RESOLUTION NO. 78393

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE (i) APPROVING THE WATER SUPPLY ASSESSMENT AND, THEN, (ii) CERTIFYING THE 237 INDUSTRIAL CENTER ENVIRONMENTAL IMPACT REPORT (SCH#2016052053) AND MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT IMPACTS, MITIGATION MEASURES AND ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED

WHEREAS, the proposed 237 Industrial Center Project consists of approximately 48 acres of off-site improvements and two development options on a 64.59 gross acre site located northwest of Highway 237 and McCarthy Boulevard (1657 Alviso-Milpitas Road, Assessor's Parcel Number 015-31-054) that includes: Option 1 – Development of approximately 1.2 million square feet of light industrial uses across the entire project site ("Option 1"); or Option 2 – Development of a data center of up to approximately 436,880 square feet and a PG&E electrical substation on 26.5 acres in Phase 1, and approximately 728,000 square feet of light industrial uses in Phase 2 on the remaining approximately 39 acres ("Option 2"), (collectively Option 1 and Option 2 are referred to herein as the "237 Industrial Center Project" or the "Project"); and

WHEREAS, consistent with Option 2, the Project applicant submitted a proposal for a Conforming Rezoning (File No. C15-054), Special Use Permit (File No. SP16-053), and Development Exception (File No. V17-004) to allow a rezoning from A(PD) Planned Development Zoning District (File No. PDC01-088) to the LI Light Industrial Zoning District; the removal of eight ordinance sized and 14 non-ordinance sized trees, and to allow the construction of six buildings for a data center use totaling approximately

376,519 square feet with associated site improvements and 14 generators; and an exception to the off-street parking requirements; and

WHEREAS, approval of the 237 Industrial Center 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 of San José ("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 Final Environmental Impact Report is comprised of the Draft Environmental Impact Report for the Project (the "DEIR"), together with the First Amendment to the DEIR (collectively, all of said documents are referred to herein as the "FEIR"); and

WHEREAS, pursuant to California Water Code Section 10910 (Senate Bill 610) and Section 15155 of the CEQA Guidelines, the City, as lead agency for the Project, has required and included a Water Supply Assessment as part of the 237 Industrial Center Project DEIR, and City must determine based on the entire record, whether projected water supplies will be sufficient to satisfy demands of the Project, in addition to existing and planned future uses; and

WHEREAS, on October 11, 2017, the Planning Commission of the City of San José reviewed the FEIR prepared for the 237 Industrial Center 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 statement of overriding consideration for any impact that cannot 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 approve the Water Supply Assessment contained as an Appendix to the DEIR as having been prepared and completed in compliance with the California Water Code and CEQA and further finds based on the entire record that projected water supplies will be sufficient to satisfy demands of the Project, in addition to existing and planned future uses; and

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

4. 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 as lead agency for the Project, and designated the Director of Planning, Building and Code Enforcement at his 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 City is based; and

5. 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 DEIR or obtained by the City after the DEIR 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 DEIR, (ii) any feasible mitigation measure considerably different from those analyzed in

the DEIR 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 DEIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented; and

6. 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

7. The City Council does hereby make the following findings with respect to the significant effects of the environment of such the Project, as identified in the FEIR, with the understanding that all the information in this Resolution is intended as a summary of the full administrative record supporting the FEIR, which fill administrative record should be consulted for the full details supporting these findings.

237 INDUSTRIAL CENTER PROJECT
SIGNIFICANT ENVIRONMENTAL IMPACTS

Transportation

Impact: **Impact TRAN(C)-1:** The Project would have a cumulatively considerable contribution to three intersections (Zanker Road/SR 237[N], Mission College/Montague Expressway, and Zanker Road/Tasman Drive). The data center alone (Phase 1 of Option 2) would not result in this impact.

Mitigation: **MM TRAN(C)-1.1:** To reduce the average delay in traffic level of service under cumulative conditions, the Project applicant shall fully fund and construct a second southbound through lane at the Zanker Road/SR 237(N) intersection. This improvement would be triggered with any development under Option 1 or when the light industrial portion of Option 2 (i.e. Option 2 Phase 2, the non-data center/PG&E substation component) of the Project is constructed.

Finding: Mitigation Measure TRAN(C)-1.1 would reduce impacts to Zanker Road/SR 237(N) to less than significant. **(Less Than Significant Impact with Mitigation)**

Implementation of Mitigation Measure TRAN(C)-1.1 would lessen the level of service impacts to Mission College/Montague Expressway and as

required by the Santa Clara County *Comprehensive County Expressway Planning Study*, the Project applicant shall pay a fair-share contribution towards the improvements identified in the study as Tier 1B prior to any entitlement approval for Option 1. **(Less Than Significant Impact with Mitigation)**

Implementation of Mitigation Measure TRAN(C)-1.1 would reduce the level of service impacts to the Zanker Road/Tasman Drive intersections and, as required by the North San José Area Development Policy (NSJADP), the Project applicant shall pay a fair-share contribution towards improvements prior to any entitlement approval for Option 1 and the light industrial component of Option 2. **(Significant and Unavoidable Cumulative Impact)**

Facts in Support of Finding:

As described above, Mitigation Measure TRAN(C)-1.1 would reduce cumulatively considerable level of service (LOS) impacts generated by the Project under Option 1 and the light industrial component of Option 2 to the Zanker Road/SR 237(N) intersection to less than significant. The addition of a second southbound through lane at the intersection would reduce the average delay from LOS E to LOS B.

Mitigation Measure TRAN(C)-1.1 and payment of fair-share contributions to Santa Clara County's transportation improvements identified under the County's *Comprehensive County Expressway Planning Study*, would reduce impacts to the Mission College/Montague Expressway intersection to less than significant.

Mitigation Measure TRAN(C)-1.1 and payment of fair-share contributions to transportation improvements identified under the North San José Area Development Policy would reduce impacts to the Zanker Road/Tasman Drive intersection to less than significant.

The San José City Council certified the North San José Development Policies Update Final Environmental Impact Report (Resolution No. 72768) on June 21, 2005 and adopted the North San José Area Development Policies (NSJADP) (Resolution No. 77631), as amended on December 15, 2015. The NSJADP includes North San José Deficiency Plan and the North San José Area Traffic Impact fee (TIF) which identifies areas requiring transportation improvements and a programmatic funding mechanism to collect development fees and implement these improvements. CEQA authorizes the reliance on a fee program for mitigation of impacts, provided the fee program itself also had been

analyzed in an EIR. The NSJADP provides a fair-share funding mechanism that future projects, such as this Project, can pay into based on the number of peak hour trips a project will generate. Payment of this fair-share fee will reduce an individual project's impact to a less than significant level, all as further explained in detail in the NSJADP.

Impact: **Impact TRAN-1:** Implementation of the proposed Project would exceed Congestion Management Program standards on the Zanker Road/Montague Expressway and Oakland Road/Montague Expressway intersections under existing plus project conditions.

Mitigation: None.

Finding: Full buildout of the Project would result in impacts to the Zanker Road/Montague Expressway and Oakland Road/Montague Expressway intersections that have been identified in the Santa Clara County Congestion Management Program as intersections that meets the County's level of service threshold for significant CEQA impact which is existing plus project conditions. Under the City's CEQA significance threshold of background plus project conditions established by City Council Policy 5-3, the Project would not result in a significant impact at the identified intersections. **(Less than Significant Impact)**

Facts in Support of Finding: CEQA Guidelines Section 15125(a) states that the existing environmental setting will normally constitute the baseline physical conditions against which the impacts of a project are to be evaluated. The courts have held that a Lead Agency has the discretion to use an alternative baseline, as long as the exercise of discretion is supported by substantial evidence. For the analysis of traffic impacts, the City uses an alternative baseline – background conditions – which includes projected traffic from approved but not yet constructed or occupied projects in addition to existing conditions.

The purpose of identifying a background condition for calculating impacts is to ensure that identification of the actual capacity of the roadways will be available to accommodate any newly proposed development projects. This methodology more accurately characterizes the real world conditions under which the Project would be implemented. City Council adopted this methodology under City Council Policy 5-3 on June 21, 2005. For this reason and those stated above, the City mitigates impacts of the background plus project condition and not the existing plus project condition.

Impact: **Impact TRAN-2:** Full buildout of the Project would result in a significant impact on the mixed flow lanes of seven directional freeway segments and high occupancy vehicle lanes of three directional freeway segments on SR 237 and I-880. Development of the data center alone (Phase 1 of Option 2) would not result in this impact.

Mitigation: None.

Finding: Freeway segments are not within the City's jurisdiction and it is beyond the capacity of any one project to acquire the right-of-way and add improvements to a state freeway. Currently, there is no program where projects can pay a fair share contribution towards freeway improvements. Therefore, the impact would remain significant and unavoidable. **(Significant and Unavoidable Impact)**

Facts in Support of Finding: As described herein, state and local transportation agencies have not identified a program for the Project to pay a fair share contribution towards freeway improvements and it is beyond the capacity of any one project to acquire the right-of-way and add improvements to a state freeway, such as construction of additional lanes. Therefore, the impact would remain significant and unavoidable.

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Agricultural Resources

Impact: **Impact AGR-1:** The Project would result in the loss of land designated as Prime Farmland [Pursuant to the State of California Natural Resources Agency Santa Clara County Important Farmlands 2012 Map.]

Mitigation: None.

Finding: The Envision San José 2040 General Plan Final Environmental Impact Report (FEIR) found that there are no feasible mitigation measures to reduce the loss of Prime Farmland within areas previously planned and designated for development within the City's Urban Growth Boundary, including the Project site. Therefore, the impact would remain significant and unavoidable. **(Significant and Unavoidable Impact)**

Facts in Support of Finding: As described herein, the construction of the Project (Option 1 and Option 2) at this location will result in loss of designated

Prime Farmland. This impact was identified in the Envision San José 2040 General Plan FEIR, which found that land designated as Prime Farmland within the City's Urban Growth Boundary, including the Project site, could not be mitigated if the property is designated for urban development. Therefore, this impact cannot be mitigated to a less than significant level.

Greenhouse Gas Emissions

Impact: Full buildout of the Project (1.2 million square feet of light industrial uses in Option 1 and 728,000 square feet of light industrial uses in Phase 2 of Option 2) after 2020 would result in significant and unavoidable GHG emissions impacts.

Mitigation: None.

Finding: The current planning application is a request for a data center on the project site. Construction of the data center (Phase 1 of Option 2) would be completed prior to 2020 in accordance to the Greenhouse Gas (GHG) Reduction Strategy identified in the Envision 2040 General Plan and, therefore, would not result in significant GHG emissions impacts. It is reasonably foreseeable that full buildout of light industrial development under Option 1 and 2 would be completed after 2020. The City's adopted GHG Reduction Strategy covers projects through 2020, and projects constructed after 2020 would be required to comply with the City's GHG-Reduction Strategy in effect at the time of permit approval. It is anticipated, however, that full buildout of light industrial development on the 64.59-acre site could result in significant and unavoidable GHG emissions impacts based on the findings in the 2040 General Plan Final Program EIR as supplemented. **(Significant and Unavoidable Impact)**

Facts in Support of Finding: The City's adopted GHG Reduction Strategy re-adopted on December 15, 2015 with certification of the Supplemental Program EIR (SEIR) to the Envision San José 2040 General Plan Final Program EIR (Resolution no. 77617) determined that projects which are consistent with the General Plan would meet statewide 2020 goals established under AB 32 and projected emissions through 2035. However, such projects could prevent the City from achieving the statewide targets in Executive Order S-3-05 to reduce emission levels by 80% below 1990 levels by 2050. The City Council adopted a Statement of Overriding Considerations with the SEIR for identified cumulative GHG emissions impacts through 2035 (Resolution No. 77617). It is reasonably foreseeable that post-2020 buildout of the light industrial components in the Project on the 64.59-acre site could result in significant and unavoidable GHG emissions impacts.

These impacts are consistent with the findings in the SEIR for the Envision San José 2040 General Plan Final Program EIR.

Air Quality

Impact: **Impact AQ-1:** The Project would result in a significant impact related to the production of Nitrogen Oxide (NOx) during generator testing.

Mitigation: **MM AQ-1.1:** Prior to issuance of any building permit, the Project applicant shall submit a generator operations plan to the Building Division Manager for review that ensures generator operations for maintenance and testing purposes for the combined operation of all 24 generators do not exceed 360 hours in any consecutive 12-month period and the average load factor does not exceed 30 percent.

MM AQ-1.2: The operator of the data center shall retain records as required by the Bay Area Air Quality Management District (BAAQMD) as a condition of the Permit to Operate that includes: 1) date and times of all reliability-related testing, and 2) engine load during the testing.

MM AQ-1.3: The Project applicant shall submit the generator operations records noted above in MM AQ-1.2 to the BAAQMD as part of the operator's Permit to Operate conditions.

MM AQ-1.4: Prior to the approval of any project-specific light industrial development on the Project site (e.g., plan development permit or equivalent), excluding the data center use, the Project applicant shall submit a Transportation Demand Management Plan to the satisfaction of the Transportation Manager of the Department of Public Works and PBCE Supervising Environmental Planner.

The Transportation Demand Management Plan shall contain the following components or equivalent measures to result in a 10 percent reduction in weekday mobile emissions:

- Eco Pass or Clipper Card for all employees, providing free rides on Santa Clara County's local transit agency, the Santa Clara Valley Transportation Authority (VTA) 25% Transit Subsidy for transit agencies other than the VTA, including Caltrain, ACE, Capitol Corridor, and BART;

- Free "Last Mile" Shuttles to local train systems (e.g., Caltrain, Amtrak, ACE) and VTA Light Rail Transit;

- Internal Carpool Matching Program utilizing zip code matching;
- Personalized Commute Assistance offered by a Commute Coordinator;
- Preferred parking for Carpools and Vanpools located near entrances to every building;
- Bicycle Lockers and/or Bicycle Racks near entrances to every building;
- Showers for cyclists and pedestrians, offering clean towel service, complimentary toiletries, hair dryers, and ironing boards; and
- Support Citywide Car Share programs.

Finding: Implementation of the identified mitigation measures would ensure that the Project would comply with BAAQMD's Permit to Operate for generators and production of NOx emissions during generator testing would have a less than significant air quality impact. **(Less Than Significant with Mitigation)**

Facts in Support of Finding: As described above, MM AQ-1.1, 1.2, and 1.3 would ensure that any proposed generators would be properly tested and have an operations permit. MM AQ-1.4 would implement a TDM plan to reduce the Project's weekday mobile emissions by 10 percent. Staff would coordinate with the Project applicant to provide a monitoring program to ensure the success of the TDM plan.

Biological Resources

Impact: **Impact BIO-1:** Construction activities could result in significant impacts to nesting migratory birds and other protected bird species.

Mitigation: **MM BIO-1.1:** If initial site disturbance activities, including tree, shrub, or vegetation removal, are scheduled to occur during the breeding season (February 1st to August 31st, inclusive), a qualified biologist shall conduct pre-construction surveys for nesting migratory birds onsite and within 250 feet (for raptors) of the site, where accessible. The survey shall occur within seven days of the onset of ground disturbance if disturbances are to commence between February 1st and June 30th and within 30 days prior to the onset of ground disturbance between July 1st and August 31st. If a nesting migratory bird were to be detected, a construction-free buffer zone shall be established in consultation with the California Department of Fish

and Wildlife (CDFW). The actual size of the buffer zone shall be determined by the Project biologist and will depend on species, topography, and type of activity that would occur in the vicinity of the nest. The Project buffer zone shall be monitored periodically by the Project biologist to ensure compliance. After the nesting period is completed, as determined by the biologist, the buffer zone can be removed.

MM BIO-1.2: The Santa Clara Valley Habitat Plan (SCVHP) identifies the Project site to be within 250 feet of potentially suitable tricolored blackbird nesting habitat occurring along Coyote Creek. The Project applicant shall conduct surveys for tricolored blackbirds within 250 feet of this habitat, where visual access is possible, prior to start of construction following protocols in Condition 17 in Chapter 6 of the SCVHP. Such protocols include:

- Prior to any ground disturbance, a qualified biologist shall complete a background assessment to determine if there has been nesting at the site or near the site in the past five years. This include checking the California Natural Diversity Data Base (CNDDB), contacting local experts, and looking for evidence of historical nesting (i.e., old nests).

- If nesting in the past five years is not evident, the qualified biologist shall conduct a preconstruction survey in areas identified in the habitat survey as supporting potential tricolored blackbird nesting habitat. Surveys shall be made at the appropriate times of year when nesting use is expected to occur, and shall document the presence or absence of nesting colonies of tricolored blackbird. Surveys shall conclude no more than two calendar days prior to construction, per Condition 17 of Chapter 6 in the SCVHP.

- Should a nesting colony of tricolored blackbirds be located, a 250-foot construction-free buffer shall be established from the edge of all hydric vegetation associated with the nest site. The buffer shall be avoided and the CDFW and U.S. Fish and Wildlife Service (USFWS) shall be notified immediately.

- If construction occurs in the Project area during the nesting season and when the 250-foot buffer is in place around active nesting habitat, a qualified biologist shall conduct periodic monitoring of the site to ensure the 250-foot buffer is enforced. The biologist shall have the authority to increase the buffer size if needed based on tricolored blackbird behavior at the active nesting area.

- If active tricolored blackbird nesting occurs within 250 feet of the Project site and off-site utility alignment areas, and construction occurs during the active nesting period resulting in the need for a buffer, the qualified biologist shall conduct training for construction personnel in avoidance procedures, buffer zones, and safety protocols to ensure no impacts to the nest.

Finding: Implementation of Mitigation Measures MM BIO-1.1 through MM BIO-1.2 would reduce impacts to nesting raptors and other migratory birds to less than significant levels. **(Less Than Significant with Mitigation)**

Facts in Support of Finding: As demolition and construction activities could impact the raptors, including the protected tri-colored blackbird, during nesting season, conducting pre-construction surveys and the implementation of a construction-free buffer zone around any migratory bird nests will ensure that raptor or migratory bird nests are not disturbed during Project earthmoving activities. The size of the buffer zones will be determined by consultation between the qualified ornithologist and the CDFW, and based on scientific evidence and best management practices.

Impact: **Impact BIO-2:** Any actions related to site development that result in the mortality of burrowing owls shall constitute a violation of the Federal Migratory Bird Treaty Act and provisions of the California Fish and Game Code. The mortality of burrowing owls would be a significant impact under CEQA.

Mitigation: **MM BIO-2.1:** To mitigate impacts to occupied burrowing owl habitat, the Project applicant shall pay the burrowing owl fee as specified in the SCVHP for each acre of occupied burrowing owl nesting habitat impacted as a result of Project buildout. Fees shall also be required from the loss of foraging habitat on the agricultural fields on-site (approximately 60 acres; Zone B fees) and annual grassland off-site (approximately 31.5 acres; Zone A fees).

MM BIO-2.2: The Project applicant shall conduct preconstruction surveys to ascertain whether or not burrowing owls occupy burrows on the site and along the utility alignments off-site prior to construction. The preconstruction surveys shall be performed by a qualified biologist and shall consist of a minimum of two surveys, with the first survey occurring no more than 14 days prior to initial construction activities (i.e., vegetation removal, grading, excavation, etc.) and the second survey conducted no more than two days prior to initial construction activities. If no burrowing owls or fresh sign of burrowing owls are observed during pre-construction surveys, construction may continue. However, if a burrowing owl is

observed during these surveys, occupied burrows shall be identified by the monitoring biologist and a buffer shall be established, as described below:

- If an active nest is found, a qualified biologist shall establish a 250-foot non-disturbance buffer around all nest sites. If the biologist determines that the nest is vacant, the non-disturbance buffer zone may be removed, in accordance with measures described in the SCVHP. The biologist shall supervise hand excavation of the burrow to prevent reoccupation only after receiving approval from the wildlife agencies (CDFW and USFWS) in accordance with Chapter 6, Condition 15 of the SCVHP.

- For permission to encroach within 250 feet of such burrows during the nesting season (February 1st through August 31st), an Avoidance, Minimization, and Monitoring Plan (AMMP) shall be prepared and approved by the City and the wildlife agencies prior to such encroachment in accordance with Chapter 6 of the SCVHP.

MM BIO-2.3: Should a burrowing owl be located during the non-breeding season (September through January), a 250-foot buffer shall be established and construction activities shall not be allowed within the 250-foot buffer of the active burrow(s) used by any burrowing owl unless the following avoidance measures are adhered to:

- A qualified biologist shall monitor the owls for at least three days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).

- The same qualified biologist shall monitor the owls during construction. If the biologist determines there is a change in owl nesting and foraging behavior as a result of construction activities, all construction activities shall cease within the 250-foot buffer.

- If the owls are gone from the burrows for at least one week, the Project applicant may request approval from the habitat agency to excavate all usable burrows within the construction area to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone shall be removed and construction may continue;

MM BIO-2.4: In the event that voluntary relocation of site burrowing owls does not occur (defined as owls having vacated the site for 10 or more consecutive days), the Project applicant can request permission to engage in passive relocation during the non-breeding season through the standard

SCVHP application process (Section 6.8 of the SCVHP). If passive relocation is granted, additional measures may be required by the Habitat Agency. If the owls voluntarily vacate the site for 10 or more consecutive days, as documented by a qualified biologist, the Project applicant could seek permission from the Santa Clara Valley Habitat Agency to have the qualified biologist take measures to collapse vacated and other suitable burrows to ensure that owls do not recolonize the site, in accordance with the SCVHP.

Finding: Implementation of identified mitigation measures, based on Condition 15 of the SCVHP, would reduce impacts to burrowing owls to less than significant levels. **(Less Than Significant with Mitigation)**

Facts in Support of Finding: As grading, demolition, and construction activities could impact burrowing owl habitat, conducting pre-construction surveys and the implementation of a construction-free buffer zone around nests and owl sighting locations consistent with Condition 15 of the SCVHP will ensure that the species are not disturbed during Project earthmoving activities. This mitigation is based on substantial evidence from the biotic studies developed during the preparation of the SCVHP. Treatment of potential owls and owl habitat will be determined through consultation between the Project's qualified ornithologist and the Santa Clara Valley Habitat Agency prior to the issuance of grading permits and during construction activities.

Impact: **Impact BIO-3:** The Project would cause permanent impacts to riparian vegetation and seasonal wetlands as a result of installation of the potential stormwater outfall at Coyote Creek and Project construction in the southwest corner of the site.

Mitigation: **MM BIO-3.1:** Prior to the start of any grading or other soil disturbing activities, the Project applicant shall be required to prepare a Stormwater Pollution Prevention Plan (SWPPP) consistent with the City's NPDES C3 provisions.

MM BIO-3.2: A qualified biological monitor shall visit the Project site daily during outfall construction to verify that these measures are being fully implemented and are effective.

MM BIO-3.3: Removal of riparian vegetation and/or trees for the potential installation of the outfall shall be limited to the minimum extent required.

MM BIO-3.4: The Project applicant shall ensure that all seed mixtures used for revegetation of the impacted riparian habitat of Coyote Creek

shall be locally native or sterile non-native species only. No invasive non-native species shall be used for revegetation.

MM BIO-3.5: The Project applicant shall comply with all requirements of the CDFW, U.S. Army Corps of Engineers (USACE), and Regional Water Quality Control Board (RWQCB) permits required for the construction of the Project, including any additional mitigation measures and all monitoring requirements.

Finding: Implementation of Mitigation Measures MM BIO-3.1 through MM BIO-3.5 would reduce impacts to riparian vegetation and seasonal wetlands to less than significant levels. **(Less Than Significant with Mitigation)**

Facts in Support of Finding: Implementation of an approved SWPPP would ensure that construction of the outfall would not result in substantial runoff into the riparian corridor. Outfall construction would include a daily monitoring by a qualified biologist to ensure that the installation would comply with CDFW, USACE, and RWQCB permits and that no invasive species would be used in the revegetation.

Impact: **Impact BIO-4:** Construction activities on-site could result in a significant impact to the trees that may be retained.

Mitigation: **MM BIO-4.1:** The Project applicant, in consultation with a certified arborist or biologist, shall submit a Tree Protection Plan (TPP) to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement for trees to be preserved. The TPP shall include, but is not limited to:

- Number of trees and location of trees to be protected
- Final landscaping proposal
- Tree Protection Zone (TPZ)
- Size and location of TPZ
- Specific recommendation and suggestions or recommendation for each TPZ if applicable
- Maintenance methodology for tree protection zones during the entire demolition and construction period
- Irrigated schedule
- Pruning schedule for preserved trees, if applicable
- Herbicides and other products recommended to be used on preserved trees

Finding: Implementation of the identified mitigation measures would ensure that during Project construction, the Project would have a less than significant

impact to trees identified to be retained. **(Less Than Significant with Mitigation)**

Facts in Support of Finding: Implementation of the TPP, based on recommended tree protection measures identified by the certified arborist or biologist, would ensure that identified trees to be retained would not be damaged during Project construction.

Cultural Resources

Impact: **Impact CUL 1:** Construction of the Project could result in significant impacts to subsurface cultural resources located on-site.

Mitigation: **MM CUL-1.1:** Prior to issuance of any grading permit, the Project applicant shall be required to complete subsurface testing to determine the extent of possible resources on-site. Subsurface testing shall be completed by a qualified archaeologist. Based on the findings of the subsurface testing, an archaeological resources treatment plan shall be prepared by a qualified archaeologist and submitted to PBCE Supervising Environmental Planner and Historic Preservation Officer for approval prior to the issuance of grading permits.

MM CUL-1.1: Prior to issuance of any grading permit, the Project applicant shall be required to complete subsurface testing to determine the extent of possible resources on-site. Subsurface testing shall be completed by a qualified archaeologist. Based on the findings of the subsurface testing, an archaeological resources treatment plan shall be prepared by a qualified archaeologist and submitted to PBCE Supervising Environmental Planner and Historic Preservation Officer for approval prior to the issuance of grading permits.

MM CUL-1.2: The Project applicant shall implement the approved treatment plan prior to the issuance of any grading permits. The approved treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.

MM CUL-1.3: All prehistoric and historic-era features identified during exploration shall be evaluated by a qualified archaeologist based on the California Register of Historical Resources criteria consistent with the archaeological treatment plan. After completion of the field work, all artifacts shall be cataloged and the appropriate forms shall be completed and filed with the Northwest Information Center of the California Archaeological Inventory at Sonoma State University by the qualified

archaeologist in coordination with the PBCE Supervising Environmental Planner and Historic Preservation Officer prior to issuance of any occupancy permit (temporary or final).

MM CUL-1.4: In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of PBCE shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource and make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits for any construction occurring within the above-referenced 50-foot radius and all areas determined by the archaeologist to not be disturbed during examination of the find. If the finds do not meet the definition of a historical or archaeological resource, no further study or protection is necessary prior to Project implementation. If the find(s) does meet the definition of a historical or archaeological resource, then it shall be avoided by Project activities. If avoidance is not feasible, adverse effects to such resources shall be mitigated in accordance with the recommendations of the archaeologist. Recommendations shall include, but are not limited to, collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE and the Northwest Information Center.

The Project applicant shall ensure that construction personnel does not collect or move any cultural material, and shall ensure that any fill soils that may be used for construction purposes do not contain any archaeological materials.

MM CUL-1.5: In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped. The Santa Clara County Coroner shall be notified immediately and shall make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours of the identification. Once the NAHC identifies the most likely descendants (MLD), the descendants shall make recommendations regarding proper burial (including the treatment of grave goods), which shall be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines.

The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. A report of findings documenting any data recovery shall be submitted to the Director of PBCE and the Northwest Information Center.

Finding: Implementation of the identified mitigation measures would ensure that the Project would have a less than significant impact on subsurface cultural resources located on-site that could be impacted by Project construction. **(Less Than Significant with Mitigation)**

Facts in Support of Finding: These mitigation measures will review and evaluate unknown subsurface prehistoric or historic resources, consistent with State regulations and local policies. Implementation of Mitigation Measures CUL-1.1 and 1.2 requires subsurface testing and development of an archaeological resources treatment plan. The treatment plan will make provisions for adequately recovering scientifically consequential information from and about the historic or prehistoric resources. Additionally, the treatment plan will utilize data recovery methods to reduce impacts on subsurface resources and be prepared prior to the start of ground distance activities. Mitigation Measures CUL-1.3, 1.4 and 1.5 would ensure that any potential Native American resources encountered would require consultation with the appropriate authority, and any other inadvertent discovery of archaeological resources during construction activities would not be damaged and would be identified and recorded with the appropriate authorities. Implementation of these mitigation measures will protect prehistoric or historic resources and Native American remains which are encountered during excavation and/or grading

Hazardous Materials

Impact: **Impact HAZ-1:** Implementation of the proposed Project could release pesticide chemicals from on-site soils into the environment, and expose construction workers to residual agricultural soil contamination

Mitigation: **MM HAZ-1.1:** A Site Management Plan (SMP) shall be prepared and implemented (as outlined below) and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations or the contaminated portions of the site shall be capped beneath the planned development under the regulatory oversight of the Santa Clara County Department of Environmental Health (SCCDEH) or State Department of Toxic Substances Control (DTSC). The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site.

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Components of the SMP shall include, but shall not be limited to:

- A detailed discussion of the site background;
- Preparation of a Health and Safety Plan by an industrial hygienist;
- Notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction;
- On-site soil reuse guidelines based on the
- California Regional Water Quality Control Board (RWQCB), San Francisco Bay Region's reuse policy;
- Sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility;
- Soil stockpiling protocols; and
- Protocols to manage ground-water that may be encountered during trenching and/or subsurface excavation activities.

MM HAZ-1.2: All contractors and subcontractors at the Project site shall develop a Health and Safety Plan (HSP) specific to their scope of work and based upon the known environmental conditions for the site. The HSP shall be approved by the PBCE Supervising Environmental Planner and Environmental Services Department (ESD) and implemented under the direction of a Site Safety and Health Officer. The HSP shall include, but shall not be limited to the following elements, as applicable:

- Provisions for personal protection and monitoring exposure to construction workers;
- Procedures to be undertaken in the event that contamination is identified above action levels or previously unknown contamination is discovered;
- Procedures for the safe storage, stockpiling, and disposal of contaminated soils;
- Provisions for the on-site management and/or treatment of contaminated groundwater during extraction or dewatering activities; and
- Emergency procedures and responsible personnel.

The SMP shall be submitted to SCCDEH, DTSC, or equivalent regulatory agency for review and approval. Copies of the approved SMP shall be provided to the PBCE Supervising Environmental Planner and

Environmental Services Department (ESD) prior to issuance of grading permits.

Finding: With implementation of the identified mitigation measures, the Project would have a less than significant impact on the exposure of construction workers to agricultural soil contamination. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: The identified mitigation is based on existing State laws. If contaminated soils are found, the SMP will be reviewed and approved by the Santa Clara County Department of Environmental Health and the City's Environmental Services Department. Compliance with all required measures identified in the SMP will reduce potential impacts to construction workers and future workers on site to a less than significant level.

FINDINGS CONCERNING ALTERNATIVES

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

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

1. No Project – No Development Alternative
2. No Project – Existing Zoning Alternative
3. Design Alternative – (Reduced Scale: Data Center Only Alternative)
4. Design Alternative – (Reduced Scale: Light Industrial Only Alternative)
5. Reduced Development – (Data Center and Reduced Light Industrial Alternative)

1. <u>No Project – No Development Alternative</u>

A. Description of Alternative: The No Project – No Development Alternative assumes no construction of new buildings on the Project site and would result in the retention of the existing buildings and structures and continuation of current operations.

B. Comparison of Environmental Impacts: The No Project – No Development Alternative would avoid all of the new environmental impacts identified in the DEIR.

C. Finding: The No Project - No Development Alternative would not meet any of the Project's objectives. The alternative would not allow for light industrial development to be constructed on the Project site consistent with the Envision San José 2040 General Plan. The site is underutilized compared with development capacities assumed in the Envision San José 2040 General Plan, as the existing structures on the site are approximately less than 55,000 square feet of residential and farm-related uses with a floor area ratio (FAR) of about 0.02, which is significantly less than the maximum 1.5 FAR allowed for the Light Industrial General Plan/Transportation Diagram Designation for the site. For all of these reasons, the No Project – No Development Alternative is rejected.

2. No Project – Existing Zoning Alternative

A. Description of Alternative: The No Project – Existing Zoning Alternative assumes that the proposed Project is not approved, but that another future Project is built consistent with existing plans and policies. According to the Alviso Master Plan and the General Plan, the site has a land use designation of LI – Light Industrial, which allows for a maximum FAR of 1.5. Existing zoning (Planned Development) allows for approximately 2.2 million square feet of data center and telecommunication facility uses on a 174-acre site.

B. Comparison of Environmental Impacts: The Alternative would anticipate up to 2.2 million square feet of data center uses, including the already constructed Los Esteros Critical Energy Facility (LECEF) and an electrical substation. Traffic trips generated by the alternative would be substantially less than the Project (about 533 A.M. and 577 P.M. peak hour trips per the US DataPort Planned Development Rezoning and Prezoning Environmental Impact Report), and would not result in significant and unavoidable impacts to freeway segments. The Alternative would result in the same significant and unavoidable impact to loss of designated prime farmland. It is foreseeable that full build out of the 2.2 million square feet of data center uses over 174 acres would occur after 2020 and would result in the same significant and unavoidable greenhouse gas emissions impacts as the Project. Similar to the Project, the Alternative would require mitigation during construction for impacts to biological resources, such as disturbance to nesting raptors and other

protected bird species, and potential construction worker exposure to residual agricultural pesticide soil contamination.

C. **Finding:** The No Project – Existing Zoning Alternative would be consistent with the 2040 General Plan Land Use/Transportation diagram and meet most of the Project objectives, including construction of data center uses. Data centers are highly automated with few staff required for operations. The Alternative, compared to the Project, would not facilitate any light industrial development beyond data center uses. Without the flexibility for a variety of light industrial uses, the Alternative would not generate a high level of employment. Based on analysis of employment density with the City in the 2040 General Plan Four-Year Review adopted by City Council on December 13, 2016, it is anticipated that Option 1 would generate approximately 2,400 employees and Option 2 would generate approximately 1,467 employees. The proposed Project would generate approximately 11 employees. The Alternative would not achieve the General Plan goals of providing for the increase in the number of jobs in San José to achieve the 1.1 jobs to employed resident ratio by the year 2040. For these reasons, the No Project – Existing Zoning Alternative is rejected.

3. Design Alternative – Reduced Scale: Data Center Only Alternative

A. **Description of Alternative:** The Design Alternative – Reduced Scale: Data Center Only Alternative assumes the development of an approximately 436,880 square foot data center on the northern portion of the 64.5-acre site without any additional light industrial uses.

B. **Comparison of Environmental Impacts:** The Alternative would continue to provide data center uses on approximately 26.5 acres on the northern portion of the 64.5-acre site. Compared to the Project, the Alternative would generate approximately 40 peak hour trips (compared to 1,455 to 2,268_peak hour trips generated by the proposed Project, depending on the option) and would not result in significant impacts to freeway segments or intersections. The Alternative would generate only 11 employees, which is the same as what the proposed Project would generate. Construction and operation of the data center would comply with existing air quality emission regulations. Construction would be completed prior to 2020 which is consistent with GHG Reduction Strategy and, therefore, would not result in significant or significant unavoidable GHG emissions impacts that the proposed Project has for post-2020 construction. Similar to the Project, the alternative would have a significant and unavoidable impact to designated Prime Farmland; however, the scale of impact would be

reduced to only affect the northern portion of the site. The Alternative would have air quality, biological, cultural, and hazardous materials impacts similar to the Project but reduced in scale due to the smaller area of site disturbance.

C. **Finding:** The Alternative would meet most of the Project objectives with the exception of those related to job creation and economic growth. The Alternative would not generate a high level of employment. It is anticipated that approximately 11 employees would operate the data center. The Alternative would not achieve, to the extent that the Project would, the General Plan goals of providing for the increase in the number of jobs in San José to achieve the 1.1 jobs to employed resident ratio by the year 2040. For fiscal sustainability, full build out of Option 1 would generate $336,000 and $504,000 in annual property and utility tax revenue, respectively, and Option 2 would generate $203,000 and $305,000 in annual property and utility tax revenue, respectively, for the City annually. This data is based on generated fees from recent light industrial developments within the City in 2017. For fiscal sustainability findings, the Design Alternative – Reduced Scale is rejected.

4. **Design Alternative – Reduced Scale: Light Industrial Only Alternative**

A. **Description of Alternative:** The Design Alternative – Reduced Scale: Light Industrial Only Alternative assumes the reduction of proposed light industrial development from 1.2 million square feet (Option 1) to 120,000 square feet (90 percent reduction) with no data center uses.

B. **Comparison of Environmental Impacts:** The Alternative would result in no significant unavoidable impacts to freeway segments on SR 237 and I-880 and no significant impacts to the Zanker Road/Montague Expressway and Oakland Road/Montague Expressway intersections. Approximately 4.1 acres of the 64.59-acre site would be developed. Loss of designated Prime Farmland would remain significant and unavoidable, but the loss would be significantly reduced compared to the Project as only about four acres of Prime Farmland would be developed compared to 64.49 acres proposed with the Project. It is anticipated that the Alternative would be constructed prior to 2020 conforming to the GHG Reduction Strategy and, therefore, would not result in significant unavoidable GHG emissions impacts. Construction of the Alternative would comply with all existing air quality regulations and would not result in any significant air quality impacts. The Alternative would have biological, cultural, and hazardous materials impacts similar to the Project but reduced in scale due to the smaller area of site disturbance.

C. **Finding:** The Alternative would not meet most of the Project objectives, especially those related to construction and operation of a data center and build out of light industrial uses at densities anticipated in the General Plan. Given that the General Plan allows for a substantially higher Floor-Area Ratio (FAR) on the Project site (FAR of 1.5) than what is proposed by the Design Alternative (FAR of 0.06), the Design Alternative would result in underutilization of the site compared to the intensity of industrial development anticipated in the General Plan, and would not be the best use of the site. Furthermore, the Design Alternative: Reduced Scale would not achieve to the same extent as the Project the General Plan goals for higher employment opportunities. For all of these reasons, the Design Alternative- Reduced Scale: Light Industrial Only Alternative is rejected.

5. **Reduced Development – Data Center and Reduced Light Industrial Alternative**

A. **Description of Alternative:** The Reduced Development – Data Center and Reduced Light Industrial Alternative assumes a 436,880 square foot data center and an 85 percent reduction of light industrial development in Option 2 from 728,000 square feet to 109,200 square feet.

B. **Comparison of Environmental Impacts:** The Alternative would result in no significant unavoidable impacts to freeway segments on SR 237 and I-880 and no significant impacts to the Zanker Road/Montague Expressway and Oakland Road/Montague Expressway intersections. The amount of designated Prime Farmland conversion would be substantially reduced from 64.5 acres to approximately 29 acres with this Alternative. Even with the reduction in affected Prime Farmland, the Alternative would result in the same significant and unavoidable impact to farmland as the Project. Based on analysis of employment density with the City in the 2040 General Plan Four-Year Review adopted by City Council on December 13, 2016, approximately 218 employees potentially would be employed on the site in this Alternative while 1,467 employees would be employed on site under Option 2 of the Project. Similar to the Project in Option 2, the Alternative would result in a large light industrial development post-2020. As analyzed in the 2040 General Plan FEIR as supplemented, it is anticipated that growth under the General Plan would exceed statewide emission level goals. Therefore, it is reasonably foreseeable that construction of the Alternative post-2020 would result in significant and unavoidable GHG emissions impacts. The Alternative would have biological, cultural, and hazardous materials impacts similar to the Project but reduced in scale due to the smaller area of site disturbance.

C. **Finding:** The Alternative would meet most of the Project objectives, except for major development of light industrial uses. The Alternative, compared to the Project, is an 85 percent reduction in light industrial development in Option 2. The Alternative, compared to the Project in Option 2, would result in less employment on the site compared with the Project. This Alternative would not achieve the General Plan goals of providing for the increase in the number of jobs in San José to achieve the 1.1 jobs to employed resident ratio by the year 2040. For these reasons, the Reduced Development – Data Center and Reduced Light Industrial Alternative is rejected.

MITIGATION MONITORING AND REPORTING PROGRAM

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

STATEMENT OF OVERRIDING CONSIDERATIONS

A. **Significant Unavoidable Impacts**. With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the Project will result in significant unmitigated or unavoidable impacts, as set forth above, associated with agricultural resources, transportation, and greenhouse gas emissions impacts.

B. **Overriding Considerations**. The City Council specifically adopts and makes this Statement of Overriding Considerations that this Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the Project are acceptable in light of the economic, legal, environmental, social, technological or other considerations noted below, because the benefits of the Project outweigh its significant adverse environmental impact of the Project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent basis for finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the Envision San José 2040 General Plan and the San José Industrial Design Guidelines.

C. **Benefits of the Project**. The City Council has considered the public record of proceedings on the 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:

- **Increase Employment Opportunity within San José.** The Project will advance goals of the Envision San José 2040 General Plan to increase the ratio of jobs/employed residents to attain fiscal sustainability for the City. The Project will support San José's stated job creation and job retention objectives by developing approximately 1.2 million square feet of light industrial development under Option 1 and 728,000 square feet of light industrial development under the full buildout Option 2.

- **Increase Economic Development.** The Project will advance the goals of the Envision San José 2040 General Plan by adding approximately up to 1.2 million square feet of light industrial development (Option 1) or 436,880 square feet data center and a PG&E electrical substation and 728,000 square feet of light industrial development (Option 2). Based on recently developed light industrial projects in 2017, it is anticipated that annually the City would receive approximately between $336,000 and $504,000 in property and utility tax revenue generated from Option 1 and approximately between $203,000 and $305,000 in property and utility tax revenue generated from Option 2. The development of light industrial uses would support the City as well as the regional economy by creating jobs for residents.

- **Expand Public Utility Infrastructure.** The Project will construct new on and off-site infrastructure improvements, including water supply, stormwater discharge, sanitary sewer, electric, natural gas, and telecommunication to facilitate the Project as well as the development of light industrial, office, and research & development uses anticipated in the San José – Santa Clara Regional Wastewater Facility Master Plan and evaluated in the San José/Santa Clara Water Pollution Control Plant Master Plan Environmental Impact Report, which anticipated economic development areas west of the Project site.

- **Envision San José 2040 General Plan Strategies, Goals, and Policies**.

  Envision San José 2040 General Plan Strategies, Goals, and Policies, including Major Strategies #4 Innovation/Regional Employment Center and #8 Fiscally Strong City.

  - Major Strategy #4 Innovation/Regional Employment Center: The Project introduces new employment opportunities by providing up to 1.2 million square feet of light industrial development under Option 1 and 728,000

square feet of light industrial development under Option 2. The Project under Option 2 would also include a 436,880 square foot data center that would bring new cloud technology into the City and local region to support the growing data and networking infrastructure and technological needs of the area.

- Major Strategy #8 Fiscally Strong City: The Project will support the City's fiscal sustainability through development of light industrial uses. Full build out of Option 1 would generate $336,000 and $504,000 in property and utility tax revenue and Option 2 would generate $203,000 and $305,000 in property and utility tax revenue for the City annually.

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

ADOPTED this 24th day of October, 2017, by the following vote:

AYES:	ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ, KHAMIS, NGUYEN, PERALEZ, ROCHA; LICCARDO.
NOES:	NONE.
ABSENT:	NONE.
DISQUALIFIED:	NONE.

RD:JVP:JMD
10/11/2017

RES. NO. 78393

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

T-31011.002/1456778_3.doc
Council Agenda: 10-24-2017
Item No.: 10.2a

78303

EXHIBIT "A"
(File Nos. C15-054; SP16-053; V17-004)

MITIGATION MONITORING AND REPORTING PROGRAM

237 Industrial Center Project

File Nos. C15-054, SP16-053, V17-004

CITY OF SAN JOSÉ

September 2017

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 prepared for the 237 Industrial Center 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 Environmental Impact Report concluded that the impacts from implementation of the project would be less than significant.

I, JAMES SMITH, the applicant, on the behalf of MICROSOFT, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of an Environmental Impact Report 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, where feasible.

Project Applicant's Signature _____

Date 27 SEPT 2017

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Planning, Building and Code Enforcement

237 Industrial Center Project
File Nos. C15-054, SP16-053, V17-004

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 AQ-1: The proposed project would result in a significant impact related to the production of NOx during generator testing.					
MM AQ-1.1: Prior to issuance of any building permit, the project applicant shall submit a generator operations plan to the Building Division Manager for review, that ensures generator operations for maintenance and testing purposes for the combined operation of all 24 generators do not exceed 360 hours in any consecutive 12-month period and the average load factor does not exceed 30 percent. MM AQ-1.2: The operator of the data center shall retain records as required by the Bay Area Air Quality Management District (BAAQMD) as a condition of the Permit to Operate that includes: 1) date and times of all reliability-related testing, and 2) engine load during the testing. MM AQ-1.3: The project applicant shall submit the generator operations records noted above in MM AQ-1.2 to the BAAQMD as part of the operator's Permit to Operate conditions.	Submit a generator operations plan and records that include: 1) dates and times of all reliability-related testing, and 2) engine load during the testing.	Prior to issuance of any building permit	Department of Planning, Building and Code Enforcement (PBCE) Supervising Environmental Planner Building Division Manager	Review the generator operations plan and records	Prior to issuance of any building permit

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Planning, Building and Code Enforcement

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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
MM AQ-1.4: Prior to the approval of any project-specific light industrial development on the project site (e.g., plan development permit or equivalent), excluding the data center use, the Project applicant shall submit a Transportation Demand Management Plan to the satisfaction of the Transportation Manager of the Department of Public Works and PBCE Supervising Environmental Planner. The TDM Plan shall contain the following components or equivalent measures to result in a 10% reduction in weekday mobile emissions: • Eco Pass or Clipper Card for all employees, providing free rides on Santa Clara County's local transit agency, the Santa Clara Valley Transportation Authority (VTA) 25% Transit Subsidy for transit agencies other than the VTA, including Caltrain, ACE, Capitol Corridor, and BART; • Free "Last Mile" Shuttles to local train systems (e.g., Caltrain, Amtrak, ACE) and VTA Light Rail Transit; • Internal Carpool Matching Program utilizing zip code matching; • Personalized Commute Assistance offered by a Commute Coordinator;	Prepare Submit a Transportation Demand Management Plan for submittal to the Transportation Manager of the Department of Public Works and to PBCE Supervising Environmental Planner.	Prior to the approval of any project-specific light industrial development	Transportation Manager of the Department of Public Works and PBCE Supervising Environmental Planner	Review and approve the Transportation Demand Management Plan	Prior to the approval of any project-specific light industrial development

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Planning, Building and Code Enforcement

237 Industrial Center Project
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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
• Preferred parking for Carpools and Vanpools located near entrances to every building, • Bicycle Lockers and/or Bicycle Racks near entrances to every building; • Showers for cyclists and pedestrians, offering clean towel service, complimentary toiletries, hair dryers, and ironing boards; and • Support Citywide Car Share programs.	See Previous Page	See Previous Page	See Previous Page	See Previous Page	See Previous Page
BIOLOGICAL RESOURCES					
Impact BIO-1: Construction activities could result in significant impacts to nesting migratory and other protected bird species.					
MM BIO-1.1: If initial site disturbance activities, including tree, shrub, or vegetation removal, are scheduled to occur during the breeding season (February 1st to August 31 st, inclusive), a qualified biologist shall conduct pre-construction surveys for nesting migratory birds onsite and within 250 feet (for raptors) of the site, where accessible. The survey shall occur within 7 days of the onset of ground disturbance if disturbances are to commence between February 1st and June 30th and within 30 days prior to the onset of ground disturbance between July 1st and August 31st. If a nesting migratory bird were to be detected, a construction-free buffer zone shall be established in consultation with the California Department of Fish and Wildlife (CDFW)	Avoidance of construction activities during nesting seasons. If avoidance is not possible, preconstruction surveys shall be conducted by a qualified biologist and construction-free buffer zones shall be designed around discovered nest.	Prior to the issuance of any grading permit.	PBCE Supervising Environmental Planner California Department of Fish and Wildlife	Review and accept report indicating the results of the survey (or any other environmental investigation reports, if applicable) and any designated buffer zones.	Prior to and during construction activities.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Planning, Building and Code Enforcement

237 Industrial Center Project
File Nos. C15-054, SP16-053, V17-004

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 actual size of the buffer zone shall be determined by the project biologist and will depend on species, topography, and type of activity that would occur in the vicinity of the nest. The project buffer zone shall be monitored periodically by the project biologist to ensure compliance. After the nest is completed, as determined by the biologist, the buffer zone can be removed.	The biologist shall submit a report indicating the results of the survey and any designated buffer zones to PBCE Supervising Environmental Planner	See Previous Page	See Previous Page	See Previous Page	See Previous Page
MM BIO-1.2 The Santa Clara Valley Habitat Plan (SCVHP) identifies the project site to be within 250 feet of potentially suitable tricolored blackbird nesting habitat occurring along Coyote Creek. The project applicant shall conduct surveys for tricolored blackbirds within 250 feet of this habitat, where visual access is possible, prior to start of construction following protocols in Condition 17 in Chapter 6 of the SCVHP. Such protocols include: • Prior to any ground disturbance, a qualified biologist shall complete a background assessment to determine if there has been nesting at the site or near the site in the past five years. This include checking the California Natural Diversity Data Base (CNDDB), contacting local experts, and looking for evidence of historical nesting (i.e., old nests).	The qualified biologist shall conduct surveys for tricolored blackbirds within 250 feet of identified suitable habitat, where visual access is possible. If a nesting colony of tricolored blackbirds are located, a 250-foot construction-free buffer zone shall be established.	Prior to any ground disturbance.	PBCE Supervising Environmental Planner California Department of Fish and Wildlife U.S. Fish and Wildlife Service	Review and accept report indicating the results of the survey (or any other environmental investigation reports, if applicable) and any designated buffer zones	Prior to and during construction activities.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Planning, Building and Code Enforcement

237 Industrial Center Project
File Nos. C15-054, SP16-053, V17-004

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
• If nesting in the past five years is not evident, the qualified biologist shall conduct a preconstruction survey in areas identified in the habitat survey as supporting potential tricolored blackbird nesting habitat. Surveys shall be made at the appropriate times of year when nesting use is expected to occur, and shall document the presence or absence of nesting colonies of tricolored blackbird. Surveys shall conclude no more than two calendar days prior to construction, per Condition 17 of Chapter 6 in the SCVHP. • Should a nesting colony of tricolored blackbirds be located, a 250-foot construction-free buffer shall be established from the edge of all hydric vegetation associated with the nest site and the buffer shall be avoided, and the California Department of Fish and Wildlife (CDFW) and U.S. Fish and Wildlife Service (USFWS) shall be notified immediately. • If construction occurs in the project area during the nesting season and when the 250-foot buffer is in place around active nesting habitat, a qualified biologist shall conduct periodic monitoring of the site to ensure the 250-foot buffer is enforced. The biologist shall have the authority to increase the buffer size if needed based on tricolored blackbird behavior at the active nesting area.	See Previous Page	See Previous Page	See Previous Page	See Previous Page	See Previous Page

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
• If active tricolored blackbird nesting occurs within 250 feet of the project site and off-site utility alignment areas and construction occurs during the active nesting period resulting in the need for a buffer, the qualified biologist shall conduct training for construction personnel in avoidance procedures, buffer zones, and safety protocols to ensure no impacts to the nest.	See Previous Page	See Previous Page	See Previous Page	See Previous Page	See Previous Page
Impact BIO-2: Any actions related to site development that result in the mortality of burrowing owls shall constitute a violation of the Federal Migratory Bird Treaty Act and provisions of the California Fish and Game Code. Therefore, the mortality of burrowing owls would be a significant impact under CEQA.					
MM BIO-2.1: To mitigate impacts to occupied burrowing owl habitat, the project applicant shall pay the burrowing owl fee as specified in the SCVHP for each acre of occupied burrowing owl nesting habitat impacted as a result of project buildout. Fees shall also be required from the loss of foraging habitat on the agricultural fields on-site (approximately 60 acres, Zone B fees) and annual grassland off-site (approximately 31.5 acres; Zone A fees). MM BIO-2.2: The project applicant shall conduct preconstruction surveys to ascertain whether or not burrowing owls occupy burrows on the site and along the utility alignments off-site prior to construction. The preconstruction surveys shall be performed by a qualified biologist and shall consist of a minimum of two surveys, with the first survey occurring no more than 14 days prior to initial construction activities.	Pay the burrowing owl fee as specified in the SCVHP. A qualified biologist shall conduct preconstruction surveys with the first survey occurring no more than 14 days prior to initial construction activities and the second survey conducted no more than 2 days prior to initial construction activities. If a burrowing owl is observed, occupied burrows shall be identified by the monitoring biologist and a buffer shall be established.	Prior to construction activities	PBCE Supervising Environmental Planner	Document payment of fees	Prior to construction activities

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(i.e., vegetation removal, grading, excavation, etc.) and the second survey conducted no more than 2 days prior to initial construction activities. If no burrowing owls or fresh sign of burrowing owls are observed during pre-construction surveys, construction may continue However, if a burrowing owl is observed during these surveys, occupied burrows shall be identified by the monitoring biologist and a buffer shall be established, as described below • If an active nest is found, a qualified biologist shall establish a 250-foot non-disturbance buffer around all nest sites. If the biologist determines that the nest is vacant, the non-disturbance buffer zone may be removed, in accordance with measures described in the SCVHP. The biologist shall supervise hand excavation of the burrow to prevent reoccupation only after receiving approval from the wildlife agencies (CDFW and USFWS) in accordance with Chapter 6, Condition 15 of the SCVHP. • For permission to encroach within 250 feet of such burrows during the nesting season (February 1st through August 31st), an Avoidance, Minimization, and Monitoring Plan (AMMP) shall be prepared and approved by the City and the wildlife agencies prior to such encroachment in accordance with Chapter 6 of the SCVHP	If encroachment into the buffer zone cannot be avoided, prepare an Avoidance, Minimization, and Monitoring Plan (AMMP)	See Previous Page	California Department of Fish and Wildlife U.S. Fish and Wildlife Service	Review and accept report indicating the results of the survey (or any other environmental investigation reports, if applicable), and, if necessary, receive and approve the AMMP	See Previous Page

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MM BIO-2.3: Should a burrowing owl be located during the non-breeding season (September through January), a 250-foot buffer shall be established and construction activities shall not be allowed within the 250-foot buffer of the active burrow(s) used by any burrowing owl unless the following avoidance measures are adhered to • A qualified biologist shall monitor the owls for at least three days prior to construction to determine baseline foraging behavior (i.e., behavior without construction). • The same qualified biologist shall monitor the owls during construction. If the biologist determines there is a change in owl nesting and foraging behavior as a result of construction activities, all construction activities shall cease within the 250-foot buffer. • If the owls are gone from the burrows for at least one week, the project applicant may request approval from the habitat agency to excavate all usable burrows within the construction area to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone shall be removed and construction may continue,	See Previous Page	See Previous Page	See Previous Page	See Previous Page	See Previous Page

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MM BIO-2.4 In the event that voluntary relocation of site burrowing owls does not occur (defined as owls having vacated the site for 10 or more consecutive days), the project applicant can request permission to engage in passive relocation during the non-breeding season through the standard SCVHP application process (Section 6.8 of the SCVHP). If passive relocation is granted, additional measures may be required by the Habitat Agency. If the owls voluntarily vacate the site for 10 or more consecutive days, as documented by a qualified biologist, the project applicant could seek permission from the Santa Clara Valley Habitat Agency to have the qualified biologist take measures to collapse vacated and other suitable burrows to ensure that owls do not recolonize the site, in accordance with the SCVHP.	See Previous Page	See Previous Page	See Previous Page	See Previous Page	See Previous Page
Impact BIO-3: The project would cause permanent impacts to riparian vegetation and seasonal wetlands as a result of installation of the potential stormwater outfall at Coyote Creek and project construction in the southwest corner of the site.					
MM BIO-3.1 Prior to the start of any grading or other soil disturbing activities, the project applicant shall be required to prepare a Stormwater Pollution Prevention Plan (SWPPP) consistent with the City's NPDES C3 provisions.	Prepare a Stormwater Pollution Prevention plan consistent with the City's NDPES C3 provisions, verify measures are being implemented, and ensure all seed mixtures used for	Prior to the start of any grading or other soil disturbing activities	PBCE Supervising Environmental Planner California Department of Fish and Wildlife, U.S. Army Corps of Engineers, and	Review and approval of permits by California Department of Fish and Wildlife, U.S. Army Corps of Engineers, and Regional Water	Prior to the start of any grading or other soil disturbing activities

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MM BIO-3.2: A qualified biological monitor shall visit the project site daily during outfall construction to verify that these measures are being fully implemented and are effective. MM BIO-3.3: Removal of riparian vegetation and/or trees for the potential installation of the outfall shall be limited to the minimum extent required. MM BIO-3.4: The project applicant shall ensure that all seed mixtures used for revegetation of the impacted riparian habitat of Coyote Creek shall be locally native or sterile non-native species only. No invasive non-native species shall be used for revegetation	revegetation are native or sterile non-native species only	See Previous Page	Regional Water Quality Control Board	Quality Control Board	See Previous Page
MM BIO-3.5 The project applicant shall comply with all requirements of the CDFW, U.S. Army Corps of Engineers (USACE), and Regional Water Quality Control Board (RWQCB) permits required for the construction of the project, including any additional mitigation measures and all monitoring requirements.	Acquisition of all regulatory agency permits (California Department of Fish and Wildlife, U.S. Army Corps of Engineers, and Regional Water Quality Control Board)	Prior to construction of outfall or within areas near wetlands	California Department of Fish and Wildlife, U.S. Army Corps of Engineers, and Regional Water Quality Control Board California Department of Fish and Wildlife, U.S. Army Corps of Engineers, and Regional Water Quality Control Board	Review and approval of permits by California Department of Fish and Wildlife, U.S. Army Corps of Engineers, and Regional Water Quality Control Board	Prior to construction of outfall or within areas near wetlands

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Impact BIO-4: Construction activities on-site could result in a significant impact to the trees that may be retained.					
MM BIO-4.1: The project applicant, in consultation with a certified arborist or biologist, shall submit a Tree Protection Plan (TPP) to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement for trees to be preserved. The TPP shall include, but is not limited to: • Number of trees and location of trees to be protected • Final landscaping proposal • Tree Protection Zone (TPZ) • Size and location of TPZ • Specific recommendation and suggestions or recommendation for each TPZ if applicable • Maintenance methodology for tree protection zones during the entire demolition and construction period • Irrigated schedule • Pruning schedule for preserved trees, if applicable • Herbicides and other products recommended to be used on preserved trees	Submit a Tree Protection Plan for trees to be preserved and incorporate the identified mitigation measures on all landscaping plans and in the Tree Protection Plan	Prior to the issuance of any grading permits and commencement of construction activities	Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement	Review and approval of the Tree Protection Plan	Prior to the issuance of any grading permits
CULTURAL RESOURCES					
Impact CUL-1: Construction of the proposed project could result in significant impacts to subsurface cultural resources located on-site.					
MM CUL-1.1: Prior to issuance of any grading permit, the project applicant shall be required to complete subsurface	A qualified archaeologist shall complete subsurface testing and prepare an	Prior to the issuance of any grading permit	PBCE Supervising Environmental Planner	Review and approve the archaeological	Prior to the issuance of any grading permit

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testing to determine the extent of possible resources on-site. Subsurface testing shall be completed by a qualified archaeologist. Based on the findings of the subsurface testing, an archaeological resources treatment plan shall be prepared by a qualified archaeologist and submitted to PBCE Supervising Environmental Planner and Historic Preservation Officer for approval prior to the issuance of grading permits. MM CUL-1.2 The project applicant shall implement the approved treatment plan prior to the issuance of any grading permits. The approved treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources. MM CUL-1.3 All prehistoric and historic-era features identified during exploration shall be evaluated by a qualified archaeologist based on the California Register of Historical Resources criteria consistent with the archaeological treatment plan. After completion of the field work, all artifacts shall be cataloged and the appropriate forms shall be completed and filed with the Northwest Information Center of the California Archaeological Inventory at Sonoma State University by the qualified archaeologist in coordination with the PBCE Supervising Environmental Planner and Historic Preservation Officer prior to issuance of any occupancy permit (temporary or final).	archaeological resources treatment plan. In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped. The Santa Clara County Coroner shall be notified immediately. If scientifically-valuable information is recovered, a report of findings documenting the recovery shall be submitted to the Director of Planning.	See Previous Page	Historic Preservation Officer	resources treatment plan and the report of findings	and prior to issuance of any occupancy permit (temporary or final)

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MM CUL-1.4: In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of PBCE shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource and make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits for any construction occurring within the above-referenced 50-foot radius and all areas determined by the archaeologist to not be disturbed during examination of the find. If the finds do not meet the definition of a historical or archaeological resource, no further study or protection is necessary prior to project implementation. If the find(s) does meet the definition of a historical or archaeological resource, then it shall be avoided by project activities. If avoidance is not feasible, adverse effects to such resources shall be mitigated in accordance with the recommendations of the archaeologist. Recommendations shall include, but are not limited to, collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE and the Northwest Information Center. The project applicant shall ensure that construction personnel does not collect or move any cultural	Building and Code Enforcement and the Northwest Information Center at Sonoma State University in Sonoma, California.	See Previous Page	See Previous Page	See Previous Page	See Previous Page

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material, and shall ensure that any fill soils that may be used for construction purposes do not contain any archaeological materials. MM CUL-1.5 In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped. The Santa Clara County Coroner shall be notified immediately and shall make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours of the identification. Once the NAHC identifies the most likely descendants (MLD), the descendants shall make recommendations regarding proper burial (including the treatment of grave goods), which shall be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines. The archaeologist shall recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. A report of findings documenting any data recovery shall be submitted to the Director of PBCE and the Northwest Information Center.	See Previous Page	See Previous Page	See Previous Page	See Previous Page	See Previous Page

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HAZARDOUS MATERIALS					
Impact HAZ-1: Implementation of the proposed project could release pesticide chemicals from on-site soils into the environment, and expose construction workers to residual agricultural soil contamination.					
MM HAZ-1.1 A Site Management Plan (SMP) shall be prepared and implemented (as outlined below) and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations or the contaminated portions of the site shall be capped beneath the planned development under the regulatory oversight of the Santa Clara County Department of Environmental Health (SCCDEH) or State Department of Toxic Substances Control (DTSC). The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site. Components of the SMP shall include, but shall not be limited to: • A detailed discussion of the site background; • Preparation of a Health and Safety Plan by an industrial hygienist; • Notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; • On-site soil reuse guidelines based on the	The project applicant shall retain a qualified hazardous materials specialist to prepare and submit a Site Management Plan to the County Environmental Health Department for approval.	Prior to the issuance of any grading permits	Santa Clara County Department of Environmental Health or State Department of Toxic Substances Control PBCE Supervising Environmental Planner in coordination with the Environmental Services Department (ESD)	SCCDEH or DTSC approval of the Site Management Plan if contaminated soils are found in concentrations above established thresholds. Copies of the Site Management Plan shall be provided to the PBCE Supervising Environmental Planner for review and approval.	Prior to issuance of any grading permits

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California Regional Water Quality Control Board (RWQCB), San Francisco Bay Region's reuse policy, • Sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; • Soil stockpiling protocols; and • Protocols to manage ground-water that may be encountered during trenching and/or subsurface excavation activities. MM HAZ-1.2: All contractors and subcontractors at the project site shall develop a Health and Safety Plan (HSP) specific to their scope of work and based upon the known environmental conditions for the site. The HSP shall be approved by the PBCE Supervising Environmental Planner and Environmental Services Department (ESD) and implemented under the direction of a Site Safety and Health Officer. The HSP shall include, but shall not be limited to , the following elements, as applicable: • Provisions for personal protection and monitoring exposure to construction workers; • Procedures to be undertaken in the event that contamination is identified above action levels or previously unknown contamination is discovered, • Procedures for the safe storage, stockpiling, and disposal of contaminated soils;	See Previous Page	See Previous Page	See Previous Page	See Previous Page	See Previous Page

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• Provisions for the on-site management and/or treatment of contaminated groundwater during extraction or dewatering activities; and • Emergency procedures and responsible personnel. The SMP shall be submitted to SCCDEH, DTSC, or equivalent regulatory agency for review and approval. Copies of the approved SMP shall be provided to the PBCE Supervising Environmental Planner and Environmental Services Department (ESD) prior to issuance of grading permits.	Develop a Health and Safety Plan based on the known environmental conditions for the site.	Prior to issuance of any grading permits	PBCE Supervising Environmental Planner in coordination with Environmental Services Department	Review and approval of the Health and Safety Plan	Prior to issuance of any grading permits
CUMULATIVE TRANSPORTATION					
Impact TRAN(C)-1: The proposed project would have a cumulatively considerable contribution to three intersections. The data center alone (Phase 1 of Option 2) would not result in this impact.					
MM TRAN(C)-1.1: To reduce the average delay in traffic level of service, the project applicant shall fully fund and construct a second southbound through lane at the Zanker Road/SR 237(N) intersection under cumulative conditions. This improvement would be triggered when the light industrial part (non-data center component) of the project is constructed.	Addition of a second southbound through lane.	Prior to issuance of any occupancy permits for light industrial development	Transportation Manager of the Department of Public Works	Transportation Manager of the Department of Public Works to confirm compliance	Prior to issuance of any occupancy permits for light industrial development

Source: 237 Industrial Center Project Environmental Impact Report, June 2017