
MM BIO-6.1: Avoidance. To the extent feasible, construction activities shall be scheduled to avoid the nesting season. If construction activities are scheduled to take place outside the nesting season, all impacts to nesting birds protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code will be avoided. The nesting season for most birds in Santa Clara County extends from February 1 through August 31, inclusive. **MM BIO-6.2:** Preconstruction Surveys. If construction activities and/or tree removal cannot be scheduled to occur between September 1 and January 31, preconstruction surveys for nesting birds shall be conducted by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. These surveys will be conducted no more than seven	Avoid construction activities during nesting seasons (February 1 through August 31, inclusive). If construction cannot be scheduled to occur outside of the nesting season, retain a qualified ornithologist to conduct pre-construction surveys and, as necessary, establish buffer zones around active nests in coordination with the California Department of Fish and Wildlife.	Prior to the issuance of any tree removal or ground disturbing permits. The pre-construction surveys shall be conducted no more than seven days prior to the initiation of construction activities. The recommendations of	Director of Planning, Building and Code Enforcement or Director's designee.	Confirm that project is scheduled outside of nesting season, if feasible. Review and approve the pre-construction survey plan and any applicable additional environmental investigation reports and any designated buffer zones.	Prior to the issuance of any ground disturbing permits during nesting season (tree removal, demolition, or grading permit, whichever occurs first).

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
days prior to the initiation of demolition or construction activities including tree removal and pruning. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, ruderal grasslands, buildings) in and immediately adjacent to the impact areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation. **MM BIO-6.3:** Reporting. Prior to issuance of any grading or building permit, the project applicant shall submit to the Director of Planning, Building and Code Enforcement or the Director's designee, a plan prepared by a qualified biologist for completing the preconstruction surveys to meet the requirements set out above. Subsequent to the preconstruction surveys, and prior to ground disturbance, the qualified biologist or ornithologist shall submit a written report indicating the results of the survey, a map of identified active nests, and any designated buffer zones or other protective measures to the Director of Planning, Building and Code Enforcement or the Director's designee.	The ornithologist shall submit a report indicating the results of the pre-construction survey to the Director of the City of San José Department of Planning, Building and Code Enforcement or the Director's designee. All measures shall be printed on all construction documents, contracts, and project plans.	the pre-construction survey report shall be implemented during construction.		Review and approve the pre-construction survey report. Ensure that all measures are printed on all construction documents, contracts, and project plans.	

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
CULTURAL RESOURCES					
Impact CUL-1: The project would demolish the Flea Market structures and open space, which are eligible for listing in the California Register of Historical Resources (CRHR) and eligible for local listing as a City Landmark.					
MM CUL-1.1: Prior to the issuance of demolition permits, the project applicant shall develop a Mitigation Implementation Program to the satisfaction of the Director of Planning, Building and Code Enforcement. The program shall specifically focus on the significant historical patterns of development and important personages and include public outreach, and could include the following: • Document the culture and use of the site, not solely the structures on the site, according to the Level III procedures outlined in the National Park Service Standards and Guidelines for Architectural and Engineering Documentation, including the updated Historic American Building Survey/Historic American Engineering Record (HABS/HAER) Guidelines, which could include using a combination of photos, video, and oral interviews. • Incorporate physical attributes of the Flea Market into the proposed project, such as signs and logos.	Retain a qualified historical consultant to prepare and submit a Mitigation Implementation Program. The program shall document and incorporate elements of the Flea Market.	Prior to the issuance of any demolition or grading permits.	Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve the Mitigation Implementation Program.	Prior to the issuance of any demolition or grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
• Incorporate historic names (e.g., Bumb) and other exhibits into the new buildings on the project site. • Based on additional historical research and personal interviews, develop a public exhibit/education program to present interpretive information on the historic patterns of development in the area.					
Impact CUL-2: Subsurface archaeological resources could be encountered during project construction.					
MM CUL-2.1: Once the site has been cleared, a qualified archaeologist shall complete mechanical trenching to explore for buried historical and Native American resources. Trenching shall be completed for the lands surrounding the location where two early 20th century houses were in the northern half of the project site. Exploration shall focus on the "artifact scatter" area east of Coyote Creek to determine if it is a meaningful archaeological deposit that could be eligible for listing on the CRHR. Additionally, trenching shall be completed throughout the project site because of its high sensitivity for prehistoric deposits and cultural materials. Subsurface exploration shall be completed by an archaeologist trained in current California methods for prehistoric and historic archaeological resources. Narrow, deep trenches shall be created to search for Native American use of this	Retain a qualified archaeologist to complete a mechanical trenching investigation to determine whether historic or prehistoric features exist on the site and submit the findings to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Preservation Officer.	Following site clearance and prior to issuance of any grading permits.	Director of Planning, Building and Code Enforcement or Director's designee. City of San José Historic Preservation Officer.	Review the mechanical trenching investigation results.	Prior to issuance of any grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
site, and shallower, wide trenches employed near the potentially sensitive historic areas. This investigation shall be completed prior to any construction or other ground disturbing activities required as part of the project. The results of the presence/absence exploration shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval prior to issuance of any grading permit. Based on the findings of the presence/absence exploration, an archaeological resources treatment plan (as described in MM CUL-2.2) shall be prepared by a qualified archaeologist, if necessary.					
MM CUL-2.2: If required by MM CUL-2.1, the project applicant shall retain a qualified archaeologist to prepare a treatment plan that reflects the permit-level detail pertaining to depths and locations of all ground disturbing activities. The treatment plan shall be prepared and submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer prior to approval of any grading permit. The treatment plan shall contain, at a minimum: (continued)	Retain a qualified archaeologist to prepare and implement the project-specific archaeological resource treatment plan, as necessary. All measures shall be printed on all construction documents, contracts, and project plans.	Prior to issuance of any grading permits.	Director of Planning, Building and Code Enforcement or Director's designee. City of San José Historic Preservation Officer.	Review and approve the treatment plan for historic and prehistoric artifacts. Ensure that all measures are printed on all construction documents,	Prior to issuance of any grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
• Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations. • Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found). • Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information). • Detailed field strategy to record, recover, or avoid the finds and address research goals. • Analytical methods. • Report structure and outline of document contents. • Disposition of the artifacts. • Appendices: all site records, correspondence, and consultation with Native Americans, etc. Implementation of the plan, by a qualified archaeologist, shall be required prior to the issuance of any grading permits. The treatment plan shall utilize data recovery methods to reduce impacts to subsurface resources. The project applicant shall submit copies of				contracts, and project plans.	

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
the treatment plan to the Director of Planning, Building and Code Enforcement or the Director's designee.					
HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-1: Redevelopment of the project site would require removal of the existing dual compartment underground storage tank (UST). Hazardous materials concentrations in soil and groundwater, resulting from USTs and aboveground storage tanks (ASTs) previously located on the site, may be encountered during construction.					
MM HAZ-1.1: The project applicant shall obtain proper permits from the Santa Clara County Department of Environmental Health (SCCDEH) and San José Fire Department (SJFD) prior to removal of the existing UST. Collect and analyze soil and groundwater (if encountered) beneath the UST after the removal under the direction of the SCCDEH. If the SCCDEH has determined the UST has leaked, perform all subsequent investigation and remediation as required under SCCDEH oversight. During removal of the existing UST, underlying soil and groundwater samples shall be collected in the vicinity of the UST. The results of the soil and groundwater sampling and testing shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José for review.	Obtain SCCDEH and SJFD permits prior to UST removal. A qualified hazardous materials specialist shall collect and submit soil and groundwater samples and complete investigation and remediation for UST leaks, as necessary. All measures shall be printed on all construction documents, contracts, and project plans.	Prior to the issuance of any grading permits and/or building permits, whichever occurs first.	Director of Planning, Building and Code Enforcement or Director's designee. City of San José Environmental Compliance Officer. San José Fire Department. Santa Clara County Department of Environmental Health.	Ensure that SCCDEH and SJFD permits were obtained prior to UST removal. Review and approve results of the soil and groundwater sampling and subsequent investigation, as necessary.	Prior to the removal of the existing UST and issuance of any grading permits and/or building permits, whichever occurs first.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
MM HAZ-1.2: In areas of residual contamination from the previous UST and AST, prepare a Site Management Plan (SMP) or similar document to manage the cleanup of potential contamination to ensure there are no health risks to construction workers and future residences and site workers. Contact the SCCDEH to determine if the applicant needs to enter into the SCCDEH's Site Cleanup Program for oversight. The SMP shall be prepared prior to construction to establish appropriate management practices for handling impacted soil, soil vapor, and groundwater, and shall include the following at a minimum: • A detailed discussion of the site background; • Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program; • Procedures to follow if evidence of an unknown historic release of hazardous materials is discovered during excavation or demolition; and • A health and safety plan (HSP) for each contractor working at the site, in an area below grade, that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for	A qualified hazardous materials specialist shall prepare a Site Management Plan to manage potential cleanup and an HSP. Coordinate with SCCDEH to determine if the site should enter into the SCCDEH's Site Cleanup Program. All measures shall be printed on all construction documents, contracts, and project plans.	Prior to issuance of any grading permits.	Director of Planning, Building and Code Enforcement or Director's designee. City of San José Environmental Compliance Officer. Santa Clara County Department of Environmental Health.	SCCDEH shall review and approve the SMP, as applicable. A copy of the SMP, HSP, and evidence of regulatory oversight shall be reviewed by the City of San José Environmental Compliance Officer.	Prior to issuance of any grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction.					
Impact HAZ-2: To avoid impacts related to disposal of hazardous materials, the project would be required to implement a facility closure plan, including removal of existing hydraulic lifts.					
MM HAZ-2.1: Prior to issuance of a grading permit, the project applicant shall coordinate facility closure with the SJFD and SCCDEH to ensure that required closure activities are completed.	Complete facility closure in coordination with SJFD and SCCDEH. All measures shall be printed on all construction documents, contracts, and project plans.	Prior to issuance of any grading permits.	Director of Planning, Building and Code Enforcement or Director's designee. City of San José Environmental Compliance Officer. San José Fire Department. Santa Clara County Department of Environmental Health.	Review and approve facility closure activities. Applicant shall provide letters from the SJFD and SCCDEH confirming facility closure.	Prior to issuance of any grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
MM HAZ-2.2: The two subgrade hydraulic lifts in the corporate yard, including associated piping and hydraulic fluid reservoirs, shall be appropriately removed prior to issuance of a grading permit. Following removal of the lifts, verification soil samples shall be collected to document soil quality. Additional soil samples shall be collected at the locations of the trains associated with the two steam cleaning areas. Removal and sampling activities shall be observed and documented by an Environmental Professional. Remediation shall be completed to applicable regulatory standards, if necessary, to the satisfaction of the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José.	Remove hydraulic lifts and retain an Environmental Professional to collect soil samples in the vicinity of the lifts and steam cleaning areas. Complete remediation of impacted soil, as necessary. All measures shall be printed on all construction documents, contracts, and project plans.	Prior to issuance of any grading permits.	City of San José Environmental Compliance Officer. Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve the results of soil sampling.	Prior to issuance of any grading permits.
Impact HAZ-3: Soil imported to the project site for grading activities may result in contamination of the site.					
MM HAZ-3.1: If the project requires importing soil for site grading, the project applicant shall evaluate the source and quality of imported soil. Evaluation of imported fill includes, but is not limited to, sourcing fill material from non-industrial sites, collection and analysis of fill samples, and documentation of the site selection and testing results. This documentation shall be provided to and approved by the Director of Planning, Building and Code Enforcement and the Environmental Compliance Officer of the City of San José prior to issuance of a grading permit.	Document the source and quality of imported soil. All measures shall be printed on all construction documents, contracts, and project plans.	Prior to issuance of any grading permits.	City of San José Environmental Compliance Officer. Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve the source and quality of imported soil.	Prior to issuance of any grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
Impact HAZ-4: Project implementation may encounter residual concentrations of chemicals, including total petroleum hydrocarbons as diesel (TPHd), total petroleum hydrocarbons as oil (TPHo), benzene, lead, pesticides, and pesticide-related metals, that could expose construction workers, neighboring uses, and the environment to hazardous materials.					
MM HAZ-4.1: Prior to the issuance of any demolition or grading permits, the project applicant shall enter into an agreement with the SCCDEH's Site Cleanup Program to provide regulatory oversight. The applicant shall meet with the SCCDEH and perform additional soil and groundwater sampling and testing to adequately define the known and suspected contamination. A Remedial Action Work Plan and/or Soil Management Plan shall be prepared and submitted to the agency for their approval to demonstrate that cleanup standards will be met for the development of the site. All measures identified in the plan(s) shall be implemented during all phases of construction, as applicable. Additional sampling and remediation shall include, at a minimum, the following areas: 1) TPHd, TPHo, and benzene groundwater sampling in the vicinity of the former feed lot/meat packing facility; 2) lead sampling in shallow soil surrounding former on-site structures; 3) shallow soil sampling near wood framed structures for organochlorine pesticides and pesticide-related metals (arsenic, lead, and mercury); 4) shallow soil sampling on parcel 254-17-007 to define the extent of elevated dieldrin concentrations; and 5) soil sampling at planned earthwork locations within the fill area near Coyote Creek.	Enter into the SCCDEH's Site Cleanup Program and complete additional soil and groundwater sampling as prescribed. Prepare a Remedial Action Work Plan and/or Soil Management Plan and submit to SCCDEH for approval. Additional soil sampling shall be conducted by a qualified hazardous materials specialist and submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer. All measures shall be printed on all construction documents, contracts, and project plans.	Soil and groundwater sampling, and preparation of the Remedial Action Work Plan and/or Soil Management Plan, shall be completed prior to issuance of any demolition or grading permits. Measures identified in the Remedial Action Work Plan and/or Soil Management Plan shall be implemented during construction.	City of San José Environmental Compliance Officer. Director of Planning, Building and Code Enforcement or Director's designee. Santa Clara County Department of Environmental Health.	Review and approve the Remedial Action Work Plan and/or Soil Management Plan.	Prior to the issuance of any demolition or grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
Evidence of regulatory oversight and approved plan(s) shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José for approval prior to the issuance of any grading permits.					
Impact HAZ-5: Groundwater monitoring wells, historic water supply wells, and septic systems associated with previous development may remain on the site, and could be encountered during or after project construction. If encountered, these structures could expose construction workers, neighboring uses, and the environment to hazardous materials.					
MM HAZ-5.1: Prior to issuance of a grading permit, the project applicant shall research well records from Valley Water and attempt to locate abandoned wells at the site. If the wells are identified, or subsequently encountered during earthwork activities, the wells shall be properly destroyed in accordance with Valley Water Ordinance 90-1. If septic systems are encountered during earthwork activities, those systems shall be abandoned in accordance with SCCDEH requirements.	Locate and abandon any wells and septic systems at the site in accordance with Valley Water and SCCDEH requirements. All measures shall be printed on all construction documents, contracts, and project plans.	Prior to issuance of any grading permits.	City of San José Environmental Compliance Officer. Director of Planning, Building and Code Enforcement or Director's designee.	Ensure that all measures are printed on all construction documents, contracts, and project plans.	Prior to issuance of any grading permits and during earthwork activities.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		**Documentation of Compliance [Lead Agency Responsibility]**		
	Method of Compliance Or Mitigation Action	**Timing of Compliance**	**Oversight Responsibility**	**Actions/Reports**	**Monitoring Timing or Schedule**
NOISE AND VIBRATION					
Impact NOI-1: Redevelopment of the project site would result in elevated noise levels at nearby residences for a period exceeding one year.					
MM NOI-1.1: An acoustic engineer shall prepare and implement a construction noise logistics plan, in accordance with General Plan Policy EC-1.7, prior to issuance of any demolition or grading permits. A typical construction noise logistics plan will include, but not be limited to, the following measures to reduce construction noise levels: • Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. • Equip all internal combustion engine-driven equipment with mufflers that are in good condition and appropriate for the equipment. • Construct temporary noise barriers, where feasible, to screen stationary noise-generating equipment when located within 200 feet of adjoining sensitive land uses. Temporary noise barrier fences will provide a five decibel (dBA) noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receptor and if the barrier is constructed in a manner that eliminates any cracks or gaps. • If stationary noise-generating equipment must be located near receptors, adequate muffling (with enclosures where feasible and appropriate) shall be used. Any enclosure	Retain an acoustic engineer to prepare and submit a construction noise logistics plan including all the measures listed. All measures shall be printed on all construction documents, contracts, and project plans.	The construction noise logistics plan shall be submitted for review and approval prior to issuance of any demolition or grading permits. The plan shall be implemented during construction.	Director of Planning, Building and Code Enforcement or Director's designee.	Ensure that all measures are printed on all construction documents, contracts, and project plans. Review and approve the construction noise logistics plan that includes all the noise measures listed.	Prior to issuance of any demolition or grading permits.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
openings or venting shall face away from sensitive receptors. • Ensure that generators, compressors, and pumps are housed in acoustical enclosures. • Locate cranes as far from adjoining noise-sensitive receptors as possible. • During final grading, substitute graders for bulldozers, where feasible. Wheeled heavy equipment are quieter than track equipment and shall be used where feasible. • Substitute nail guns for manual hammering, where feasible. • Substitute electrically powered tools for noisier pneumatic tools, where feasible. • The project applicant shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance. A copy of the construction noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement prior to issuance of any demolition or grading permits.					

Source: City of San José. *San José Flea Market Planned Development Rezoning Project Environmental Impact Report.* October 2020.