

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN JOSE CERTIFYING THE MILLIGAN PARKING LOT
PROJECT FINAL SUPPLEMENTAL ENVIRONMENTAL
IMPACT REPORT (FILE NO. ER20-049), MAKING
CERTAIN FINDINGS CONCERNING SIGNIFICANT
IMPACTS, MITIGATION MEASURES, AND
ALTERNATIVES, ADOPTING A STATEMENT OF
OVERRIDING CONSIDERATIONS, AND ADOPTING A
MITIGATION MONITORING AND REPORTING PROGRAM,
ALL IN ACCORDANCE WITH THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT**

WHEREAS, the City of San José (“City”), acting as lead agency under the California Environmental Quality Act (“CEQA”), prepared and circulated an Environmental Impact Report for the Coleman Avenue/Autumn Street Improvements Environmental Impact Report (“Coleman Avenue/Autumn Street Improvements EIR”) to analyze the widening of Coleman Avenue between Hedding Street and Autumn Street and the widening and partial realignment, and extension of Autumn Street between Coleman Avenue and Park Avenue; and

WHEREAS, on April 7, 2009, the City Council and the Board of the Redevelopment Agency certified the Coleman Avenue/Autumn Street Improvements EIR (City Council Resolution No. 74870 and Redevelopment Agency Resolution No. 5902) and adopted a mitigation monitoring and reporting program pursuant to CEQA; and

WHEREAS, the City, acting as lead agency under CEQA, prepared and circulated an Environmental Impact Report for the Downtown Strategy 2040 (“Downtown Strategy 2040 EIR”) to update and replace the Downtown Strategy 2000 Environmental Impact Report

and analyze the environmental impacts of increased downtown development capacity under the Downtown Strategy Plan 2040 and Envision San José 2040 General Plan; and

WHEREAS, on December 18, 2018, in connection with the adoption of the Downtown Strategy 2040 Plan (Planning File No. PP15-102), the City Council certified the Downtown Strategy 2040 EIR (City Council Resolution No. 78944) and adopted a mitigation monitoring and reporting program pursuant to CEQA; and

WHEREAS, the proposed project, the Milligan Parking Lot Project, includes the demolition of all existing structures on the 2.5-acre site and the construction of a 300-space surface parking lot (the “Project”) located on five parcels on the northeast corner of North Autumn Street and West St. John Street in downtown San José (APNs 259-29-032, 033, 071, 072 & 102) (the “subject property”); and

WHEREAS, the City, acting as lead agency, prepared a Draft Supplemental Environmental Impact Report (“Draft SEIR”) to the Coleman Avenue/Autumn Street Improvements EIR and the Downtown Strategy 2040 EIR for the Project (Planning File No. ER20-049) dated June 2023; and

WHEREAS, a First Amendment to the Draft SEIR was prepared to include responses to comments received during the public comment period and to make any technical or text changes to the Draft SEIR; and

WHEREAS, the First Amendment and the Draft SEIR together comprise the Final Supplemental Environmental Impact Report (“FSEIR”) for the Project; and

WHEREAS, the FSEIR concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce each of those significant impacts but not to a less than significant level; and

WHEREAS, on April 30, 2024, the Planning Commission of the City of San José reviewed the FSEIR and recommended the City Council find the FSEIR was completed in accordance with the requirements of CEQA and further recommended the City Council adopt a resolution certifying the FSEIR; and

WHEREAS, as required under CEQA, a program to monitor and report on the implementation of measures to mitigate or avoid significant effects on the environment has been prepared for the Project (the “Mitigation Monitoring and Reporting Program”); and

WHEREAS, the decision-making body of a public agency is required under CEQA to make certain findings regarding potentially significant environmental impacts and adopt a statement of overriding considerations for any impact that may not be reduced to a less than significant level;

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

1. The foregoing recitals are true and correct and are incorporated herein as if set forth in the body of this Resolution.
2. The City Council finds and certifies the FSEIR has been prepared and completed in compliance with CEQA.
3. The FSEIR was presented to the City Council, the City Council reviewed and considered the information contained therein prior to approving the Project, and, as lead agency for the Project, the City Council finds the FSEIR reflects the independent judgment and analysis of the City of San José and designates the Director of Planning, Building and Code Enforcement at 200 East Santa Clara

Street, 3rd Floor Tower, San José, California 95113 as the custodian of records on which the decision of the City is based.

4. The City Council recognizes the FSEIR contains additions, clarifications, modifications, and other information in response to comments on the Draft SEIR or obtained after the Draft SEIR was issued and circulated for public review and hereby finds such changes and additional information would not result in: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft SEIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft SEIR that would lessen a significant environmental impact of the Project, or (iii) any feasible alternative considerably different from those analyzed in the Draft SEIR that would lessen a significant environmental impact of the Project.
5. The City Council finds and determines that recirculation of this FSEIR for further public review and comment is not warranted or required under CEQA.
6. The City Council makes the following findings with respect to potentially significant environmental impacts, as identified in the FSEIR, with the understanding that all the information in this Resolution is intended as a summary of the full administrative record supporting the FSEIR.

MILLIGAN PARKING LOT PROJECT

ENVIRONMENTAL EFFECTS FOUND NOT TO BE SIGNIFICANT

Through project scoping and the environmental analysis contained within the FSEIR, it was determined that the Project would not result in a potential significant effect on the environment with respect to aesthetics, agricultural and forestry resources, energy, geology and soils, land use and planning, mineral resources, noise and vibration, population and housing, public services, recreation, and utilities and service system as the impacts these resources are consistent with the conclusions in the Downtown Strategy 2040 EIR and the Coleman Avenue/Autumn Street Improvements EIR. A summary of the reasons for this determination can be found in Section 3.0 of the Draft SEIR. Additionally, through the Draft SEIR analysis it was determined that the Project would not result in a potential significant effect on the environment greater than the Downtown Strategy 2040 EIR and the Coleman Avenue/Autumn Street Improvements EIR with respect to air quality, greenhouse gas emissions, hydrology and water quality, transportation, and tribal cultural resources. Analysis for this determination can be found in Sections 3.1, 3.4, 3.6, 3.7 and 3.8. No further findings are required for these subject areas.

FINDINGS FOR SIGNIFICANT BUT MITIGATED IMPACTS

Biological Resources

Impact: **Impact BIO-1:** Construction activities associated with the proposed Project could result in the loss of fertile eggs of nesting raptors or other migratory birds, or nest abandonment, which would constitute a significant impact under the Migratory Bird Treaty Act (MBTA) and California Department of Fish and Wildlife (CDFW) Code Sections 3503, 3503.5, and 3800.

Mitigation: **MM BIO-1.1: Nesting Raptors and Migratory Birds:** The Project will be required to implement the following measures:

- The City's contractor shall schedule demolition, tree removal, and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.
- If demolition, tree removals, and construction activities cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.
- Prior to any tree removal, grading, or demolition permits (whichever occur first), the City's contractor shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.

Finding: With implementation of Mitigation Measure BIO-1.1, the Project would not result in an adverse effect on any species identified as a candidate, sensitive, or special-status species including nesting birds and raptors. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

Facts in Support of the Finding: As described in Section 3.2, Biological Resources, in the Draft SEIR, the federal Migratory Bird Treaty Act (MBTA) prohibits killing, capture, possession, or trade of migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. Nesting birds are considered special-status species and are protected by the U.S. Fish and Wildlife Service. The CDFW also protects migratory and nesting birds under California Fish and Game Code Sections 3503, 3503.5, and 3800. The CDFW defines “taking” as causing abandonment and/or loss of reproductive efforts through disturbance. The Santa Clara Valley Habitat Plan (“Habitat Plan”), Condition 1, also requires avoidance of direct impact on legally protected plant and wildlife species. Construction activities on the project site could result in the loss of eggs or nests to surrounding trees and in nest abandonment. Implementation of Mitigation Measure MM BIO-1.1 will ensure that if construction cannot avoid the nesting season, any nesting birds on the Project site and immediately adjacent to the project site are identified, and buffer zones around the trees with nests are established to ensure that the nests are protected during construction activities.

Impact: **Impact BIO-2:** The Project’s parking lot lighting could result in a significant impact to sensitive habitat and species along the Guadalupe River due to spillover illumination affecting foraging activity, increasing predation risk on fish and changing the composition of fish communities that occur across a day-night period.

Mitigation: **MM BIO-2.1:** All lighting shall be fully shielded to block illumination from shining upward, or outward towards the Guadalupe River to the northeast. All fixtures on the site shall have a backlight, uplight, and glare (BUG) rating of U0, and any fixtures located along the site’s northeast property line shall have a BUG rating of B0, as follows:

- U0: 0 lumens (90–180 degrees)
- B0: 110 lumens high (60–80 degrees), 220 lumens mid (30–60 degrees), and 110 lumens low (0–30 degrees)

MM BIO-2.2: Except as indicated in mitigation measure MM BIO-2.1 above, fixtures shall comply with lighting zone LZ-2, Moderate Ambient, as recommended by the International Dark-Sky Association (2011) for light commercial business districts and high-density or mixed-use residential districts. The allowed total initial luminaire lumens for the Project site is 2.5 lumens per square foot of hardscape, and the BUG rating for individual fixtures shall not exceed B3 or G2, as follows:

- B3: 2,500 lumens high (60–80 degrees), 5,000 lumens mid (30–60 degrees), 2,500 lumens low (0–30 degrees)
- G2: 225 lumens (forward/back light 80–90 degrees), 5,000 lumens (forward 60–80 degrees), 1,000 lumens (back light 60–80 degrees asymmetrical fixtures), 5,000 lumens (back light 60–80 degrees quadrilateral symmetrical fixtures)

MM BIO-2.3: Exterior lighting shall be minimized (i.e., total outdoor lighting lumens shall be reduced by at least 30 percent or extinguished, consistent with recommendations from the International Dark-Sky Association [2011]) from 10:00 PM until sunrise, except as needed for safety and City code compliance.

Finding: With implementation of Mitigation Measures BIO-2.1, BIO-2.2, and BIO 2.3, the Project would not result in an adverse effect to sensitive habitat and species along the Guadalupe River due to spillover illumination. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

Facts in Support of the Finding: As described in Section 3.2, Biological Resources in the Draft SEIR, and Section 6.2.6 of the Biological Resources Report, Appendix C to the Draft SEIR, literature has shown how artificial lighting may indirectly affect birds, mammals and fish including impacting foraging activity, increasing predation risk on fish and changing the composition of fish communities that occur across a day-night period. While the species inhabiting the sensitive habitats along the Guadalupe River are already habituated to existing artificial illuminance from the nearby by urban environment, substantial increases in illuminances of the Guadalupe River could result in a potentially significant impact to species by disrupting wildlife behavior. While there is not a quantitative threshold for the level of illuminance increase above ambient light that is an agreed upon threshold for significant impacts to animals, the Biological Resources Report, Appendix C, prepared by H.T. Harvey and Associates, finds that

implementation of Mitigation Measures BIO-2.1, BIO-2.2, and BIO-2.3 would shield and minimize light spillover from the Project into the Guadalupe River which would reduce this impact to a less-than-significant level.

Impact: **Impact BIO-3:** The Project could result in a significant impact to adjacent riparian trees and habitat during construction, a sensitive natural community as defined by CDFW, USFWS, RWQCB, and USFWS.

Mitigation: **MM BIO-3.1:** Avoid Impacts to Riparian Trees and Habitat Prior to and During Construction. Riparian trees and sensitive riparian habitat along the Guadalupe River to be avoided by the Project will be clearly marked on plans as such. Riparian trees to remain will be protected with environmentally sensitive area (ESA) fencing installed at their driplines to provide a Tree Protection Zone (TPZ). Should any grading, staging, trenching, or other activity need to take place within a designated TPZ for a tree intended to be retained, the City's contractor shall hire an International Society of Arboriculture (ISA) Certified arborist to monitor the work, recommend any applicable measures to lessen impact on the tree, and following completion of the work, determine whether the tree has been injured to the degree that it may die from the impacts and therefore be considered for removal. During the construction phase, the Project is required to stabilize soils adjacent to riparian trees, minimize ground-disturbing impacts, and avoid planting species identified by the California Invasive Plant Council (Cal-IPC) as invasive. All temporarily disturbed soils are required to be revegetated with native plants or sterile, nonnative species, and temporarily disturbed areas such as staging areas will be returned to pre-project or ecologically improved conditions within one year of the completion of construction.

MM BIO-3.2: Avoid Impacts to Riparian Trees and Habitat During and Post Construction. During Project construction and immediately after construction (based on Habitat Conditions 3 and 4), the City's contractor shall implement the following measures to protect riparian trees and habitat:

- Removal of riparian vegetation and trees shall be limited to the minimum extent required to construct the Project.
- Seed mixtures, and if needed, shrubs and trees used for revegetation of the impacted riparian habitat shall not contain invasive non-native species but will be composed of native or sterile non-native species. If sterile non-native mixtures must be used for temporary erosion control, native seed mixtures will be used in subsequent treatments to provide

long-term erosion control and prevent colonization by invasive nonnative species.

- The minimum amount of impermeable surface shall be used for the construction as is practicable.
- The Project shall prepare and implement sediment erosion control plans to prevent erosion or other disturbance-related impacts within the riparian corridor.
- All construction within the riparian habitat shall take place during the dry season from June 15 to October 31 (inclusive).
- Immediately after completion of Project components located in the riparian habitat, and before close of seasonal work window, stabilize all exposed soil with mulch, seeding, and/or placement of erosion control blankets.

MM BIO-3.3: Prevent Spread of Invasive Plant Species. Within the proposed planting areas in the 100-foot setback, no nonnative invasive species, as ranked by the California Invasive Plant Council and/or identified in Valley Water's Guidelines and Standards for Land Use Near Streams: A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County (Valley Water 2006) and the City of San José's Riparian Corridor, shall be planted (including planting near the future Guadalupe River Trail extension). The City's contractor shall implement following BMPs for weed control to avoid and reduce the spread of invasive plant species.

- Prior to grading or soil disturbance, infestations of non-native vegetation within areas of direct permanent or temporary disturbance will be removed and all vegetative material will be disposed of offsite.
- All ground disturbing equipment used adjacent to the riparian corridors shall be washed (including tracks, and undercarriages) at a legally operating equipment yard both before and after being used at the site.
- All applicable construction materials used on site, such as straw wattles, mulch, and fill material, shall be certified weed free.
- The Project shall follow a Stormwater Pollution Prevention Plan as per the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Water Board Order No. 2009-0009- DWQ).
- All disturbed soils shall be stabilized and planted with a native seed mix from a local source following construction.

- If excavating, soil and vegetation removed from weed-infested areas shall not be used in general soil stockpiles and shall not be redistributed as topsoil cover for the newly filled areas. All weed infested soil shall be disposed of off-site at a landfill or buried at least 2.5 feet below final grade.

The City's Director of Planning, Building and Code Enforcement, or the Director's designee shall review and approve the above measures prior to grading or soil disturbance.

Finding: Consistent with the Downtown Strategy 2040 EIR requirements, with the implementation of Mitigation Measures BIO-3.1, BIO-3.2, and BIO-3.3, the Project would result in a less than significant impact to riparian trees and habitat. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

Facts in Support of the Finding: As described in Section 3.2 Biological Resources in the Draft SEIR, implementation of the Project could result in temporary impacts to adjacent riparian woodland and forest habitat as a result of the construction. Implementation of Conditions 3 and 4 of the Valley Habitat Plan, outlined in Mitigation Measures BIO-3.1, BIO-3.2, and BIO-3.3 would require implementation of design phase, construction phase, and post construction-phase measures including programmatic best management practices, performance standards, and control measures which would reduce the increases in peak discharge in storm water and reduce pollutants to protect water quality. Further the conditions would include avoidance conditions to avoid and reduce construction impacts to riparian trees and habitat. Implementation of Mitigation Measures BIO-3.1, BIO-3.2, and BIO-3.3 would reduce this impact to a less-than-significant level.

Impact: **Impact BIO-C-4.1:** Development within the 100-foot riparian setback area (adjacent to the Guadalupe River), would result in significant cumulative impacts to riparian habitat and bird communities.

Mitigation: **MM BIO-C-4.1: Compensate for New Urban Development within the Setback.** To compensate for the degradation of setback functions in the 100-foot setback within existing California annual grassland (0.17 acre) due to the construction of a new parking lot and landscape areas, the City's contractor shall restore native riparian tree and shrub habitat at a 1:1 (restored area: impacted area) ratio, on an acreage basis, on-site or off-site prior to Project operations. The City shall also pay Habitat Plan fees to the Santa Clara Valley Habitat Agency for impacts on riparian trees prior

to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.

MM BIO-C-4.4: On-Site Mitigation. If restoration is completed on-site, native riparian vegetation shall be planted in planting areas that are contiguous with the riparian corridor (i.e., not located in isolated planting wells) and located within the 100-foot setback. If the available planting area is smaller than the project's 0.17-acre impact area, then the City's contractor shall: (1) reduce the impact area within the California annual grassland land cover type, or (2) expand any landscape areas that are contiguous with the riparian corridor, to achieve a ratio of restored area to impacted area of 1:1. Locally native trees and shrubs appropriate to the area as identified in Valley Water's guidance and/or the City's Policy Study shall be planted and maintained on-site to provide additional wildlife habitat adjacent to the Guadalupe River. The on-site planting areas shall include locally native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation (including "compatible" nonnatives that may be recommended for planting along streams by local jurisdictions) shall be planted within the restoration areas. Example overstory species include coast live oak, valley oak, and example understory species include holly-leaf redberry (*Rhamnus ilicifolia*) and holly-leaf cherry (*Prunus ilicifolia*). A qualified restoration ecologist shall develop a Riparian Setback Enhancement and Monitoring Plan (RSEP), which shall contain the following components (or as otherwise modified by regulatory agency permitting conditions):

1. Goal of the restoration to achieve no net loss of habitat functions and values.
2. Restoration design:
3. Planting plan
4. Soil amendments and other site preparation elements as appropriate
5. Maintenance plan
6. Remedial measures/adaptive management
7. Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc.). At a minimum, success criteria shall include elimination of nonnative woody species from within the enhancement area and establishment of a native tree and shrub canopy providing at least 50 percent canopy coverage of the mitigation area within 10 years of mitigation implementation.

8. Contingency plan for mitigation elements that do not meet performance or final success criteria.

On-site plantings shall be approved by the Director of Planning, Building and Code Enforcement, or the Director's designee prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.

The RSEP must be approved by the City's Director of Planning, Building, and Code Enforcement prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.

Monitoring of the restored habitat shall be implemented by the City and continue post-construction as indicated in the Monitoring Plan (10 years or greater).

MM BIO-C-4.3: Off-Site Mitigation. If adequate riparian habitat mitigation cannot be restored on-site, riparian habitat will be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or elsewhere along the Guadalupe River and within the City of San José. If off-site mitigation is necessary and it is not possible to find a suitable mitigation site along the Guadalupe River, the mitigation shall be provided elsewhere on the Santa Clara Valley floor and within the City of San José. Restoration/enhancement that shall be provided along the immediately adjacent riparian corridor would consist of the removal of nonnative trees, shrubs, and vines and the planting of native riparian vegetation. The off-site planting areas shall be restored/enhanced to incorporate native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation (even including "compatible" nonnatives that may be recommended for planting along streams by local jurisdictions) shall be planted within the restoration areas. Acreage will be credited based on the area extent of nonnative vegetation removal and native riparian vegetation planting.

Any off-site restoration/enhancement would need to be performed according to a Riparian Habitat Mitigation and Monitoring Plan, as described for on-site mitigation.

Finding: The Coleman Avenue/Autumn Street Improvements EIR assumed development would occur outside of the riparian corridors of the Guadalupe River. The Downtown Strategy 2040 EIR stated that projects adjacent to the Guadalupe River would be required to have an open space buffer and

incorporate riparian setback areas, which would result in less than significant impacts to riparian habitats. With implementation of the Mitigation Measures BIO-C-4.1, BIO-C-4.1, and BIO-C-4.3, the Project's contribution to the significant cumulative impact on the Guadalupe River riparian and bird communities would be reduced to a less-than-significant level. **(New Less than Significant Cumulative Impact with Mitigation Incorporated)**

Facts in Support of Finding: The Project proposes to convert the California annual grassland habitat on the site into paved parking areas and landscaping (which may include nonnative vegetation) within the 100-foot setback. As described in Section 3.2.2.2 of the Draft SEIR and Section 6.7.1 of Appendix C, Biological Resources Report of the Draft SEIR, along the entire Guadalupe River, the encroachment of development toward the riparian corridor has resulted in a cumulative impact on riparian bird communities over time due to the degradation of the riparian habitat, increase in human activity in and along the riparian corridor, and loss/degradation of open areas adjacent to the riparian corridor that birds can use for foraging or as flight paths in and out of the riparian corridor. Given the importance of riparian habitat and riparian bird communities along the Guadalupe River to regional bird diversity and abundance, the contribution to cumulative impacts due to encroachment into the riparian buffer would be considerable for the removal of grassland habitat, as it represents a new type of development that will have a greater impact on the adjacent riparian corridor (due to the removal of existing undeveloped habitat, as discussed above) compared to existing conditions. Compensatory mitigation for the Project's encroachment into the riparian setback via disturbance of existing grassland habitat is provided on-site or elsewhere along the Guadalupe River, would reduce the project's contribution to the significant cumulative impact on Guadalupe River riparian bird communities to a less-than-significant level under CEQA because it would ensure habitat located along Guadalupe River is replaced at a 1:1 ratio for the riparian bird communities.

Cultural Resources

Impact: **Impact CUL-2:** Project construction activities could result in the accidental disturbance and/or destruction of archaeological resources pursuant to CEQA Guidelines Section 15064.5.

Mitigation: **MM CUL 2-1: Cultural Sensitivity Training.** Prior to issuance of any grading permit, the Project shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified archaeologist in collaboration with a Native

American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

MM CUL 2-2: Sub-Surface Monitoring. A qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall be present during applicable earthmoving activities including, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping. Archaeological monitors have the authority to halt construction with the finding of an archaeological discovery and to authorize construction to resume. Monitoring shall continue until the monitor has determined that excavation has reached the maximum depth at which archaeological remains could be expected to occur. Monitoring is intended to ensure that appropriate cultural protective measures are effective prior to initiation of construction activities and to document and protect cultural resources from inadvertent damage.

The results of the monitoring shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee within 14 days of completion of monitoring activities. If 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, and the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified. The on-site archaeologist and Native American representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include reinterment of artifacts and materials, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move away any cultural materials.

Finding: Implementation of the identified Mitigation Measures CUL-2.1 and CUL-2.2 would result in a less than significant impact to subsurface archaeological resources. **[Same Impact as Approved Projects (Less than Significant Impact With Mitigation Incorporated)]**

Facts in Support of Finding: As discussed in Section 3.3 of the Draft SEIR, Native American and historic artifacts have been found throughout the downtown area, particularly near the Guadalupe River. While no prehistoric archaeological sites have been identified in the immediate Project area as documented in the cultural resources review for the Coleman Avenue/Autumn Street Improvements EIR, the Project site is located adjacent to the Guadalupe River, and therefore the Project site has moderate to high potential for buried prehistoric Native American resources and historic resources. As part of the Project, the site will be graded and as a result, Project ground disturbing activities could impact previously unrecorded archaeological resources. Implementation of Mitigation Measures MM CUL-2.1 and MM CUL-2.2, which includes monitoring and evaluation of any resources identified during Project construction, would reduce any potential impacts associated with Project construction to a less than significant level.

Hazards and Hazardous Materials

Impact: **Impact HAZ-1.1:** Due to the site's history of use as an automobile repair shop, evidence of historic storage/use of hazardous materials identified from prior site assessments, there is a potential to encounter unknown hazardous materials which could expose construction workers to harmful levels of pollutants during grading, earthwork, and trenching.

Mitigation: **MM HAZ-1.1:** Prior to issuance any grading activities, a self-directed Site Management Plan (SMP) that includes a Health and Safety Plan (HASP) shall be prepared by a qualified environmental professional to guide activities during demolition, excavation, and construction due to the historic storage/use of hazardous materials on-site. The SMP is intended to provide guidelines and protocols in the event of encountering soil contamination during redevelopment to ensure construction worker safety. Components of the SMP shall include, but shall not be limited to:

- A detailed discussion of the site background;
- Soil management protocol to manage contaminated soils if encountered on-site;

- Proper procedures as needed for demolition of existing structures, including any groundwater wells if identified to be present within the project area;
- Management of stockpiles, including sampling, disposal, and dust and runoff control measures;
- Implementation of a stormwater pollution prevention program;
- Procedures for transporting and disposing the waste material generated during removal activities;
- Procedures for stockpiling soil on-site if such stockpiling is necessary;
- Procedures to ensure that fill and cap materials are verified as clean;
- Truck routes for export of soil;
- Staging and loading procedures and record keeping requirements;
- Procedures to follow if evidence of an unknown historic release of hazardous materials (e.g., underground storage tanks, polychlorinated biphenyls [PCBs], asbestos containing materials, lead-based paints, etc.) is discovered during excavation or demolition activities;
- Details on dewatering for treatment and discharge to the sanitary sewer or for permitting from the Regional Water Quality Control Board (RWQCB) for treatment and discharge to the storm drain system. The SMP shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee, and Environmental Services Department (ESD) Municipal Compliance Officer prior to any grading activities.

Finding: With implementation of Mitigation Measure HAZ-1.1 which includes the preparation of a Site Management Plan and Health and Safety Plan, construction worker exposure to unknown hazardous materials during construction would be reduced to a less-than-significant level. **[Same Impact as Approved Project (Less Than Significant Impact with Mitigation Incorporated)]**

Facts in Support of the Finding: As discussed in Section 3.5 of the Draft SEIR and Appendix F4 of the Draft SEIR, residual contaminants associated with the former fuel tanks may exist at 150 North Autumn which may expose construction workers to pollutants during Project construction activities. In addition, Appendix F5 of the Draft SEIR found concentrations of benzene, methylene chloride, and PCE in soil gas samples were above the vapor

intrusion human health risk ESLs for commercial land use as result of the automobile repair uses at the 447 West St. John Street property.

In accordance with the Coleman Avenue/Autumn Street Improvements EIR, which required a Phase I ESA and subsequent Phase II ESA for each parcel at the time a specific development is proposed, Phase I and II ESAs were prepared for the Project site. The Downtown Strategy 2040 EIR concluded that for any site with the potential for encountering subsurface hazardous materials and/or where soil removal is required, the City or regulatory agencies may require preparation of a site-specific SMP. To address the handling of impacted soils during site development. The Downtown Strategy 2040 EIR also concluded that any site where contamination has been identified, construction shall occur in accordance with a site-specific Health and Safety Plan (or "Construction Risk Management Plan") prepared by an environmental professional. Implementation of Mitigation Measure HAZ-1.1 requires preparation of a Site Management Plan and Health and Safety Plan, which will reduce construction worker exposure to unknown hazardous materials during construction to a less-than-significant level.

FINDINGS FOR SIGNIFICANT AND UNAVOIDABLE ENVIRONMENTAL IMPACTS

Cultural Resources

Impact: **CUL-1:** Implementation of the proposed project, which includes the demolition of the Forman's Arena building, would result in an adverse significant impact to the historic resource pursuant to CEQA Guidelines Section 15064.5.

Mitigation: **MM CUL-1.1: Action Plan:** Prior to any grading, demolition, or building activities or any other approval that would allow disturbance of the Project site, the City's contractor shall prepare and submit, for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee in coordination with the City's Historic Preservation Officer, a Historic Resources Mitigation Action Plan (Action Plan) demonstrating that the following steps, actions, and documents have been satisfied for each of the four historic structures in accordance with the Action Plan timeline. The Action Plan shall include roles and responsibilities between the City's contractor, City staff, and outside individuals, groups, firms, and consultants.

Documentation (HABS): The Forman's arena building and associated features on the project site shall be documented in accordance with the

guidelines established for the Level III Historic American Building Survey (HABS) consistent with the Secretary of the Interior's Standards for Architectural and Engineering Documentation and shall consist of the following components:

- A. Drawings – Prepare sketch floor plans.
- B. Photographs – Digital photographic documentation of the interior, exterior, and setting of the four buildings in compliance with the National Register Photo Policy Fact Sheet.
- C. Written Data – National Park Service Heritage Documentation Programs (HABS) written documentation in Outline Format.

An architectural historian and historian meeting the Secretary of the Interior's Professional Qualification Standards shall oversee the preparation of the sketch plans for a period of no less than 60 days, photographs, research and written data. The documentation shall be submitted to the Director of Planning, Building or Code Enforcement or the Director's designee and the City's Historic Preservation Officer for review and approval. The required documentation after approval shall be filed with the San José Public Library's California Room and the Northwest Information Center at Sonoma State University, the repository for the California Historical Resources Information System. All documentation shall be submitted on archival paper and must first be reviewed and approved by the City's Historic Preservation Officer. Additional copies shall be made available to other local research institutions including History San José, and a copy with the City's Planning Division.

Three-Dimensional (3D) Laser Scans. Prior to issuance of any grading, demolition, or building permits or any other approval that would allow disturbance of the Project site, the Forman's arena building and associated features at 447 West St. John Street shall be laser scanned by a qualified historic resources consultant meeting the qualifications in the Secretary of the Interior's Professional Qualification Standards. The 3D laser scanning will utilize 3D Laser Scanning techniques to capture as-built survey of the existing exterior conditions of the property, to create a 3D point cloud model for digital documentation/archival purposes. A plan of the proposed procedures for the laser scanning shall be submitted as part of the required Action Plan prior to commencement. The documentation from the 3D Laser Scanning shall be reviewed and approved by the City's Historic Preservation Officer. After City approval, the documentation shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee and to History San José. Proof of receipt by History San José shall be submitted to the City following submittal.

Relocation by the Applicant and/or a Third Party: Prior to issuance of any demolition activities, the City's contractor, or an interested third party, shall be required to advertise the availability of the four structures for relocation for a period of no less than 60 days. The advertisements must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The City contractor shall provide evidence (i.e., receipts, date and time stamped photographs, etc.) to the City's Historic Preservation Officer that this condition has been met prior to the issuance of demolition permits.

If the City's contractor or third party agrees to relocate the structure, the following measures must be followed:

- 1) The Director of Planning, Building and Code Enforcement or Director's designee, based on consultation with the City's Historic Preservation Officer, must determine that the receiver site is feasible for the building.
- 2) Prior to relocation, the City's contractor or third party shall hire a historic preservation architect and a structural engineer to undertake an existing condition study that establishes the baseline condition of the building prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those character-defining physical features of the resource that convey its historic significance and must be protected and preserved. The documentation shall be reviewed and approved by the City's Historic Preservation Officer prior to the structure being moved.
- 3) To protect the building during relocation, the City's contractor shall engage a building mover who has experience moving similar historic structures. A structural engineer shall also be engaged to determine how the building needs to be reinforced/stabilized before the move.
- 4) Once moved, the building shall be repaired and rehabilitated, as needed, by the City's contractor or third party in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. In particular, the character-defining features shall be retained in a manner that preserves the integrity of the building for the long-term preservation and reuse.

Upon completion of the repairs, a qualified architectural historian shall document and confirm that work to the structure(s) were completed in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and character-defining features were preserved. The project applicant shall submit a memo report supplement to

the Action Plan to the City's Historic Preservation Officer documenting the relocation, repair, and reuse.

Salvage: If the City's contractor does not relocate the Forman's Arena Building within the specified time, the structure(s) shall be made available to salvage companies facilitating the reuse of historic building materials. The City shall advertise the availability of the Forman's Arena Building for salvage for a period of no less than 30 days. The advertisement must include notification in a newspaper of general circulation, on a website, and notice placed on the Project site. The City's contractor shall provide evidence of the advertisement (i.e., receipts, date and time stamped photographs, etc.) to the Director of Planning, Building or Code Enforcement or the Director's designee. The City's contractor must provide evidence to the City's Historic Preservation Officer that this condition has been met prior to demolition activities.

Commemoration and Public Interpretation: Prior to issuance of any building permits, the City shall retain a qualified historic resources consultant to initiate the development and design of a commemorative and interpretive program, exhibit, display including, but not limited to interpretive text and historic photographs, physical remnants from the site, art or sculpture, video, interactive media, and/or oral histories. The proposed concepts for commemoration and public interpretation shall be submitted to the City Historic Preservation Officer for review and approval prior to issuance of any building permits and shall be developed in coordination with the City as the Project is implemented. The final product shall be reviewed and approved by the City's Historic Preservation Officer and implemented in a suitable publicly accessible location on the Project site as determined by the Historic Preservation Officer, prior to the issuance of a certificate of occupancy. There are no historical resources adjacent to the Project site. The nearest historic resources are located approximately 300 to 400 feet west of the Project site within the River Street City Landmark District. Given the separation of the Project site from the historical resources, the Project would not result in a significant impact to historic resources off-site. The Coleman Avenue/Autumn Street EIR identified this impact as less than significant with mitigation incorporated, which included the relocation of the Forman's arena.

Finding: Mitigation measure MM CUL-1.1, would help retain the memory of the Forman's arena and its association with the City's history but demolition or salvage of the Forman's Arena, a historic resource on site, would remain a significant unavoidable impact because even with implementation of this

mitigation measure the historic resource would be permanently lost. **(New Significant and Unavoidable Impact)**

Facts in Support of Finding: As described in Section 3.3 of the Draft SEIR and in the 2007 Cultural Resources Assessment prepared by Basin Research Associates as part of the Coleman Avenue/Autumn Street Improvement EIR, the Forman's Arena, located at 447 West St. John Street (APN 259-29-032) is significant under National Register of Historic Places (NRHP) Criterion A and California Register of Historical Resources (CRHR) Criterion 1 because of the building's associations with local themes or cultural patterns of significance. The building is a rare surviving sports arena associated with a period of San José's social history and the "Golden Age" of boxing in the 1920s and 1930s. The building is rare in a regional context as an early sports arena built to accommodate one sporting activity, rather than being utilized as a multi-use facility. The building is also directly associated with the prominent San José boxing promoter Ora Forman, a significant local figure in San José sports history. Therefore, the Forman's arena building is significant under CRHR Criterion 2. The 447 West St. John Street former Forman's arena is eligible for the CRHR under Criteria 1 and 2. It is also eligible for listing in the NRHP under Criterion A. The building is also listed on the City of San José's Historic Resources Inventory as a Candidate City Landmark. Therefore, the City concluded that this building is eligible for listing in the City's Historic Resources Inventory (HRI) as a Candidate City landmark.

The proposed Project would demolish all the existing buildings on site including the Forman's Arena which was identified as a Historic Resource. Based on the above, demolition of the building would destroy the historic resource which is rare in a regional context as an early sports arena built to accommodate one sport and therefore, the impact would be significant and unavoidable. Implementation of the mitigation measures would help retain the memory of the building and its association with the City's history and provide an opportunity for relocation of the building; however, relocation is not guaranteed as no receiver site has been secured and there are no mitigation measures that would reduce the impact of demolition a less than significant level. Therefore, even with implementation of Mitigation Measures MM CUL-1.1, the impact to the historical resources would remain significant and unavoidable.

FINDINGS CONCERNING ALTERNATIVES

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

The alternatives analyzed in the Draft SEIR 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 objectives for the Project are as follows:

1. Maximize surface parking spaces available to provide off-street parking within 1/3 mile of the San José SAP Center.
2. Facilitate the retention of professional sports teams in San José (Envision San José 2040 General Plan Policy IE-5.5) specifically through ensuring San José SAP Center has the required parking to meet sports fan needs as identified in the Arena Management Agreement.¹
3. Design parking lot to minimize conflicts between vehicles entering or exiting the site and area circulation, including bicyclists, pedestrians, or transit.
4. Reduce the amount of impervious surface as a part of redevelopment of the site (Envision San José 2040 General Plan Policy EC-5.11).
5. Develop the parking in a manner that allows easy conversion of the parking lot to a future use such as the Autumn Street widening, partial realignment, and extension.

The following alternatives were considered and rejected for the reasons stated below:

- **Relocation of Forman's Arena Alternative** -- The San José History Park, the previous City Hall "E" parking lot, the site of the San José Fire Department Training Center, the former FMC site, and the Guadalupe Gardens (behind the Master Metal Products building on 495 Emory Street) were areas of the City identified in the Coleman Avenue/Autumn Street Improvement EIR that could potentially accommodate the historic building. However, the abovementioned sites can no longer accommodate the historic building. Guadalupe Gardens is not feasible because it is within Airport safety zones encumbered by Airport

¹ Second Amended and Restated Arena Management Agreement by and between The City of San José and San Jose Arena Management, LLC, dated July 1, 2015.

Land Use Compatibility restrictions limiting height, safety, and noise and under strict oversight by the Federal Aviation Administration. The former FMC site, the San José Fire Department's Training Center, and the City Hall "E" parking lot are no longer feasible since they are either developed or designated for future development by the City or private property owners. San José History Park is currently limited due to funding in accepting new buildings and relocation would require approval through the Office of Cultural Affairs with evidence of funding. Given the sites are no longer feasible, this alternative is rejected from further consideration.

- **Location Alternative** – In order to identify an alternative site for the parking lot that would meet the purposes of the project and reduce significant impacts it was assumed an ideal site would be approximately 2.5-acres in size, located within 1/3 mile of the SAP Center in accordance with Arena Management Agreement (AMA), located near freeways or major roads, served by infrastructure, and available for development. Development of a new parking lot of any size in downtown San José would have similar impacts associated with project construction, but likely would not have a significant and unavoidable impact to cultural resources due to demolition of a historic resource assuming no historic resource is located on the alternative site. However, this alternative was rejected because the City does not own or have control over any alternative site within 1/3 mile of SAP Center that is available for redevelopment. The three city-owned properties within 1/3 mile of the SAP Center are already set aside for other development. The properties at 456 Autumn Court and 406 Autumn Court (APNs 259-29-041, 984-22-019, and 259-29-098) are identified for the Autumn Street realignment and the properties at 240 and 260 North Montgomery and 255 North Autumn Street (APNs 259-29-011, 259-29-012, and 259-29-020) were deeded to the City by Google as part of their community benefits to be used as for affordable housing. Given there are no city-owned sites available that would meet the project's objectives, this alternative is rejected from further consideration.
- **Multi-level Parking Structure with Retail Alternative**—The City considered a two- to three-story parking structure with 300 parking spaces, open space, and retail space to increase pedestrian activity on surrounding streets. The Project site was evaluated as a part of the Coleman Avenue/Autumn Street EIR Improvement project as part of the site of the extended Autumn Street. The site was considered as a possible interim use for surface parking until completion of the Autumn Street extension. Additionally, the intent of the Project is to provide interim surface parking during the development of other projects in the vicinity. Once these developments are complete, they may include sufficient parking in garages for the San José SAP Center and the proposed interim surface parking may no longer be needed, as identified in the Project

objectives. A surface parking lot is easier to redevelop into a future use than a structure. Therefore, this alternative is rejected from further consideration.

The following are evaluated as alternatives to the proposed Project:

1. No Project-No Development Alternative
2. Forman's Arena Building Retention Alternative

1. No Project Alternative

- A. **Description of Alternative:** The No Project Alternative would retain the existing uses and buildings on-site. The Project site is currently developed with several warehouse buildings, an auto service business, a residence, several accessory structures, and 118 surface parking spaces currently used for SAP Center event parking. The northwestern portion of the site contains a paved surface parking lot. The No Project Alternative assumes that the Project site would remain as it currently exists and therefore, the significant impacts of the Project would not occur.
- B. **Comparison of Environmental Impacts:** Under this alternative, none of the impacts of the Project would occur. The site would retain the existing 118 surface parking spaces on-site. However, this alternative would not meet the Project objective to maximize surface parking lot spaces available to provide off-street parking within 1/3 mile of the San José SAP Center as the amount of parking spaces on-site would remain the same. Additionally, this alternative would not facilitate the retention of the professional sports teams in San José because the existing 118 parking spaces would not meet the Arena Management Agreement's required parking needs and the Project would not reduce the amount of impervious surface since the site would remain the same. Since the site would remain as is, the existing design would remain, and the alternative Project could not be designed to minimize existing circulation conflicts. Maintaining the existing site would neither support the Project objective to maximize surface parking lot spaces available nor limit the future redevelopment of the site.
- C. **Findings:** Because the No Project Alternative would not result in any development on the site, this Alternative would avoid all of the environmental impacts of the project. This Alternative would also only partially meet the Project objectives with regards to providing parking. This Alternative would not meet the Project objectives to maximize parking in accordance with the Arena Management Agreement, reduce impervious surface, or improve the site's circulation design.

2. Forman's Arena Building Retention Alternative

- A. **Description of Alternative:** The Project proposes to demolish all structures (including the historic Forman's arena building, a historic resource under CEQA) to construct the proposed 300-space surface parking lot. The Forman's Arena Building Retention Alternative would demolish all structures on the site with the exception of the Forman's Arena building at 447 West St. John Street. This alternative would also propose a surface parking lot but would retain the Forman's Arena and allow parking inside the Forman's Arena building. This re-design would require the relocation of the ADA stalls and would eliminate some of the spaces available for surface parking. This alternative would provide an estimated 233 outdoor surface parking spaces and up to 27 parking spaces inside the Forman's Arena building for a total of 250 parking spaces. Driveway locations would remain the same as the proposed Project and one additional driveway along West St John Street would be added for entry into the indoor parking. Protective bollards would shield parking spaces from the historic building and parking on the exterior of the building would be setback a minimum of 15 feet to driving accidents impacting the historic building. Any structural repairs needed for the Forman's Arena would be completed for the building consistent with the Secretary of the Interior Standards.
- B. **Comparison of Environmental Impacts:** The Forman's Arena Building Retention Alternative would reduce the significant and unavoidable impact to the historic Forman's arena building to a less than significant level since the building would be retained and repaired in accordance with the Secretary of the Interior Standards. Development within the 100-foot riparian setback area, required under Condition 11 of the Santa Clara Valley Habitat Plan and the City Council Policy 6-34: Riparian Corridor Protection, would be required for this alternative, including within the undeveloped 0.17-acre of California grassland area on the site to accommodate the surface parking and because the Forman's Arena is currently within the setback area. The impacts to biological resources and mitigation required would be similar for this alternative and the proposed Project. The demolition of one less building (the Forman's arena building) and slight reduction in paving for the parking lot would not substantially reduce the construction schedule or emissions. Therefore, construction air quality impacts would be similar and would remain less than significant. This alternative would have the same footprint as the proposed Project; therefore, impacts to archaeological resources, tribal cultural resources, and hazards and hazardous materials impacts would also be similar to the Project.
- C. **Findings:** This alternative would meet all Project objectives except the objective to maximize surface parking within 1/3 mile of the SAP Center. This Alternative would only provide up to 250 parking spaces (net 132 new spaces above the existing 118 spaces) compared to the Project that would provide 300 parking

spaces (net 182 new spaces). Therefore, this alternative would not maximize the parking available on-site (objective #1) as completely as the Project would, and this would require the City to find other lots to use for interim parking in order to meet the Arena Management Agreement's minimum off-site parking requirements. The additional time needed to secure other locations for interim parking would conflict with the timelines established in the AMA. The alternative would be designed to minimize vehicle conflicts around the site and would reduce impervious surface as part of the redevelopment, but to a lesser degree since the Forman's Building impervious area would remain.

Environmentally Superior Project

The CEQA Guidelines state that an EIR shall identify an environmentally superior alternative. Based on the above discussion, the environmentally superior alternative to the proposed project is the No Project- No Development Alternative because all of the project's significant environmental impacts would be avoided. However, Section 15126(e)(2) states that "if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. In addition to the No Project – No Development Alternative, the Forman's Arena Building Retention Alternative would be environmentally superior because it would avoid the significant and unavoidable impact to the historic building.

STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to CEQA Guidelines section 15093, the City Council of the City of San José hereby adopts and makes the following statement of overriding considerations regarding the remaining significant and unavoidable impact of the Project as outlined above and the anticipated economic, social, and other benefits of the Project.

- A. **Significant Unavoidable Impact.** With respect to the foregoing findings and in recognition of those facts which are included in the administrative record, the City has determined the Project has significant unmitigated or unavoidable impacts, as set forth above, associated with the Forman Arena building that is a Candidate City Landmark structure and eligible for CRHR and NRHP listing, which would be demolished under the proposed Project.
- 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 impact 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 the significant and adverse impacts of the Project. The City Council finds that each of the overriding considerations set forth below constitutes a separate and independent ground 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 administrative record that includes, but is not limited to, the Envision San José 2040 General Plan.

- C. **Benefits of the Proposed Project.** The City Council has considered the public record of proceedings on the proposed Project and other written materials presented to the City as well as oral and written testimony at all hearings related to the Project and does hereby determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits:

- 1) **Compliance with the Arena Management Agreement.** Meeting the City's obligations in Arena Management Agreement is beneficial because the Agreement supports the management and continued operation of the SAP Center, an approximately 18,000 seat arena within Downtown San José. The Arena Management Agreement benefits the City through providing national recognition by being the home venue for the San José Sharks, a National Hockey League team, and the agreement provides economic benefits to downtown San José. Financially, the Arena Management Agreement benefits the City through Capital Reserve Fund annual fees, Community and City Events Fund fees, District Funds fees, as well as the hosting and maintenance of the San José Sports Hall of Fame. The rent and sources of shared revenue provided through operation of the team and facility to the City average approximately \$6 million annually with an additional approximately \$5 million dollars in sales tax and transient occupancy tax generated by events held at the SAP Center.² Further, events at the arena attract visitors to the Downtown area and support local business.

- i. Implementation of the Milligan Parking Lot Project will support the City in meeting its parking obligation under the Arena Management Agreement³. Specifically, the City is required to provide 1,650 on-site parking spaces including 1,422 parking spaces within the commonly referenced ABC Lot and 228 spaces within Lot D. Additionally the City

² https://sanjose.granicus.com/MetaViewer.php?view_id=2&clip_id=8154&meta_id=515337.

³ <https://sanjose.legistar.com/View.ashx?M=F&ID=6810591&GUID=51297C0D-5847-49D0-B57D-8230B0FEC84C>.

is required to provide 6,350 spaces within ½ mile of the arena and as much as half of those spaces (3,175 spaces) within 1/3 mile of the arena. The Milligan Parking Lot Project would more than double the spaces available on the site today, adding over 182 parking spaces within 1/3 mile of the SAP Center. This project would help replace spaces lost as a result of development in Downtown including spaces within Lot D which will be removed for the BART extension⁴.

2) The Milligan Parking Lot Project will also further the following goals and policies of the Envision San Jose 2040 General Plan.

- i. IE-5.-5: Attract and retain professional and amateur sports teams and events in San José and identify and support opportunities for growth of related businesses and retail markets.
- ii. AC-1.1 Continue to support Downtown entertainment, arts and cultural activities and pursue opportunities to enhance or expand offerings there.

The Milligan Parking Lot project will provide parking within 1/3 mile of the SAP Center to support the sports, cultural, and other event functions of the SAP Center in Downtown San José. Parking is a component of the Arena Management Agreement which helps retain the San José Sharks as well as attracts different performances to the venue. The project surface parking lot is intended to be temporary so that the site can be redeveloped in the future to provide other benefits and offerings to the City and downtown.

- iii. FS-5.11 Identify the most efficient use of available resources to maintain the City's infrastructure and to minimize the need to replace this infrastructure.

Because the parking lot will be an interim use (approximately 15 years) and the City's obligation for Replacement Parking may cease once the BART service to Diridon Station area is operational or Google has constructed a minimum of 500 parking spaces, the City is pursuing the construction of the surface parking lot. The 300-space surface Milligan Parking Lot project will efficiently use City funds for construction as a surface parking lot is less costly than a parking structure. The project

⁴ Lot D is an important part of the parking program for SAP Center and loss of these spaces is considered detrimental to the successful operations of the SAP Center. The agreed upon plan for replacement of the 228 spaces in Lot D is to construct surface parking lots on the Lot E and Milligan sites.

also effectively uses the City's land resources developing a temporary surface parking lot which can be redeveloped to serve future City needs.

- iv. EC-5.11 Where possible, reduce the amount of impervious surface as a part of redevelopment and roadway improvements through the selection of materials site planning, and street design.

The Milligan Parking Lot Project will replace 102,370 square feet of impervious surface with 95,000 square feet of pervious surface. The project includes the use of permeable pavement and will treat on-site runoff with LID requirements of Provision C.3. The redevelopment of the site would increase the stormwater treated on-site before being conveyed to the City's storm drain lines in the surrounding streets.

- 3) The Milligan Parking Lot Project will also further the following goals and policies of the Diridon Station Area Plan, specifically:

- i. Guiding Principal M6. Ensure the continued vitality of the SAP Center, recognizing that it is a major anchor for both Downtown San José and the Diridon Station area, and pursue best efforts to maintain a sufficient supply of parking and efficient vehicular and pedestrian access for SAP Center customers, compliant with the standards set forth in the Arena Management Agreement.

The Project will continue the vitality of the SAP Center through complying with the parking standards set forth in Part 5 of the Arena Management Agreement. Specifically, the project will add 182 new parking spaces within 1/3 mile of the SAP Center which will offset the expected loss of 228 parking spaces from the Lot D due to the future BART development and other anticipated development in the area. These parking spaces will ensure the City meets its requirement to provide 6,350 parking spaces within 1/2 mile of the SAP Center.

The City Council has weighed each of the above benefits of the Project against its unavoidable environmental risks and adverse environmental effects identified in the FSEIR, 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.

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 California Public Resources Code Section 21081.6 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.

LOCATION AND CUSTODIAN OF RECORDS

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

ADOPTED this ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Milligan Parking Lot Project File No. ER20-049 March 2024



PREFACE

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

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

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

The City of San José hereby agrees to fully implement the mitigation measures described below, which have been developed in conjunction with the preparation of an SEIR for the Project. The City understands that these mitigation measures, or substantially similar measures, will be adopted as conditions of approval to avoid or significantly reduce potential environmental impacts to less than significant levels.

EXHIBIT “A”
Milligan Parking Lot Project
File No. ER20-049

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
BIOLOGICAL RESOURCES					
Impact BIO-1: Construction activities associated with the proposed project could result in loss of fertile eggs of nesting raptors or other migratory birds, or nest abandonment.					
MM BIO-1.1: Nesting Raptors and Migratory Birds: The project will be required to implement the following measures: <ul style="list-style-type: none"> The City’s contractor shall schedule demolition, tree removal, and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive. If demolition, tree removals and construction activities cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will 	Avoid construction activities during nesting seasons (February 1 through August 31, inclusive). If construction activities occur between February 1 and April 30, inclusive, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed no more than 14 days prior to the initiation of demolition/construction activities or 30 days if activities occur between May 1 and August 31, inclusive. All measures shall be printed on all construction documents, contracts, and project plans. The City’s contractor shall submit a report indicating the results of the survey and any designated buffer zones to the	Prior to demolition, tree removal, and construction	Director of Planning, Building and Code Enforcement, or the Director’s designee	Survey and report included in MMRP compliance file	Prior to demolition, tree removal, and construction

EXHIBIT “A”
Milligan Parking Lot Project
File No. ER20-049

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.</p> <ul style="list-style-type: none"> Prior to any tree removal, grading, or demolition activities, the City’s contractor shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director’s designee. 	satisfaction of the Director of Planning, Building and Code Enforcement or Director’s designee.				
Impact BIO-2: The project’s parking lot lighting could result in a significant impact to sensitive habitat and species along the Guadalupe River due to spillover illumination affecting foraging activity, increasing predation risk on fish and changing the composition of fish communities that occur across a day-night period.					
MM BIO-2.1: All lighting shall be fully shielded to block illumination from shining upward, or outward towards the Guadalupe River to the northeast. All fixtures on the site shall have a backlight, uplight, and glare (BUG) rating of U0, and any fixtures located along the site’s northeast property line shall have a BUG rating of B0, as follows: <ul style="list-style-type: none"> U0: 0 lumens (90-180 degrees). B0: 110 lumens high (60-80 degrees), 220 lumens mid (30-60 degrees), and 110 lumens low (0-30 degrees) 	Parking lot lighting plan and buildout will comply with the BUG ratings listed in mitigation.	Lighting plan shall be provided by the City’s contractor prior to construction. The fixtures shall be installed in compliance with BUG ratings and shall be maintained with appropriate ratings throughout project operations.	Director of Planning, Building and Code Enforcement, or the Director’s designee	Review the project’s lighting plan prior to construction	Prior to construction

EXHIBIT “A”
Milligan Parking Lot Project
File No. ER20-049

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
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MM BIO-2.2: Except as indicated in mitigation measure MM BIO-2.1 above, fixtures shall comply with lighting zone LZ-2, Moderate Ambient, as recommended by the International Dark-Sky Association (2011) for light commercial business districts and high-density or mixed-use residential districts. The allowed total initial luminaire lumens for the project site is 2.5 lumens per square foot of hardscape, and the BUG rating for individual fixtures shall not exceed B3 or G2, as follows: <ul style="list-style-type: none"> B3: 2,500 lumens high (60–80 degrees), 5,000 lumens mid (30–60 degrees), 2,500 lumens low (0–30 degrees) G2: 225 lumens (forward/back light 80–90 degrees), 5,000 lumens (forward 60–80 degrees), 1,000 lumens (back light 60–80 degrees asymmetrical fixtures), 5,000 lumens (back light 60–80 degrees quadrilateral symmetrical fixtures) 	Parking lot lighting plan and buildout will comply with zone LZ-2, Moderate Ambient, as recommended by the International Dark-Sky Association (2011) for light commercial business districts and high-density or mixed-use residential districts		Director of Planning, Building and Code Enforcement, or the Director’s designee	Review the project’s lighting plan	Prior to start of construction
MM BIO-2.3: Exterior lighting shall be minimized (i.e., total outdoor lighting lumens shall be reduced by at least 30 percent or extinguished, consistent with recommendations from the International Dark-Sky Association [2011]) from 10:00 PM until sunrise, except as needed for safety and City code compliance.	Minimize (i.e., total outdoor lighting lumens shall be reduced by at least 30 percent or extinguished, consistent with recommendations from the International Dark-Sky Association [2011]) from 10:00 PM until sunrise, except as needed for safety and City code compliance.	Lighting plan shall be provided by the City’s contractor prior to construction. The fixtures shall be installed in compliance with BUG ratings and shall be maintained with appropriate ratings throughout project operations. n	Director of Planning, Building and Code Enforcement, or the Director’s designee	Review the project’s lighting plan	Prior to construction and throughout project operations (review lighting plan) Prior to project operations (minimizing exterior lighting)

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MM BIO-3.1: Avoid Impacts to Riparian Trees and Habitat Prior to and During Construction. Riparian trees and sensitive riparian habitat along the Guadalupe River to be avoided by the project during construction will be clearly marked on construction plans. Riparian trees to remain will be protected with environmentally sensitive area (ESA) fencing installed at their driplines to provide a Tree Protection Zone (TPZ). Should any grading, staging, trenching, or other activity need to take place within a designated TPZ for a tree intended to be retained, the City’s contractor shall hire an International Society of Arboriculture (ISA) Certified arborist to monitor the work, recommend any applicable measures to lessen impact on the tree, and following completion of the work, determine whether the tree has been injured to the degree that it may die from the impacts and therefore be considered for removal. During the construction phase, the project is required to stabilize soils adjacent to riparian trees, minimize ground-disturbing impacts, and avoid planting species identified by the California Invasive Plant Council (Cal-IPC) as invasive. All temporarily disturbed soils are required to be revegetated with native plants or sterile, nonnative species, and temporarily disturbed areas will be returned to pre-project or ecologically improved conditions within one year of the completion of construction.	<p>Submit construction plans which identify the TPZs, riparian trees, and sensitive riparian habitat along the Guadalupe River clearly marked. City’s certified arborist shall monitor construction activities within TPZs.</p> <p>During the construction phase, stabilize soils adjacent to riparian trees, All temporarily disturbed soils will be revegetated with native plants or sterile, nonnative species, and temporarily disturbed areas will be returned to pre-project or ecologically improved conditions within one year of the completion of construction.</p>	<p>Prior to grading, staging, trenching, construction, or other activity</p> <p>During construction or post-construction</p>	<p>Director of Planning, Building and Code Enforcement, or the Director’s designee</p>	<p>Review and approve the project plans that show TPZ areas.</p> <p>Ensure that all measures are printed on all construction documents, contracts, and project plans</p>	<p>Pre-construction through post-construction</p>

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MM BIO-3.2: Avoid Impacts to Riparian Trees and Habitat During and Post-Construction. During project construction and immediately after construction (based on Habitat Conditions 3 and 4), the City’s contractor shall implement the following measures to protect riparian trees and habitat: <ul style="list-style-type: none"> Removal of riparian vegetation and trees, prior to project construction, shall be limited to the minimum extent required to construct the project. Seed mixtures, and if needed, shrubs and trees used for revegetation of the impacted riparian habitat during construction shall not contain invasive non-native species but will be composed of native or sterile non-native species. If sterile non-native mixtures must be used for temporary erosion control, native seed mixtures will be used in subsequent treatments to provide long-term erosion control and prevent colonization by invasive non-native species. The minimum amount of impermeable surface shall be used for the construction as is practicable. The project shall prepare and implement sediment erosion control plans to prevent erosion or other disturbance-related impacts within the riparian corridor. All construction within the riparian habitat shall take place during the dry season from June 15 to October 31, inclusive. Immediately after completion of project components located in the riparian habitat, and before close of seasonal work window, stabilize all 	<p>-All construction within the riparian habitat shall take place during the dry season from June 15 to October 31, inclusive. Seed mixtures and shrubs and trees used for revegetation of the impacted riparian habitat will be composed of native or sterile non-native species.</p> <p>If sterile non-native mixtures must be used for temporary erosion control, native seed mixtures will be used in subsequent treatments to provide long-term erosion control and prevent colonization by invasive non-native species.</p> <p>A minimum amount of impermeable surfaces will be used during construction</p> <p>The project applicant City’s contractor will prepare a sediment erosion control plan.</p> <p>All exposed soil with mulch, seeding, and/or</p>	<p>All construction within the riparian habitat shall take place during the dry season from June 15 to October 31, inclusive.</p> <p>Removal of any riparian vegetation and trees (to a minimum extent) will occur prior to project construction.</p> <p>Revegetation of riparian habitat (with native or sterile non-native species) will occur during project construction.</p>	<p>Director of Planning, Building and Code Enforcement, or the Director’s designee</p>	<p>Ensure that all measures are printed on all construction documents, contracts, and project plans.</p>	<p>Pre-construction through post-construction</p>

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exposed soil with mulch, seeding, and/or placement of erosion control blankets.	placement of erosion control blankets will be stabilized. All measures shall be printed on all construction documents, contracts, and project plans.				
MM BIO-3.3: Prevent Spread of Invasive Plant Species. Within the proposed planning areas in the 100-foot setback area, no non-native invasive species, as ranked by the California Invasive Plant Council and/or identified in Santa Clara Valley Water Resources Protection Collaborative (Collaborative) Guidelines and Standards for Land Use Near Streams: A Manual of Tools, Standards, and Procedures to Protect Streams and Streamside Resources in Santa Clara County and the City of San José’s Riparian Corridor, shall be planted. The City’s Contractor shall implement following BMPs for weed control to avoid and reduce the spread of invasive plant species. <ul style="list-style-type: none"> Prior to grading or soil disturbance, infestations of non-native vegetation within areas of direct 	Implement all weed control BMPs in MM BIO-3.3 within the Riparian Corridor area of the project.	Prior to grading or soil disturbance, and during excavation, grading, and construction activities	Director of Planning, Building and Code Enforcement, or the Director’s designee	Review and approve the weed control BMPs. Ensure that all weed control BMPs measures are printed on all construction documents, contracts, and project plans.	Prior to grading or soil disturbance, and during excavation, grading, and construction activities

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<p>permanent or temporary disturbance will be removed and all vegetative material will be disposed of off-site.</p> <ul style="list-style-type: none"> • All ground disturbing equipment used adjacent to the riparian corridors shall be washed (including tracks, and undercarriages) at a legally operating equipment yard both before and after being used at the site. • All applicable construction materials used on site, such as straw wattles, mulch, and fill material, shall be certified weed free. • The project shall follow a Stormwater Pollution Prevention Plan as per the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Water Board Order No. 2009-0009-DWQ). • All disturbed soils shall be stabilized and planted with a native seed mix from a local source following construction. • If excavating, soil and vegetation removed from weed-infested areas shall not be used in general soil stockpiles and shall not be redistributed as topsoil cover for the newly filled areas. All weed-infested soil shall be disposed of off-site at a landfill or buried at least 2.5 feet below final grade. <p>The City’s Director of Planning, Building and Code Enforcement, or the Director’s designee shall review and approve the above measures prior to grading or soil disturbance.</p>					

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<p>MM BIO-C-4.1: Compensate for New Urban Development within the Setback. To compensate for the degradation of setback functions in the 100-foot setback within existing California annual grassland (0.17 acres) due to the construction of a new parking lot and landscape areas, the City’s contractor shall restore native riparian tree and shrub habitat at a 1:1 (restored area: impacted area) ratio, on an acreage basis, on-site or off-site prior to project operations.</p> <p>The City shall also pay Habitat Plan fees to the Santa Clara Valley Habitat Agency for impacts on riparian trees prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.</p>	<p>Restore 0.17 acre of native riparian tree and shrub habitat at a 1:1 ratio on-site or off-site.</p> <p>Pay Habitat Fees to _the Santa Clara Valley Habitat Agency.</p>	<p>By the completion of project construction</p> <p>Prior to grading, demolition, tree removal, or initiation of ground disturbing activities</p>	<p>Director of Planning, Building and Code Enforcement, or the Director’s designee</p>	<p>Ensure contractor's restoration of native riparian tree and shrub habitat is in accordance with MM BIO-C-4.1</p> <p>Ensure payment of all applicable Habitat Plan fees</p>	<p>Prior to grading, demolition</p>
					<p>Prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.</p>
<p>MM BIO-C-4.2: On-Site Mitigation. If restoration is completed on-site, native riparian vegetation shall be planted in planting areas that are contiguous with the</p>	<p>The City’s contractor shall restore 0.17 acre of native riparian tree and shrub</p>	<p>The RSEMP and on-site plantings must be approved prior to</p>	<p>Director of Planning, Building and Code</p>	<p>Review RSEMP</p>	<p>Prior to grading, demolition, tree removal, or</p>

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<p>riparian corridor (i.e., not located in isolated planting wells) and located within the 100-foot setback. If the available planting area is smaller than the project’s 0.17-acre impact area, then the City’s contractor shall: (1) reduce the impact area within the California annual grassland land cover type, or (2) expand any landscape areas that are contiguous with the riparian corridor, to achieve a ratio of restored area to impacted area of 1:1. Locally native trees and shrubs appropriate to the area as identified in Valley Water’s guidance and/or the City’s Policy Study shall be planted and maintained on-site to provide additional wildlife habitat adjacent to the Guadalupe River. The on-site planting areas shall include locally native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation (including “compatible” nonnatives that may be recommended for planting along streams by local jurisdictions) shall be planted within the restoration areas. Example overstory species include coast live oak, valley oak, and example understory species include holly-leaf redberry (<i>Rhamnus ilicifolia</i>) and holly-leaf cherry (<i>Prunus ilicifolia</i>). A qualified restoration ecologist shall develop a Riparian Setback Enhancement and Monitoring Plan (RSEMP), which shall contain the following components (or as otherwise modified by regulatory agency permitting conditions):</p> <ol style="list-style-type: none"> 1. Goal of the restoration to achieve no net loss of habitat functions and values. 2. Restoration design 3. Planting plan 4. Soil amendments and other site preparation elements as appropriate 	<p>habitat on-site or off-site in accordance with MM BIO-C-4.2.</p> <p>The on-site planting areas, in accordance with Valley Water’s guidance and/or the City’s Policy Study, shall include locally native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation shall be planted within the restoration areas. An RSEMP shall be prepared by the City or City’s qualified ecologist..</p>	<p>grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.</p> <p>On-site restoration must be completed by the completion of project construction.</p>	Enforcement, or the Director’s designee	Review on-site plantings on plans and contracts	initiation of impacts to currently undeveloped habitat within the riparian setback.

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<p>5. Maintenance plan</p> <p>6. Remedial measures/adaptive management</p> <p>7. Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc.). At a minimum, success criteria shall include elimination of nonnative woody species from within the enhancement area and establishment of a native tree and shrub canopy providing at least 50 percent canopy coverage of the mitigation area within 10 years of mitigation implementation.</p> <p>8. Contingency plan for mitigation elements that do not meet performance or final success criteria.</p> <p>On-site plantings shall be approved by the Director of Planning, Building and Code Enforcement, or the Director’s designee prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.</p> <p>The RSEMP must be approved by the City’s Director of Planning, Building, and Code Enforcement prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.</p> <p>Monitoring of the restored habitat shall be implemented by the City and continue post-construction as indicated in the Monitoring Plan (10 years or greater).</p>				<p>Monitor restored habitat shall continue post-construction as indicated in the Monitoring Plan</p>	<p>10 years or greater</p>

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<p>MM BIO-C-4.3: Off-Site Mitigation. If adequate riparian habitat mitigation cannot be restored on-site, riparian habitat will be enhanced or restored to native habitat along the immediately adjacent riparian corridor, and/or elsewhere along the Guadalupe River and within the City of San José. If off-site mitigation is necessary and it is not possible to find a suitable mitigation site along the Guadalupe River, the mitigation shall be provided elsewhere on the Santa Clara Valley floor and within the City of San José.</p> <p>Restoration/enhancement that shall be provided along the immediately adjacent riparian corridor would consist of the removal of nonnative trees, shrubs, and vines and the planting of native riparian vegetation. The off-site planting areas shall be restored/enhanced to incorporate native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation (even including “compatible” nonnatives that may be recommended for planting along streams by local jurisdictions) shall be planted within the restoration areas. Acreage will be credited based on the areal extent of nonnative vegetation removal and native riparian vegetation planting.</p> <p>For restoration/enhancement activities immediately adjacent to the riparian corridor (within the Valley Water’s fee title property and easement), the City shall coordinate with Valley Water for approval.</p> <p>Any off-site restoration/enhancement would need to be performed according to a Riparian Habitat Mitigation</p>	<p>Restore/enhance off-site planting areas to incorporate native understory, mid-story, and overstory vegetation to provide high-quality habitat for birds; no nonnative vegetation shall be planted within the restoration areas.</p> <p>Conduct required off-site restoration/enhancement as defined in the Riparian Habitat Mitigation and Monitoring Plan</p>	<p>Off-site restoration must be completed by the completion of project construction.</p> <p>The RSEMP and on-site plantings must be approved prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback. Monitoring of the restored habitat shall continue post-construction as indicated in the Monitoring Plan (10 years or greater).</p>	<p>Director of Planning, Building and Code Enforcement, or the Director’s designee</p>	<p>Review RSEMP</p> <p>Review off-site plantings on plans and contracts</p>	<p>Prior to grading, demolition, tree removal, or initiation of impacts to currently undeveloped habitat within the riparian setback.</p>

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and Monitoring Plan, as described for on-site mitigation. Monitoring of the restored habitat shall continue post-construction as indicated in the Monitoring Plan (10 years or greater).					

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<p>MM CUL-1.1: Action Plan: Prior to any grading, demolition, or building activities or any other approval that would allow disturbance of the project site, the City’s contractor shall prepare and submit, for review and approval by the Director of Planning, Building and Code Enforcement or the Director’s designee in coordination with the City’s Historic Preservation Officer, a Historic Resources Mitigation Action Plan (Action Plan) demonstrating that the following steps, actions, and documents have been satisfied for each of the four historic structures in accordance with the Action Plan timeline. The Action Plan shall include roles and responsibilities between the City’s contractor, City staff, and outside individuals, groups, firms, and consultants.</p> <p>Documentation (HABS): The Forman’s arena building and associated features on the project site shall be documented in accordance with the guidelines established for the Level III Historic American Building Survey (HABS) consistent with the Secretary of the Interior’s Standards for Architectural and Engineering Documentation and shall consist of the following components:</p> <p style="margin-left: 40px;">A. Drawings – Prepare sketch floor plans. B. Photographs – Digital photographic documentation of the interior, exterior, and setting of the four buildings in compliance with the National Register Photo Policy Fact Sheet.</p>	<p>the City’s contractor shall prepare a Historic Resources Mitigation Action Plan and submit the Action Plan to the Director of Planning, Building and Code Enforcement or the Director’s designee in coordination with the City’s Historic Preservation Officer for review and approval n.</p> <p>The City’s contractor shall document the Forman’s arena building and associated features on the site in accordance with the guidelines established for the Level III HABS consistent with the Secretary of the Interior’s Standards for Architectural and Engineering Documentation.</p> <p>An architectural historian and historian meeting the Secretary of the Interior’s Professional Qualification Standards shall oversee the preparation of documentation in</p>	<p>Prior to any grading, demolition, or building activities or any other approval that would allow disturbance of the project site.</p>	<p>Director of Planning, Building and Code Enforcement, or the Director’s designee</p> <p>Director of Planning, Building and Code Enforcement or Director’s Designee and City’s Historic Preservation Officer.</p>	<p>Review and approve the Historic Resources Mitigation Action Plan.</p> <p>Review and approve all documentation (written, photographic, digital, or other)</p>	<p>Prior to grading, demolition, or building activities or any other disturbance of the project site.</p>

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<p>C. Written Data – National Park Service Heritage Documentation Programs (HABS) written documentation in Outline Format.</p> <p>An architectural historian and historian meeting the Secretary of the Interior’s Professional Qualification Standards shall oversee the preparation of the sketch plans for a period of no less than 60 days, photographs, research and written data.</p> <p>The documentation shall be submitted to the Director of Planning, Building or Code Enforcement or the Director’s designee and the City’s Historic Preservation Officer for review and approval. The required documentation after approval shall be filed with the San José Public Library’s California Room and the Northwest Information Center at Sonoma State University, the repository for the California Historical Resources Information System. All documentation shall be submitted on archival paper and must first be reviewed and approved by the City’s Historic Preservation Officer. Additional copies shall be made available to other local research institutions including History San José, and a copy with the City’s Planning Division.</p> <p>Three-Dimensional (3D) Laser Scans. Prior to issuance of any grading, demolition, or building permits or any other approval that would allow disturbance of the project site, the Forman’s arena building and associated features at 447 West St. John Street shall be laser scanned by a qualified historic resources consultant meeting the qualifications in the Secretary of the Interior’s Professional Qualification</p>	<p>accordance with Level III HABS.</p> <p>Documentation (drawings, photographs, and written data) filed with the San José Public Library’s California Room and the Northwest Information Center at Sonoma State University, the repository for the California Historical Resources Information System</p> <p>Video production of the Foreman’s Arena using Three-Dimensional Laser Scans</p>				

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<p>Standards The 3D laser scanning will utilize 3D Laser Scanning techniques to capture as-built survey of the existing exterior conditions of the property, to create a 3D point cloud model for digital documentation/archival purposes. A plan of the proposed procedures for the laser scanning shall be submitted as part of the required Action Plan prior to commencement. The documentation from the 3D Laser Scanning shall be reviewed and approved by the City’s Historic Preservation Officer. After City approval, the documentation shall be submitted to the Director of Planning, Building and Code Enforcement or Director’s designee and to History San José. Proof of receipt by History San José shall be submitted to the City following submittal</p> <p>Relocation by the Applicant and/or a Third Party: Prior to issuance of any demolition activities, the City’s contractor, or an interested third party, shall be required to advertise the availability of the four structures for relocation for a period of no less than 60 days. The advertisements must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The City contractor shall provide evidence (i.e., receipts, date and time stamped photographs, etc.) to the City’s Historic Preservation Officer that this condition has been met prior to the issuance of demolition permits.</p> <p>If the City’s contractor or third party agrees to relocate the structure, the following measures must be followed:</p> <p>1.The Director of Planning, Building and Code Enforcement or Director’s designee, based on</p>	<p>Advertise the availability of the structure for relocation</p> <p>Relocate agreed-to-be-relocated structures after finding a feasible receiver, undertaking an existing conditions study, protecting the building(s) during relocation, repair and</p>				

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<p>consultation with the City’s Historic Preservation Officer, must determine that the receiver site is feasible for the building.</p> <p>2.Prior to relocation, the City’s contractor or third party shall hire a historic preservation architect and a structural engineer to undertake an existing condition study that establishes the baseline condition of the building prior to relocation. The documentation shall take the form of written descriptions and visual illustrations, including those character-defining physical features of the resource that convey its historic significance and must be protected and preserved. The documentation shall be reviewed and approved by the City’s Historic Preservation Officer prior to the structure being moved.</p> <p>3.To protect the building during relocation, the City’s contractor shall engage a building mover who has experience moving similar historic structures. A structural engineer shall also be engaged to determine how the building needs to be reinforced/stabilized before the move.</p> <p>4.Once moved, the building shall be repaired and rehabilitated, as needed, by the City’s contractor or third party in conformance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties. In particular, the character-defining features shall be retained in a manner that preserves the integrity of the building for the long-term preservation and reuse.</p> <p>Upon completion of the repairs, a qualified architectural historian shall document and confirm that work to the structure(s) were completed in conformance with the Secretary of the Interior’s</p>	<p>rehabilitate the building(s) as needed in conformance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties.</p>				

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<p>Standards for the Treatment of Historic Properties and character-defining features were preserved. The project applicant shall submit a memo report supplement to the Action Plan to the City’s Historic Preservation Officer documenting the relocation, repair, and reuse.</p> <p>Salvage: If the City’s contractor does not relocate the Foreman’s Arena Building within the specified time, the structure(s) shall be made available to salvage companies facilitating the reuse of historic building materials. The City shall advertise the availability of the Foreman’s Arena Building for salvage for a period of no less than 30 days. The advertisement must include notification in a newspaper of general circulation, on a website, and notice placed on the project site. The City’s contractor shall provide evidence of the advertisement (i.e., receipts, date and time stamped photographs, etc.) to the Director of Planning, Building or Code Enforcement or the Director’s designee.. The City’s contractor must provide evidence to the City’s Historic Preservation Officer that this condition has been met prior to demolition activities.</p> <p>Commemoration and Public Interpretation: Prior to issuance of any building permits, the City shall retain a qualified historic resources consultant to initiate the development and design of a commemorative and interpretive program, exhibit, display including, but not limited to interpretive text and historic photographs, physical remnants from the site, art or sculpture, video,</p>	<p>Make salvage of historic building components available if the buildings are not made available for sale.</p> <p>Commemorate and curate the Foreman’s Arena using a commemorative and interpretive program, exhibit, display including, but not limited to</p>				

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interactive media, and/or oral histories. The proposed concepts for commemoration and public interpretation shall be submitted to the City Historic Preservation Officer for review and approval prior to issuance of any building permits and shall be developed in coordination with the City as the project is implemented. The final product shall be reviewed and approved by the City’s Historic Preservation Officer and implemented in a suitable publicly accessible location on the project site as determined by the Historic Preservation Officer, prior to the issuance of a certificate of occupancy.	interpretive text and historic photographs, physical remnants from the site, art or sculpture, video, interactive media, and/or oral histories.				
MM CUL-2.1: Cultural Sensitivity Training. Prior to issuance any grading activities, the City’s contractor shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee..	A subsurface exploration at the site shall be completed, by a qualified archaeologist in consultation with Native American representative, prior to any excavation activities.	Prior to grading activities	Director of Planning, Building and Code Enforcement, or the Director’s designee	Review and approve documentation of any t cultural sensitivity trainings.	Prior to grading activities

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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>MM CUL-2.2: Sub-Surface Monitoring. A qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall be present during applicable earthmoving activities including, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping. Archaeological monitors have the authority to halt construction with the finding of an archaeological discovery and to authorize construction to resume. Monitoring shall continue until the monitor has determined that excavation has reached the maximum depth at which archaeological remains could be expected to occur. Monitoring is intended to ensure that appropriate cultural protective measures are effective prior to initiation of construction activities and to document and protect cultural resources from inadvertent damage.</p> <p>1. The results of the monitoring shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee within 14 days of completion of monitoring activities. If 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, and the Director of Planning, Building and Code Enforcement (PBCE) or the Director’s designee and the City’s Historic Preservation Officer shall be notified. The on-site archaeologist and Native American representative shall 1)</p>	<p>A qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall be present during applicable earthmoving activities including, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping.</p> <p>Continue monitoring excavation has reached the maximum depth at which archaeological remains could be expected to occur.</p> <p>If prehistoric or historic resources are encountered during excavation and/or</p>	<p>Prior to grading activities</p>	<p>Director of Planning, Building and Code Enforcement, or the Director’s designee</p>	<p>Review the results documentation of the monitoring activities associated with MM CUL-2.2.</p>	<p>Prior to grading activities</p>

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evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include reinterment of artifacts and materials, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director’s designee and the City’s Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move away any cultural materials..	grading of the site, all activity within a 50-foot radius of the find shall be stopped, and the Director of Planning, Building and Code Enforcement (PBCE) or the Director’s designee and the City’s Historic Preservation Officer shall be notified.				
MM HAZ-1.1: Prior to any grading activities, a self-directed Site Management Plan (SMP) that includes a Health and Safety Plan (HASp) shall be prepared by a qualified environmental professional to guide activities during demolition, excavation, and construction due to the historic storage/use of hazardous materials on-site. The SMP is intended to provide guidelines and protocols in the event of encountering soil contamination during redevelopment to ensure construction worker safety. Components of the SMP shall include, but shall not be limited to: <ul style="list-style-type: none"> • A detailed discussion of the site background; • Soil management protocol to manage contaminated soils if encountered on-site; 	Coordinate with SCCDEH or equivalent regulatory agency to develop a SMP. Submit the SMP, as applicable, to the City of San José Environmental Compliance Officer and SCCDEH or equivalent regulatory agency for review. A qualified environmental professional shall complete any further work required by the SCCDEH or	Prior to grading or demolition activities.	Director of Planning, Building and Code Enforcement, or the Director’s designee	Review and approve SMP. Ensure that all measures are printed on all construction documents, contracts, and project plans.	Prior to grading or demolition activities.

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<ul style="list-style-type: none"> • Proper procedures as needed for demolition of existing structures, including any groundwater wells if identified to be present within the project area; • Management of stockpiles, including sampling, disposal, and dust and runoff control measures; • Implementation of a stormwater pollution prevention program; • Procedures for transporting and disposing the waste material generated during removal activities; • Procedures for stockpiling soil on-site if such stockpiling is necessary; • Procedures to ensure that fill and cap materials are verified as clean; • Truck routes for export of soil; • Staging and loading procedures and record keeping requirements; • Procedures to follow if evidence of an unknown historic release of hazardous materials (e.g., underground storage tanks, polychlorinated biphenyls [PCBs], asbestos containing materials, lead-based paints, etc.) is discovered during excavation or demolition activities; • Details on dewatering for treatment and discharge to the sanitary sewer or for permitting from the Regional Water Quality Control Board (RWQCB) for treatment and discharge to the storm drain system. <p>The SMP shall be provided to the Director of Planning, Building and Code Enforcement or the Director’s designee, and Environmental Services Department</p>	<p>equivalent regulatory agency.</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>				

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(ESD) Municipal Compliance Officer prior to any grading activities.					

Source: City of San José. *Milligan Parking Lot Project Supplemental Environmental Impact Report, March 2024.*