

RESOLUTION NO. 73259

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS CONCERNING MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE iSTAR GENERAL PLAN AMENDMENT AND PLANNED DEVELOPMENT ZONING PROJECT FOR WHICH AN ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the iStar General Plan Amendment and Planned Development Zoning Project (“Project”) requires the City of San Jose (“City”) to approve Amendments to the City of San Jose 2020 General Plan (file nos. GP03-02-05/GPT03-02-05 and GP04-02-02/GPT04-02-02), Planned Development Zoning file no. PDC04-100, Planned Development Permits, amendments to the Edenvale Area Development Policy, Tentative and/or Vesting Tentative Maps and Final Maps, agreements for public infrastructure improvements, various permits and approvals necessary for the onsite and offsite infrastructure, right-of-way acquisition for public improvements and other permits and approvals;

WHEREAS, prior to the adoption of this Resolution, the Planning Commission of the City of San José has certified that the Final Environmental Impact Report (“FEIR”), for the iStar General Plan Amendment and Planned Development Zoning Project was completed in accordance with the requirements of the California Environmental Quality Act (“CEQA”) of 1970, as amended, and state and local guidelines; and

WHEREAS, no appeal of the certification of the FEIR by the Planning Commission was filed with the City of San Jose; and

WHEREAS, the project analyzed under the FEIR consisted of the following components: 1) An amendment to the San José 2020 General Plan Land Use/Transportation Diagram designation for the site from *Industrial Park* to *Mixed Use with No Underlying Land Use Designation*, 2) An amendment the text of Appendix F of the General Plan to identify the range of industrial and commercial development proposed by the project and to increase the maximum allowable building height to 120 feet on the site, and 3) A rezoning on the site, from the existing *A(PD) Planned Development* zoning designation to *IP(PD)-Planned Development* to allow for the development of up to one million square feet of industrial office/research and development (R&D) uses and up to 450,000 square feet of commercial/retail uses on the project site; and

WHEREAS, the City Council of the City of San José is the decision-making body for the iStar General Plan Amendment and Planned Development Zoning Project (“Project”); and

WHEREAS, the City Council of the City of San José intends to approve actions related to the Project; and

WHEREAS, CEQA requires that in connection with the approval of a project for which a FEIR has been prepared which identifies one or more significant environmental effects, the decision-making body of a responsible agency must make certain findings regarding those significant effects on the environment identified in the FEIR; and

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

THAT THE CITY COUNCIL hereby finds that it has independently reviewed and analyzed the FEIR and other information in the record and has considered the information contained therein including the written and oral comments received at the public hearings on the FEIR and on the Project, prior to acting upon or approving the Project, and has found that the FEIR represents the independent judgment and analysis of the City of San José as Lead Agency for the Project, and designates the Director of Planning, Building and Code Enforcement at his office at 200 East Santa Clara Street, San José, California 95113-1905, as the custodian of documents and records of proceedings on which this decision is based; and

THAT THE CITY COUNCIL does hereby make the following findings with respect to the significant effects on the environment of the Project:

I. FINDINGS CONCERNING SIGNIFICANT ENVIRONMENTAL EFFECTS

A. LAND USE

1. Impacts

Development of sensitive commercial uses in proximity to existing industrial uses could result in land use conflicts and future limitations on the existing industrial development, and possible conflicts between the proposed uses.

Adjacent industrial uses could expose future development on the site, which may include sensitive land uses, to adverse effects from outdoor industrial activities, heavy truck use, generation of noise, dust, odors and litter, and accidental releases of hazardous materials used and stored nearby.

Mitigation

The project shall implement either measures 1 and 2 or measures 3 and 4 below. The appropriate combination of measures shall be determined at the PD Permit stage.

1. Any sensitive commercial uses, such as day care centers, schools, medical clinics, and community centers, shall be required to be located at least 1,000 feet from any hazardous materials use or storage facility, or any site that could be used for such a facility, such as the following:

- Hazardous materials meeting the California Occupational Health and Safety Administration’s (Cal/OSHA) definition of a material that presents a potential for catastrophic event;
- Chemicals that have a National Fire Protection Agency (NFPA) or a Hazardous Materials Identification System (HMIS) rating of two or greater for flammability, health, reactivity, and fire; and
- Underground storage tanks (USTs) or aboveground storage tanks (ASTs) that store hazardous materials.

If the safety and health objectives of the 1,000-foot separation requirement can be achieved to the satisfaction of the Director of Planning, Building, and Code Enforcement through an alternative combination of site design, building orientation, construction techniques, or other similar methods, than a lesser separation may be approved through issuance of a Planned Development Permit.

-AND-

2. Sensitive commercial uses shall be required to prepare and implement an emergency response plan for responding to circumstances that include the accidental release of hazardous materials. This plan could include designation of responsible persons, regular drills, and the identification of a “shelter in place” response that includes keeping all persons indoors, shutting windows, and shutting down air circulation systems.

-OR-

3. To ensure that hazardous materials impacts are minimized, the following types of hazardous materials shall be restricted from use on-site:
 - Toxic and highly toxic compressed gases;
 - Class 4 liquid and solid oxidizers
 - Unclassified detonatable and Class I organic peroxides;
 - Unstable reactive materials; and
 - Flammable oxidizing gases.

-AND-

4. Industrial uses on the site shall record a deed restriction that precludes the storage and/or use of acutely hazardous materials on the project site in amounts that could lead to significant off-site consequences (substantial human health and safety risks from exposure/inhalation/explosion) in the event of an accidental release or upset, for as long as any day care centers or other centers of vulnerable populations are operational within 1,000 feet.

Should private power generation (including emergency generators) and/or an electrical substation be proposed for this site, a detailed analysis of impacts, including noise, air quality, and hazardous materials use will be prepared. The analysis will address site specific impacts based on location, design, and the presences of sensitive receptors in the vicinity. If the analysis identifies the likelihood of significant impacts occurring, a subsequent CEQA document would be required.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impacts to **less than significant levels**.

2. Impact

The development of the proposed project would result in the loss of approximately 74 acres of land designated by the U.S. Department of Conservation as prime agricultural farmland.

Mitigation

Deleted:

There are no feasible measures that could reduce this significant impact to agricultural land to a less than significant level.

Finding

The proposed project would result in impacts to agricultural land at a **significant unavoidable level**.

B. TRANSPORTATION

1. Impacts

The proposed project would result in a significant impact to one EADP Gateway: US 101 and Blossom Hill Road.

The proposed project would result in significant impacts associated with increased congestion at four local City of San José intersections: 1) Monterey Highway and Blossom Hill Road (S), 2) US 101 and Blossom Hill Road (W), 3) San Ignacio Avenue and Great Oaks Boulevard, and 4) San Ignacio Avenue and Bernal Road.

The proposed project would result in significant impacts to one of the CMP study intersections: US 101 and Blossom Hill Road (W).

Mitigation

The project shall make a fair-share contribution toward the EADP improvements to the satisfaction of the Director of Public Works, including adding a third right-turn lane to the southbound US 101 off-ramp, at the US 101 and Blossom Hill Road (W) intersection.

The project shall add a second westbound right-turn lane at the Monterey Highway and Blossom Hill Road (S) intersection. This improvement would require coordination with

Caltrans and would involve widening and modifying the east leg of the intersection, as well as traffic signal modifications.

The project shall convert the southbound shared through/right-turn lanes into separate through and right-turn lanes, and construct dual northbound left-turn lanes at the San Ignacio Avenue and Great Oaks Boulevard intersection. These improvements would require widening the north leg of the intersection, possible right-of-way acquisition, realigning the intersection, and modifying the existing traffic.

The project shall extend and widen the southbound left-turn lanes and interconnect the traffic signal with the other traffic signals located along Bernal Road. These improvements will require some median island reconstruction and traffic signal modifications.

The project shall include a Transportation Demand Management (TDM) program to minimize overall vehicle trip generation. The specific mix of TDM measures to be implemented shall be determined at the Planned Development Permit stage, to the satisfaction of the Director of Planning, but may include:

- Bike racks
- Showers
- Van/carpool parking
- Ride share matching program
- Parking slots allocated for motorcycles
- Site design of pedestrian pathways to provide access to the Santa Teresa Light Rail Station.
- Physical improvements, such as sidewalk improvements, landscaping, and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel
- Connection to regional bikeway/pedestrian trail system
- Transit information kiosks
- Carpool/vanpool program, e.g., carpool ridematching for employees, assistance with vanpool formation, provision of vanpool vehicles, etc.
- Transit Use incentive program for employees, such as on-site distribution of passes and/or subsidized transit passes for local transit system
- Preferential parking for electric or alternatively-fueled vehicles
- Guaranteed ride home program
- Flextime policy
- On-site child care
- Showers and lockers for employees bicycling or walking to work.
- Secure and conveniently located bicycle parking and storage for workers
- Parking cash-out program for employees (non-driving employees receive transportation allowance equivalent to the value of subsidized parking

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impacts to **less than significant levels**.

2. Impact

Pedestrian facilities are adequate except along Via del Oro north of the SR 85 overpass where there is no sidewalk.

Mitigation

The project shall provide and construct sidewalks on Via del Oro north of the SR 85 overpass.

Finding

The implementation of the above FEIR mitigation measure will reduce the potentially significant impact to a **less than significant level**.

C. NOISE

1. Impact

Construction-generated noise from the project could be approximately 80 dBA at the nearby sensitive receptors. This would result in a significant temporary noise impact. The proposed project, therefore, would result in short-term increases in noise levels in the project area, especially during grading, below grade work, and pile driving.

Mitigation

For construction activity within 500 feet of residential uses, the project shall limit all construction-related activities on weekdays between 7:00 AM and 7:00 PM, Monday through Friday. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan, and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

The project shall prohibit and post signs prohibiting unnecessary idling of internal combustion engines.

The project shall locate all stationary noise-generating equipment, such as air compressors and portable generators, as far as practicable from noise-sensitive land uses.

The project shall designate a “noise disturbance coordinator” who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.

The project shall equip all internal combustion engine-driven equipment with mufflers which are in good condition and appropriate for the equipment.

The project shall utilize “quiet” models of air compressors and other stationary noise sources where technology exists.

If pile driving is required, the project shall implement site-specific noise and vibration attenuation measures under the supervision of a qualified acoustical consultant such as the following measures:

- Multiple pile drivers shall be considered to expedite this phase of project construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced.
- Temporary noise control blanket barriers shall shroud pile drivers. Such noise control blanket barriers can be rented and quickly erected.
- Pre-drill foundation pile holes. Pre-drilling reduces the number of blows required to seat the pile. The associated noise reduction would be based on the soil conditions of the site.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

2. Impact

The General Plan guidelines identify satisfactory noise levels of up to 70 L_{dn} for industrial uses. Operation of the proposed project may expose adjacent industrial uses to noise levels above 70 L_{dn} . This would be a significant impact.

Mitigation

The project shall install standard gaskets around the large truck loading dock openings to control noise at loading docks.

The project shall control noise from building mechanical systems, through acoustical louvers or baffles in air transmission paths, parapet walls, rooftop screen walls and sound attenuators, so that it does not exceed 70 L_{dn} at the adjacent industrial boundary.

Noise control measures included in the building mechanical systems shall be reviewed and measurements shall be made during the design phase by a qualified acoustical specialist to verify that noise impacts have been mitigated. The acoustical specialist shall prepare a report for submittal to the City demonstrating that necessary treatments have been included in the design prior to issuance of a building permit.

Operation noise from the proposed project shall be required to conform to the noise performance standards identified in Tables 20-105 and 20-135 of the Zoning Ordinance.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

3. Impact

The General Plan guidelines identify satisfactory noise levels up to 70 L_{dn} for industrial and up to 60 L_{dn} for commercial uses. The site is exposed to noise levels above the satisfactory noise levels for the proposed industrial and commercial uses. Therefore, future commercial and industrial development could be subject to noise levels in excess of the City's guidelines.

Mitigation

The project shall complete a detailed, design-level noise analyses for all proposed development at the Planned Development Permit stage demonstrating that the design would achieve an interior L_{dn} of 45 dBA or less, in accordance with the Environmental Protection Agency and the City's General Plan Noise Policy 1.

Outdoor activity areas along the Monterey Highway and SR 85 frontages shall be shielded and located on the sides of buildings facing away from these thoroughfares and the buildings themselves shall be set back as far as possible from these sources. Outdoor noise exposures in these areas shall not exceed 70 dBA for industrial uses and 60 dBA for commercial uses at the property line, and 60 dB L_{dn} for active outdoor areas on the site.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

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D. AIR QUALITY**1. Impact**

The project emissions would exceed the threshold of significance for reactive organic gases, nitrogen oxides, and PM₁₀. Therefore, the proposed project would have a significant impact on regional air quality.

Mitigation

The project shall include a Transportation Demand Management (TDM) program to minimize overall vehicle trip generation. The specific mix of TDM measures to be implemented shall be determined at the Planned Development Permit state, to the satisfaction of the Director of Planning, but may include:

- Van/carpool parking
- Ride share matching program
- Parking slots allocated for motorcycles
- Site design of pedestrian pathways to provide access to the Santa Teresa Light Rail Station
- Physical improvements, such as sidewalk improvements, landscaping, and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel
- Connection to regional bikeway/pedestrian trail system
- Transit information kiosks
- Carpool/vanpool program, e.g., carpool ridematching for employees, assistance with vanpool formation, provision of vanpool vehicles, etc.
- Transit Use incentive program for employees, such as on-site distribution of passes and/or subsidized transit passes for local transit system
- Preferential parking for electric or alternatively-fueled vehicles
- Guaranteed ride home program
- Flextime policy
- On-site child care
- Showers and lockers for employees bicycling or walking to work.
- Secure and conveniently located bicycle parking and storage for workers
- Parking cash-out program for employees (non-driving employees receive transportation allowance equivalent to the value of subsidized parking
- Have sidewalks and shade trees on all internal driveways
- Mark safe pedestrian paths in all parking lots

The following measure has been included in the project as a condition of project approval: To minimize the construction impacts from diesel emissions on nearby sensitive receptors, the project shall, as a condition of approval at the Planned Development permit stage, implement the following measures to reduce combustion emissions from construction equipment where applicable and feasible:

- Minimize the idling time of diesel powered construction equipment to three minutes;
- Use alternative fueled construction equipment (clean natural gas (CNG), biodiesel, water emulsion fuel, electric);

- Use add-on control devices such as diesel oxidation catalysts or particulate filters;
- Use diesel construction equipment that meets the ARB's 200 or newer certification standard for off-road heavy-duty diesel engines;
- Phase the construction of the project; and
- Limit the hours of operation of heavy duty equipment.

In addition, a feasibility analysis of additional air quality measures (qualitatively and quantitatively, when possible) shall be required as a condition of approval for the Planned Development permit. If the measures are determined feasible by the Director of Planning, they will be required as a condition of the Planned Development permit. The additional measures may include:

- Providing Class I or Class II bicycle facilities that link the project site with the nearby light-rail station, the Blossom Hill Caltrain station, and bicycle lanes on Santa Teresa Boulevard and SR 82;
- Ensuring that all interchange improvements allow for safe pedestrian crossings through the use of bulb-outs and count-down signals;
- Charging employees and patrons a parking fee;
- Requiring big box retail tenants to provide free home-delivery service to customers who take transit to the store;
- Utilizing only electric or natural gas forklifts and landscaping equipment in the project operations and the operations of tenants;
- Providing 110 and 220 volt outlets at the loading docks and requiring all trucks to connect with these outlets to power their auxiliary equipment;
- Limiting the idling of trucks at the project to three minutes by posting signs in loading zones;

Finding

The implementation of the above FEIR mitigation measures will lessen the significant impact, but not to a less than significant level. This cumulative impact, therefore, will be **significant and unavoidable**.

2. Impact

The effects of construction activities would be increased dustfall and locally elevated levels of PM₁₀ downwind of construction activity. Construction dust may impact nearby properties.

Mitigation

All construction vehicles shall be properly maintained and equipped with exhaust mufflers that meet State standards.

Newly disturbed soil surfaces shall be watered down regularly by a water truck(s) or by other approved method maintained on site during all grading operations. Construction grading activity shall be discontinued in wind conditions that in the opinion of the Public

Works Construction Inspector cause excessive neighborhood dust problems. Wash down of dirt and debris into storm drain systems shall not be allowed.

Construction activities shall be scheduled so that paving and foundation placement begin immediately upon completion of grading operation.

All aggregate materials transported to and from the site shall be covered in accordance with Section 23114 of the California Vehicle Code during transit to and from the site.

The following construction practices shall be implemented during all phases of construction on the project site:

- Water to control dust generation during demolition of structures and break-up of pavement.
- Water or cover stockpiles of debris, soil, sand or other materials that can be blown by the wind.
- Cover all trucks hauling demolition debris, soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Sweep paved streets daily (preferably with water sweepers) including all paved access roads, parking areas, and staging areas at construction site.
- Sweep adjacent streets daily (preferably with water sweepers) if visible soil material is carried onto these public streets.
- Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.)
- Limit traffic speed on unpaved roads to 15 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

E. VISUAL AND AESTHETICS

1. Impact

Future development on the site would result in a significant change in visual character on the site, as compared to the existing conditions, and to the extent that existing views of the hills are obscured, could block views of scenic resources from SR 85 and Monterey Road.

Mitigation

Future development on the site will conform to landscaping, design, setbacks, and height requirements in the City’s adopted Industrial and Commercial Design Guidelines. Consistency with these guidelines would be specifically evaluated for proposed development at the Planned Development Permit stage.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impacts, but not to a less than significant level. This cumulative impact, therefore, will be **significant and unavoidable**.

F. BIOLOGICAL RESOURCES

1. Impact

Future development under the proposed land uses on the project site could result in the removal of up to 2,275 non-ordinance-size trees and up to 55 ordinance-size trees.

Mitigation

Prior to approval of a Planned Development (PD) Permit for any phase of development on the project site, a comprehensive tree survey, which identifies the number of orchard and non-orchard trees on the site, prepared by a certified arborist or licensed landscape architect for the parcel(s) being developed shall be required. The site design and PD Permit approval shall incorporate preservation of existing trees to the maximum extent practicable, to the satisfaction of the Director of Planning, Building, and Code Enforcement (PBCE). In locations where preservation of existing trees is not feasible due to site constraints, relocation and replanting of significant existing trees (especially native species) shall be incorporated into the project, where feasible and appropriate, to the satisfaction of the Director of PBCE.

Trees to be removed as part of the project shall be replaced at the following ratios:

- Ordinance-size trees to be removed shall be replaced at a minimum ratio of 4:1 (4 replaced for each 1 removed).
- Ordinance-size trees of native species to be removed shall be replaced on the site, at a ratio of 6:1 (six replaced for each one removed).
- Trees between 12-18 inches in diameter to be removed as part of the project shall be replaced at a ratio of 2:1.
- Trees less than 12 inches in diameter to be removed as part of the project would be replaced at a ratio of 1:1.

No mitigation is required for the removal of non-ordinance-size orchard trees, which are considered an agricultural resource not subject to City regulation and not a biologic resource.

The species and exact number of trees to be planted on the site shall be determined in consultation with the City Arborist and to the satisfaction of the Director of the Department of Planning, Building and Code Enforcement. In the event the developed portion of the project site does not have sufficient area to accommodate the required tree mitigation, one or both of the following measures will be implemented at the PD Permit stage:

- An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools, or installation of trees on adjacent properties for screening purposes, to the satisfaction of the Director of PBCE.
- A donation equal to the replacement/installation cost per replacement tree will be made to Our City Forest or a similar organization for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. The replacement plan and the per-tree donation amount shall be determined in coordination with the selected organization, to the satisfaction of the Director of Planning, Building, and Code Enforcement. A donation receipt for off-site tree planting will be provided to the Director of Planning, Building, and Code Enforcement prior to removal of the trees.

The following tree protection measures shall also be included in the project in order to protect trees to be retained during construction:

Pre-construction Treatments

- The applicant shall retain a consultant arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
- Fence all trees to be retained to completely enclose the tree protection zone prior to demolition, grubbing, or grading. Fences shall be as approved by the consulting arborist and are to remain until all grading and construction is completed.
- Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.

Recommendations for Tree Protection During Construction

- No grading, construction, demolition or other work shall occur within the tree protection zone. Any modifications must be approved and monitored by the consulting arborist.
- Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist.
- Supplemental irrigation shall be applied as determined by the consulting arborist.

- If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- No excess soil, chemicals, debris, equipment, or other materials shall be dumped or stored within the tree protection zone.
- Any additional tree pruning needed for clearance during construction must be performed or supervised by an arborist.
- As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near the trees shall be designed to withstand differential displacement.

A final report on tree protection measures, and the health of the protected trees, shall be submitted to the City's Environmental Principal Planner, and be prepared to the satisfaction of the Director of PBCE, after grading and construction activities have been completed.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

2. Impacts

There is potential for northern harriers to forage and nest in the project area, especially the open fields on the project site. The development of the proposed project, therefore, would impact foraging and nesting habitat for the northern harrier.

There is potential for kites to forage in the open field and orchard on the project site and nest in the large trees on the site. Therefore, development of the proposed project and removal of trees on-site may impact kites.

Several raptors are known to occur in the project vicinity and may breed either on the site or close enough that nest may be potentially disturbed or destroyed by project-related construction disturbance. Development of the proposed project, therefore, could impact nesting raptors on the site or in the immediate site vicinity.

There are records of breeding shrikes in project vicinity, and they may breed in the larger trees and shrubs on the site. While development in areas where loggerhead shrikes forage is unlikely to have a significant impact on their populations, development in areas with tall trees and shrubs could cause the destruction of nests during the breeding season (February through August). Development of the proposed project, therefore, could impact nesting loggerhead shrikes.

Mitigation

The project shall implement one of the following two measures to reduce impacts to nesting raptors:

1. Avoidance. Construction shall be scheduled to avoid the nesting season to the extent feasible. In the South San Francisco Bay area, most raptors breed from January through August. If construction can be scheduled to occur between September and December, the nesting season would be avoided, and no impacts to nesting birds/raptors would be expected.

-OR-

2. Preconstruction/Pre-disturbance Surveys. If it is not feasible to schedule construction between September and December, preconstruction surveys for nesting raptors shall be conducted by a qualified ornithologist to ensure that no active nests will be disturbed or destroyed during project implementation. Preconstruction surveys for nesting birds/raptors should be conducted no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (January through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist would inspect the ground in open fields, as well as all trees in and immediately adjacent to the impact areas for nesting birds and raptor. If an active nest is found close enough to the construction area to be disturbed by these activities, the ornithologist, in consultation with CDFG, would determine the extent of a construction-free buffer zone (typically 250 feet) to be established around the nest.

Inhibit Nesting. If vegetation is to be removed by the project and all necessary approvals have been obtained, potential nesting substrate (e.g., bushes, trees, grass, burrows) that will be removed by the project shall be removed before the start of the nesting season (January), if feasible, to help preclude nesting. Removal of vegetation or structures to be removed by the project shall be completed outside of the nesting season, which extends from January through August.

A final report on nesting birds and raptors, including any protection measures, shall be submitted to the Environmental Principal Planner, and be completed to the satisfaction of the Director of PBCE prior to start of grading.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

3. Impact

Given the flat nature of the site, there is a potential for owls to locate onto the project site at any time. Development of the proposed project could result in impacts to individual burrowing owls if owls moved onto the site prior to project construction. If owls are using active nests when construction activity commences, grading of the site could result

in destruction of nests and individual owls. Development of the proposed project, therefore, could impact burrowing owls.

Mitigation

Preconstruction surveys shall be conducted, per California Department of Fish and Game (CDFG) guidelines, no more than 30 days prior to the start of site grading. If no burrowing owls are found, then no further mitigation is warranted. If owls are located on or immediately adjacent to the site, a qualified burrowing owl biologist in consultation with CDFG would establish a construction-free buffer zone around the active burrow. No activities, including grading or other construction work, shall proceed until the buffer zone is established, or a CDFG approved relocation of the birds has been performed [such relocations can occur only during the non-reproductive season (September through January)]. Regardless of the time of year when burrowing owls are observed on the site, implementation of one of the following two mitigation measures is necessary:

- If preconstruction surveys confirm that burrowing owls occupy the site, then avoidance of impacts to the habitat utilized by these owls would be considered the preferred mitigation method. In order to effectively avoid habitat utilized by burrowing owls, a buffer distance of 75 meters shall be required during the nesting season (February 1 through August 31). During the non-nesting season, this distance could be reduced to 50 meters. Avoidance would allow the use of areas currently occupied by burrowing owls to continue uninterrupted.
- If preconstruction surveys determine that burrowing owls occupy the site, and the Director of PBCE finds that avoiding development of occupied areas is not feasible, then the owls may be evicted outside of the breeding season, with the authorization of the California Department of Fish and Game (CDFG). The CDFG typically only allows eviction of Owls outside of the breeding season [only during the non-breeding season (September 1-January 31)] by a qualified ornithologist, and generally requires habitat compensation on off-site mitigation lands.

CDFG guidelines recommend that off-site mitigation lands shall be set-aside at a ratio of 6.5 acres/pair or individual owl (if only an individual is observed). A single, large contiguous mitigation site is preferable to several smaller, separated sites. The mitigation site would preferably support owl nesting and be contiguous with or at least proximal to other lands supporting burrowing owls. Sites with a long history of burrowing owl use or that have at least been in a suitable condition for occupancy are preferred. Grazing is compatible with burrowing owl occupancy.

- A final report of Burrowing Owls, including any protection measures, shall be submitted to the Environmental Principal Planner, and completed to the satisfaction of the Director of Planning, Building and Code Enforcement prior to start of grading.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

4. Impact

Development of the proposed project could impact approximately 35 acres of burrowing owl habitat.

Mitigation

There are no feasible measures that could reduce the project's potential impacts on burrowing owl habitat. The City finds that mitigation of the proposed project's potential impacts on burrowing owl habitat is infeasible for the following reasons.

Compensation for the loss of burrowing owl habitat typically requires that 6.5 acres of suitable off-site land be purchased and set aside for potential habitat mitigation for each individual owl or pair of owls residing on the project site. The iStar site is suitable for potential burrowing owl habitation. However, surveys conducted for the proposed project identified no evidence of recent habitation of the site by burrowing owls on the site. No burrowing owls are known to currently occupy the site. Therefore, no adequate basis exists for quantifying an appropriate amount of off-site mitigation land.

Full or partial compensation for impacts to burrowing owl habitat can also occur in the form of purchasing sufficient credits at a mitigation bank that services the area, or some combination of onsite and offsite mitigation. If the mitigation is to be done partially onsite and partially offsite, however, it should be noted that relatively small habitat areas left onsite would be considered insufficient mitigation unless they are contiguous with suitably protected open space areas. In the case of the project site, which is surrounded by development, there are no contiguous open space areas. Additionally, although it would lessen impacts to owls overall, complete or partial mitigation that occurs offsite and outside of the local area (i.e., outside of Santa Clara County) would result in a significant unavoidable loss of burrowing owl nesting and foraging habitat in the local area. At this time, there are no known mitigation banks within Santa Clara County that offer credits for burrowing owl habitat.

Finding

This impact will be **significant and unavoidable**.

5. Impact

Pallid bats may forage on the project site and roost in the large oak trees and old buildings on the project site. While foraging habitat is available elsewhere, any

demolition of potential roosts, such as large trees or old buildings, would constitute a significant impact.

Mitigation

Construction activities involving potential roost sites shall be conducted after the maternity roost season. The maternity roost season begins as early as March 1 and the young are volant (fly off on their own) by July 31.

Pre-demolition and pre-construction surveys for roosting bats shall be conducted by a qualified bat biologist after the maternity season and before the wet season (i.e., between August 15 and October 15) and 14 days prior to any removal of buildings or removal of trees greater than 12 inches in diameter. No activities that would result in disturbance to active roosts shall proceed prior to the completed surveys. If no active roosts are found, then no further action shall be warranted. If a maternity roost is present, a qualified bat biologist shall determine the extent of construction-free zones around active nurseries located during surveys. CDFG shall also be notified of any active nurseries within the construction zone.

Initial surveys can be conducted any time prior to the pre-demolition surveys to establish if a particular location has supported, or supports, roosting bats. A survey for indications of nursery roosts would be conducted prior to March 1. If indications of a maternity roost are present, the structure can not be removed or modified before a maternity roost becomes reestablished.

If indications of a maternity roost are present, bats can be excluded from the building or tree after July 31 and before March 1 to prevent the formation of maternity colonies. Such non-breeding bats can be safely evicted, under the direction of a qualified bat biologist, by sealing crevices and providing them one-way exclusion doors. Such a device would be employed in all expansion joints during dark hours as a temporary device to prevent the formation of a maternity colony. In order not to exclude all potential maternity roost habitat at once, only one half of the expansion joints would be sealed at any one given time during the maternity colony-nesting season. This action would allow bats to leave during dark hours, thus increasing their chance of finding new roosts with a minimum of potential predation during daylight.

A final report of pallid bats, including any protection measures, shall be submitted to the Director of Planning, Building and Code Enforcement prior to start of grading.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

G. CULTURAL RESOURCES

1. Impact

The project site is located within an archaeologically sensitive area and there is a potential to uncover previously unrecorded prehistoric or historic cultural resources during ground disturbing construction activities.

Mitigation

A qualified archaeologist shall be present on site to monitor subsurface construction excavation activities into native soils during future development on the site.

Construction personnel involved in the site clearing and subsequent grading and trenching shall be warned that there is a potential for the discovery of archaeological materials. Indicators of archaeological site deposits include, but are not limited to, the following: darker than surrounding soils, evidence of fire (ash, fire altered rock and earth, carbon flecks), concentrations of stone, bone and shellfish, artifacts of these materials and burials, either animal or human.

In the event any unanticipated prehistoric or significant historic era cultural materials are exposed during construction, all grading and/or excavation operations within 50 feet of the find shall be halted, the Director of Planning, Building and Code Enforcement shall be notified, and a qualified professional archaeologist shall examine the find and make appropriate recommendations regarding the significance of the find and the appropriate mitigation. The recommendation shall be implemented and could include collection, recordation, and analysis of any significant cultural materials.

In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius of the find in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:

- a. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-enter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

- b. A final report shall be submitted to the Director of Planning, Building and Code Enforcement. This report shall contain a description of the mitigation program that was implemented and its results, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusion, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Planning, Building and Code Enforcement.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

H. HYDROLOGY AND WATER QUALITY

1. Impact

The project would increase storm water runoff from the site above existing conditions, and would exacerbate impacts to existing downstream drainage conditions in the project area.

Mitigation

The proposed project shall utilize structural and nonstructural control measures and management practices to minimize the addition of runoff volume and pollution to the storm water system, and complete a hydromodification management program approved by the Regional Water Quality Control Board (RWQCB).

All future development shall include post-construction Best Management Practices (BMPs) and HMP requirements based on the detailed site plans. These measures are likely to include on-site infiltration of runoff, first flush diversion, flow attenuation by use of open vegetated swales and natural depressions, storm water retention or detention structures, oil/water separators, porous pavement, or, a combination of these practices. Justification for the combination of BMPs used on the site will be required from the project proponent/applicant at the time the Planned Development Permit is proposed for any specific on-site development. The proposed BMPs shall be required to comply with the NPDES C.3 permit provisions and City Policy 6-29.

BMPs to reduce the volume of runoff from the site, such as detention/retention units or infiltration structures, shall be designed to treat storm water runoff equal to:

1. the maximized storm water quality capture volume for the area, based on the City of San José precipitation gage with adjustments made directly proportionate to Mean Annual Precipitation, determined using the formula and volume capture coefficients set forth in Urban Runoff Quality Management, WEF Manual of Practice No. 23/

- ASCE Manual of Practice No. 87, (1998), pages 175-178 (e.g., approximately the 85th percentile 24-hour storm runoff event); or
2. the volume of annual runoff required to achieve 80 percent or more capture, determined in accordance with the methodology set forth in Appendix D of the California Storm water Best Management Practices Handbook, (1993), using local rainfall data.

BMPs designed to increase flow capacity, such as swales, sand filters, or wetlands, shall be sized to treat:

1. 10% of the 50-year peak flow rate [approximately eight cfs]; or
2. the flow of runoff produced by a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the applicable area, based on historical records of hourly rainfall depths; or
3. the flow of runoff resulting from a rain event equal to at least 0.2 inches per hour intensity [approximately 10 cfs].

The selected BMPs must:

1. Address significant erosion potential and sediment control (C.3.a.iv).
2. Reduce post-development pollutant loads from a site to the maximum extent practicable (C.3.b.i).
3. Ensure that post-project runoff pollutant levels do not exceed pre-project pollutant levels for projects that discharge directly to listed impaired water bodies under Clean Water Act Section 303(d)(C.3.b.ii).

According to preliminary calculations for a hydraulic design, assuming 76 percent impervious surface on the site, the project shall be required to detain a water volume size of approximately 19.8 acre-feet. This requires setting aside approximately 4.3 acres (five feet deep), or approximately 24 percent, of the total open space on the site for detention/retention.

Land can be set aside to construct the required basin on-site or the basin can be constructed underground, underneath a parking lot. The exact location and configuration of the required detention basin shall be determined to the satisfaction of the Director of Planning, Building, and Code Enforcement and prior to the issuance of a Planned Development Permit.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

2. Impacts

Construction of the proposed project could cause a significant temporary increase in the amount of contaminants in storm water runoff during construction.

The project's storm water runoff both during and after construction would contain urban pollutants, such as oil, grease, plastic, and metals that could impact water quality in local drainage systems receiving storm water runoff. The pollutants would occur in higher amounts than currently exist, due to increased development and activity on the site.

Mitigation

Prior to construction of any phase of the project, applicant(s) shall submit a Storm Water Pollution Prevention Plan (SWPPP) and a Notice of Intent (NOI) to the State of California Water Resource Quality Control Board to control the discharge of storm water pollutants including sediments associated with construction activities. Along with these documents, the applicant may also be required to prepare an Erosion Control Plan. The Erosion Control Plan may include Best Management Practices (BMPs) as specified in the California Storm Water Best Management Practice Handbook for reducing impacts on the City's storm drainage system from construction activities. The SWPPP shall include control measures during the construction period for:

- Soil stabilization practices
- Sediment control practices
- Sediment tracking control practices
- Wind erosion control practices and
- Non-storm water management and waste management and disposal control practices.

Prior to issuance of a grading permit, the applicant shall submit copies of the NOI and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works. The applicant shall also maintain a copy of the most current SWPPP on-site and provide a copy to any City representative or inspector on demand.

Each phase of development shall comply with the City of San José Grading Ordinance, including erosion- and dust-control during site preparation, and with the City of San José Zoning Ordinance requirement for keeping adjacent streets free of dirt and mud during construction.

The project shall comply with Provision C.3 of NPDES Permit Number CAS0299718, which provides enhanced performance standards for the management of storm water for new development.

Prior to issuance of a Planned Development Permit, each phase of development shall include provision for post-construction structural controls in the project design in compliance with the NPDES C.3 permit provisions, and shall include Best Management Practices (BMP) for reducing contamination in storm water runoff as permanent features of the project. The specific BMPs to be used in each phase of development shall be determined based on design and site-specific considerations and determined prior to issuance of Planned Development Permits. Post-construction BMPs and design features could include, but are not limited to, the following:

- Infiltration basins – shallow impoundments designed to collect and infiltrate storm water into subsurface soils.
- Infiltration trenches – long, narrow trenches filled with permeable materials designed to collect and infiltrate storm water into subsurface soils.
- Permeable Pavements – permeable hardscape that allows storm water to pass through and infiltrate subsurface soils.
- Vegetated Filter Strips – linear strips of vegetated surface designed to treat surface sheet flow from adjacent surfaces.
- Vegetated Swales – shallow, open channels with vegetated sides and bottom designed to collect, slow, and treat storm water as it is conveyed to downstream discharge point.
- Flow-through Planter Boxes – structures designed to intercept rainfall and slowly drain it through filter media and out of planter.
- Hydromodification Separators – flow through structures with a settling or separation unit that removes sediments and other pollutants.
- Media Filtration Devices – two chamber system including a pretreatment settling basin and a filter bed.
- Green Roofs – vegetated roof systems that retain and filter storm water prior to drainage off building rooftops.
- Wet Vaults – subsurface storage system designed to fill with storm water during larger storm events and slowly release it into the conveyance system over a number of hours.
- New trees planted within 30 feet of impervious surfaces and existing trees kept on a site if the trees' canopies are within 20 feet of impervious surfaces, 100 square feet of Credit may be give for each new deciduous tree, and 200 square feet of Credit may be given for each new evergreen tree. The Credit for existing trees is the square-footage equal to one-half of the existing tree canopy. Nor more than 25 percent of a site's impervious surface can be treated through the use of trees.

The trees selected shall be suitable species for the site conditions and the design intent. Trees should be relatively self-sustaining and long-lived. Protection during construction shall be in the form of minimizing disruption of the root system. Trees required by the City of San José for tree removal mitigation, to fulfill City of San José street tree requirements, or to meet storm water treatment facility planting requirements will not count toward Post-Construction Treatment Control Measure Credit.

Trees approved for Post-Construction TCM Credit shall be maintained and protected on the site after construction and for the life of the development (until any approved redevelopment occurs in the future). During the life of the development, trees approved for Post-Construction TCM Credit shall not be removed without approval from the City. Trees that are removed or die shall be replaced within six (6) months with species approved by the City of San José.

To protect groundwater from pollutant loading of urban runoff, BMPs which are primarily infiltration devices (such as infiltration trenches and infiltration basins) must meet, at a minimum, the following conditions:

- Pollution prevention and source control BMPs must also be implemented to protect groundwater;
- Use of infiltration BMPs cannot cause or contribute to degradation of groundwater;
- Infiltration BMPs must be adequately maintained;
- Vertical distance from the base of any infiltration device to the seasonal high groundwater mark must be at least 10 feet. In areas of highly porous soils and/or high groundwater table, BMPs should be subject to a higher level of analysis (considering potential for pollutants such as on-site chemical use, level of pretreatment, similar factors);
- Unless storm water is first treated by non-infiltration means, infiltration devices shall not be recommended for areas of industrial or light industrial activity; areas subject to high vehicular traffic (25,000 or greater average daily traffic trips on main roadway or 15,000 or more average daily traffic trips on any intersecting roadway); automotive repair shops; car washes; fleet storage areas (bus, truck, etc); nurseries; and other land uses and activities considered by the City as high threats to water quality; and
- Infiltration devices must be located a minimum of 100 feet horizontally from any water supply wells.

To maintain effectiveness, all storm water treatment facilities shall include long-term maintenance programs.

The applicant, their arborist and landscape architects, shall work with the City and the SCVURPPP to select pest resistant plants to minimize pesticide use, as appropriate, and the plant selection will be reflected in the landscape plans included with the PD Permit Plan set for each phase of the project.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

I. HAZARDOUS MATERIALS

1. Impact

The construction and operation of a child care or other sensitive commercial uses on the project site could result in the exposure of sensitive receptors to hazardous materials impacts in the event of an accidental release or upset.

Mitigation

In order to reduce potential hazardous material impacts to sensitive uses, the project would implement either measures 1 and 2 or measures 3 and 4 below.

1. Any sensitive commercial uses, such as day care centers, schools, medical clinics, and community centers, shall be required to be located at least 1,000 feet from

any hazardous materials use or storage facility, or any site that could be used for such a facility, such as the following:

- Hazardous materials meeting the California Occupational Health and Safety Administration's (Cal/OSHA) definition of a material that presents a potential for catastrophic event;
- Chemicals that have a National Fire Protection Agency (NFPA) or a Hazardous Materials Identification System (HMIS) rating of two or greater for flammability, health, reactivity, and fire; and
- Underground storage tanks (USTs) or aboveground storage tanks (ASTs) that store hazardous materials.

If the safety and health objectives of the 1,000-foot separation requirement can be achieved to the satisfaction of the Director of Planning, Building, and Code Enforcement through an alternative combination of site design, building orientation, construction techniques, or other similar methods, than a lesser separation may be approved through issuance of a Planned Development Permit.

-AND-

2. Sensitive commercial uses shall be required to prepare and implement an emergency response plan for responding to circumstances that include the accidental release of hazardous materials. This plan could include designation of responsible persons, regular drills, and the identification of a "shelter in place" response that includes keeping all persons indoors, shutting windows, and shutting down air circulation systems.

-OR-

3. To ensure that hazardous materials impacts are minimized, the following types of hazardous materials shall be restricted from use on-site:
 - Toxic and highly toxic compressed gases;
 - Class 4 liquid and solid oxidizers
 - Unclassified detonatable and Class I organic peroxides;
 - Unstable reactive materials; and
 - Flammable oxidizing gases.

-AND-

4. Industrial uses on the site shall record a deed restriction that precludes the storage and/or use of acutely hazardous materials on the project site in amounts that could lead to significant off-site consequences (substantial human health and safety risks from exposure/inhalation/explosion) in the event of an accidental release or upset, for as long as any day care centers or other centers vulnerable populations are operational.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

2. Impact

Because the project proposes buildings of two or more stories within the 250 foot setback, the project could result in safety hazards associated with the presence of high-pressure gas lines near the site.

Mitigation

Proposed structures more than two stories in height to be located within 250 feet of nearby high-pressure gas lines shall include and incorporate appropriate design features (i.e., reinforced walls, blast-proof glass, etc.) to reduce safety impacts. Such features may include:

- Locating doors and windows such that they do not directly face the pipeline;
- Selecting thermally tempered glazing for doors and windows;
- Increasing the thickness of such glazing;
- Strengthening the framing around doors and windows;
- Increasing the structural integrity of the wall and roof systems by using a larger framing wood system; and
- Using reinforced concrete or masonry construction materials.

The specific design features to be included in the structures shall be selected prior to issuance of PD Permit(s) through consultation with an engineer retained by the project proponent with experience in identifying and analyzing a building's response to an explosive threat due to an accidental explosion occurring with gas discharge from high-pressure gas main. The measures to be incorporated into the structures shall be approved by the Director of PBCE and the Fire Chief.

Any proposed grading and excavation activities in the vicinity of the gas lines shall conform to PG&E's requirements.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

J. UTILITIES AND SERVICE SYSTEMS

1. Impact

Future development would increase the amount of impervious surfaces on the site and, therefore, increase the amount of storm water runoff from the site. Runoff from the project site is estimated to increase three times compared to existing conditions.

Mitigation

Please refer to the mitigation measures listed under Section H. Hydrology and Water Quality, Impact #1.

Finding

The implementation of the FEIR mitigation measures identified in Section H. Hydrology and Water Quality, Impact #1 will reduce the potentially significant impact to a **less than significant level**.

K. ENERGY

1. Impact

The project would provide industrial and commercial uses near existing housing, which could lead to some reduction in transportation related to energy consumption. The project, however, would result in a substantial increase in energy usage on the site. The increase in energy usage on the site would increase the demand upon energy resources; therefore, the project would result in a significant impact on energy resources.

Mitigation

The project shall conform with Title 24 of the California Administrative Code (as it pertains to energy efficiency) and implement the following measures to reduce energy impacts:

Measures to Reduce Energy Consumption During Demolition

The project shall have a waste management plan for recycling of construction and demolition materials in place and operating at the beginning of the project. Prior to issuance of building permits, the City will review the plan. The plan shall be completed to the satisfaction of the Director of Planning, Building, and Code Enforcement.

The project shall recycle or salvage a minimum of 50 percent (by weight) of construction, demolition, and land clearing waste.

Measures to Reduce Energy Consumption by Design

The project shall incorporate principles of passive solar design to the satisfaction of the Director of Planning, Building, and Code Enforcement. Passive solar design is the technology of heating, cooling, and lighting a building naturally with sunlight rather than with mechanical systems because the building itself is the system. Basic design principles are large south-facing windows with proper overhangs, as well as tile, brick, or

other thermal mass material used in flooring or walls to store the sun's heat during the day and release it back into the building at night or when the temperature drops. Passive solar also takes advantage of energy efficient materials, improved insulation, airtight construction, natural landscaping, and proper building orientation to take advantage of the sun, shade, and wind.

The project shall install reflective, EnergyStar™, cool roofs to the satisfaction of the Director of Planning, Building, and Code Enforcement. Cool roofs decrease roofing maintenance and replacement costs, improve building comfort, reduce impact on surrounding air temperatures, reduce peak electricity demand, and reduce waste stream of roofing debris.

Measures to Reduce Energy Consumption During Construction

The proposed buildings shall incorporate, where applicable and feasible, elements of the LEED Project Checklist into the design to the satisfaction of the Director of Planning, Building, and Code Enforcement. The following are examples of LEED measures that may be incorporated:

- The project shall use recycled materials to reduce the use of raw materials and divert material from landfills. Construction material used shall be at least 5-10 percent salvaged or refurbished materials, specifically, a minimum of 25-50 percent of building materials shall contain at least 20 percent post consumer recycled content material, or a minimum of 40 percent post industrial recycled content material.
- The project shall use local and regional materials in order to reduce natural resources necessary from transporting materials over long distances. Of the building materials used, 20-50 percent shall be manufactured within 500 miles of the building site.
- The project shall use rapidly renewable materials in order to reduce the depletion of virgin materials and reduce use of petroleum-based materials. Specifically five percent of total building materials shall be made from rapidly renewable building materials.
- For components of the project where buildings would be made from wood, such as flooring and framing, the project shall use a minimum of 50 percent wood-based materials certified in accordance with the Forest Stewardship Council Guidelines (<http://www.fsc.org/index.html>).
- The project shall select materials with volatile organic compound limits.

The idling of construction vehicles shall be avoided to reduce fuel consumption, emissions, and noise.

Commercial and industrial buildings, to the extent feasible, shall:

- Install motion detectors or dimmers to control lighting;
- Install efficient security and parking lot lighting (e.g., high pressure sodium fixtures);
- Install reflective window film or awnings on all south and west facing windows;
- Install ceiling and wall insulation; and

- Install Energy Management System to control HVAC system—its operating hours, set points, scheduling of chillers, etc.

Finding

The implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level**.

L. CUMULATIVE

1. Impact

The proposed project would not contribute to significant cumulative land use compatibility, population and housing, or loss of open space impacts. The project would, however, contribute to the cumulative loss of agricultural land.

Mitigation

There are no feasible measures that could reduce this significant cumulative agricultural land impact.

Finding

This cumulative impact will be **significant and unavoidable**.

2. Impact

Approval of the proposed project would result in cumulatively significant visual and aesthetic impacts. The proposed project would change the visual character of the site and would obstruct views of the eastern foothills. The project, therefore, would contribute to significant cumulative visual and aesthetic impacts.

Mitigation

There are no feasible measures that could reduce this significant cumulative visual and aesthetic impact.

Finding

This cumulative impact will be **significant and unavoidable**.

3. Impact

The cumulative projects will contribute to significant cumulative impacts including significant increase in congestion across the three special subarea screenlines, VMT and VHT within the City's Sphere of Influence, and peak hour congestion on already

contested roadway links. The proposed project will contribute to the significant increases in peak hour congestion on already congested roadway links.

Mitigation

Given the magnitude of the cumulative traffic impacts that are described above, no feasible mitigation was identified that would reduce the impacts.

Finding

This cumulative impact will be **significant and unavoidable**.

4. Impact

While the proposed project would not add housing, the project would increase development on the site and would result in significant additional traffic trips. The project would itself result in significant regional air quality impacts and, therefore, would contribute to a significant cumulative regional air quality impact.

Mitigation

While there are no specific measures identified that would reduce significant cumulative air quality impacts to a less than significant level, the proposed project includes all feasible measures to reduce long-term air quality impacts (refer to Section D. Air Quality of this Resolution).

Finding

The project includes measures to reduce air quality impacts, however, the mitigation measures would not reduce cumulative air quality impacts to a less than significant level. The cumulative impact, therefore, will be **significant and unavoidable**.

5. Impact

Implementation of all cumulative projects would result in significant temporary cumulative construction-related noise impacts.

Mitigation

While short-term impacts of many individual construction project can be minimized or reduced to less than significant, the cumulative impacts of construction noise in areas planned for multiple or very large developments would be significant and unavoidable.

Finding

The project includes measures to reduce temporary construction-related noise impacts, however, the mitigation measures would not reduce cumulative construction-related noise

impacts to a less than significant level. The cumulative impact, therefore, will be **significant** and **unavoidable**.

6. Impact

The proposed project would contribute to the significant cumulative impacts to individual burrowing owls and nesting raptors.

Mitigation

The project shall complete pre-construction surveys and establish construction-free buffers, in the event raptors or active nests are present, to reduce impacts to individual burrowing owls and nesting raptors.

Finding

The implementation of the above FEIR mitigation measure will reduce the project's potentially significant cumulatively considerable impact to a **less than significant level**.

7. Impact

The proposed project would significantly contribute to cumulative impacts to burrowing owl habitat.

Mitigation

There are no feasible measures that could reduce this significant cumulative burrowing owl habitat impact to a less than significant level.

Finding

This cumulative impact will be **significant and unavoidable**.

II. ALTERNATIVES TO THE PROPOSED PROJECT

A. NO PROJECT ALTERNATIVE

1. Description

Under the No Project Alternative, the site would continue to be designated *Industrial Park*. The No Project Alternative, therefore, could include the site remaining as it is—unoccupied and vacant—or future development could occur under the existing industrial land use designation and entitlements. Since the project site is within an urbanized area and is part of an existing Redevelopment Project area, it is unlikely to remain undeveloped indefinitely. Currently, the project site has entitlements for up to

approximately 1.5 million square feet of office/R&D uses. The existing land use designation allows for buildings of up to 50 feet tall on the site, except for the southern portion of the site, which is within a Transit Area where buildings of up to 120 feet are allowed.

2. Comparison to Proposed Project

Development of the project site under the No Project Alternative would result in fewer visual and aesthetic impacts, in that the majority of the site would be developed with buildings of up to 50 feet whereas, with the proposed project, buildings up to 120 feet in height would be allowed throughout the site. The No Project Alternative, therefore, would not obstruct views of scenic resources as significantly as the proposed project, although the impact would still be significant.

In addition, the No Project Alternative would result in fewer traffic impacts than the proposed project. Although this Alternative and the proposed project allow for the same amount of development, the proposed project includes commercial/retail development, which generally generates more daily traffic trips than industrial uses.

This Alternative would, in comparison to the proposed project, also avoid potential land use conflicts between new non-industrial (i.e., commercial) land uses and existing industrial operations. The proposed project would allow for the development of commercial land uses on the site, which could potentially bring new commercial employees and customers into contact with acutely hazardous materials from the existing industrial uses. The No Project Alternative would enable much less commercial development and therefore would result in fewer potential land use compatibility impacts than the proposed project.

Overall, the No Project Alternative would, in comparison to the proposed project, result in essentially similar significant unavoidable impacts on agricultural land, regional air quality, cumulative construction noise, and burrowing owl habitat. This Alternative would also result in the same significant impacts on noise, biological resources (including trees), cultural resources, hydrology and water quality, utilities, and energy as the proposed project. Construction impacts related to clearing and grading operations, such as short-term noise, dust, and water quality impacts, would also be comparable to the proposed project.

The No Project Alternative would result in lesser impacts on visual and aesthetic resources, traffic, and land use compatibility. However, most other impacts (including the loss of designated agricultural land, impacts on regional air quality, impacts to biological resources, and construction-related impacts) would be comparable to the proposed project, including all of the project's significant unavoidable impacts with the exception of visual and aesthetic impacts. Therefore, this alternative does not significantly reduce the overall impacts of the proposed project or represent an "environmentally superior" alternative.

3. **Finding**

The City finds that this Alternative is infeasible for the following reasons: In general, the “no project” Alternative would, by definition, not meet the project’s objectives as described on pages 53-54 of the EIR. This Alternative would not achieve the objectives of introducing commercial/retail land uses onto the site and creating a mixed-use development to complement the recently approved mixed-use, transit-oriented project on the adjacent Hitachi campus. This Alternative also does not meet the objectives of increasing the City’s General Fund revenues, addressing the City’s unmet retail demand, and capturing sales tax revenue leakage.

B. REDUCED DEVELOPMENT AND SMALLER PROJECT SITE ALTERNATIVE

1. **Description**

Under the Reduced Development and Smaller Project Site Alternative, the proposed uses would be built at approximately the same intensity as the proposed project, but be built on only the northern half of the project site, a site of approximately 40 acres. Since this Alternative assumes the same intensity, but half the project site area, it is assumed that the amount of development would also be reduced accordingly. Under this Alternative, it is assumed that approximately 0.5 million square feet of industrial office/R&D development and approximately 225,000 square feet of commercial/retail development, would be developed.

Under this Alternative, the southern half of the project site is assumed to remain undeveloped. Development pressures, however, may lead to its development in the future.

2. **Comparison to Proposed Project**

By developing only the northern half of the project site, this Alternative would result in less state-designated agricultural land being converted and less burrowing owl habitat loss in comparison to the proposed project. In addition, this Alternative would not obstruct views of the foothills as much as the proposed project because it would be set further back from SR 85. This alternative, therefore, would have less of a significant visual and aesthetic impact as compared to the proposed project.

The amount of development under this Alternative would be less than what is proposed (approximately half), therefore, the number of project-generated trips would be proportionately less. As a result, the traffic and air quality impacts would also be reduced proportionately. Because this Alternative would allow for less development and development on only the northern half of the project site, it would also result in less tree, utility and service systems, energy, and public service impacts than the proposed project.

This Alternative would result in the same land use compatibility impacts as the proposed project in regards to allowing industrial uses in proximity to commercial uses, especially sensitive commercial uses. Construction impacts related to clearing and grading

operations, such as short-term noise, dust, and water quality impacts, would be comparable to the proposed project, but of shorter duration.

3. Finding

The City finds that this Alternative is infeasible for the following reasons: Reducing the amount of developable acreage by leaving approximately half of the site in an undeveloped state under the existing industrial zoning would adversely affect the objective of developing the currently underutilized site into a comprehensively planned and integrated mixed-use project. Excluding the southern portion of the iStar property from the project would result in an “island” of lower-intensity industrial land that may be developed in a manner inconsistent with the mixed-use development objectives for the project and the approved plans on the adjacent Hitachi site.

A reduced amount of developable site area would reduce flexibility, at the later site design stage, to orient and configure the project’s industrial and commercial buildings so as to maximize land-use compatibility between these components of the project. Reducing the size of the project and excluding a portion of the site from development would also result in the cancellation of planned transportation improvements in the area, especially the improvements to Via Del Oro as a public street. The planned improvement of Via Del Oro will benefit revitalization in the overall area, including the Hitachi project, by providing a southern point of access to the area in addition to the northern access along Great Oaks Boulevard.

A substantial reduction in the size of the retail development would provide significantly less revenue to the City’s general fund and fewer jobs, thereby worsening the City’s current job/housing imbalance. A reduction in retail square footage would also impair the viability of creating a new “destination” commercial center in this area of the city. Overall, this Alternative would fail to meet most of the project’s objectives as identified in the draft EIR.

C. REDUCED HEIGHT ALTERNATIVE

1. Description

The Reduced Height Alternative would allow for the development of the proposed project with a maximum building height of 50 feet on the entire site. This Alternative assumes that the project would be built at the same intensity as the proposed project. By reducing the maximum building height allowed on the site from 120 feet to 50 feet, the amount of development would also be proportionately reduced.

With the proposed project, the proposed commercial buildings were anticipated to have a maximum height of 35 feet, therefore, under this Alternative all of the commercial square footage could be developed. The proposed industrial buildings were anticipated to have a maximum height of 75 feet. This Alternative would reduce the maximum building height

to 50 feet, which would proportionately reduce the amount of industrial development from one million square feet to approximately 670,000 square feet.

2. Comparison to Proposed Project

By reducing the maximum allowable height on the project site, this Alternative would result in fewer visual and aesthetic impacts because development on the site would not block views of the foothills as much as the proposed project. In addition, by reducing the allowable building height on the site, the amount of development would be reduced, which would result in fewer traffic, air quality, and utilities and services impacts compared to the proposed project.

This Alternative would have the same land use compatibility and hazardous materials impacts as the proposed project because it would allow industrial uses in proximity to commercial uses, especially sensitive commercial uses. Impacts to biological resources and agricultural land would be also the same as the proposed project. In addition, construction impacts related to clearing and grading operations, such as short-term noise, dust, and water quality impacts would generally be comparable to the proposed project. This alternative would result in the same significant unavoidable impacts to agricultural land, regional air quality, borrowing owl habitat and cumulative construction noise. Only the significant unavoidable visual impact would be reduced but would still be significant and require mitigation.

Overall, the Reduced Height Alternative would be environmentally superior to the proposed project because it would reduce the project's visual and aesthetic, traffic, air quality, and utilities and service systems impacts. Other impacts resulting from the development of this Alternative, including biological resources, agricultural land, land use compatibility, hazardous materials, and construction-related impacts, would be comparable to those from the proposed project.

3. Finding

The City finds that this Alternative is infeasible for the following reasons: Overall, this Alternative would not adequately achieve most of the project's objectives as identified in the draft EIR. The reduced building height limit would result in a corresponding reduction in potential industrial development, which would be inconsistent with the objectives of preserving industrial development on the site and developing up to one million square feet of industrial uses. This loss of potential industrial development would also result in the generation of fewer jobs upon build-out of the project, and would thus adversely affect the City's existing jobs/housing imbalance. In addition, the reduced height would be less consistent with the allowable height on other nearby properties, including the Hitachi site. This would hinder the project's objective of complementing the approved Hitachi mixed-use transit village project with a compatible, similarly scaled development. The reduced height would also be inconsistent with the City's existing General Plan policy allowing 120 foot height and more intense development adjacent to transit centers.

D. RETAIL-ONLY ALTERNATIVE**1. Description**

The Retail-Only Alternative would involve the development of only commercial uses on the project site. A supplemental traffic analysis was completed by *Hexagon Transportation Consultants, Inc.* in August 2005 to determine the maximum amount of retail development that could be built on the project site without generating any significant intersection impacts or triggering the need for any impact-related traffic mitigation improvements. This analysis did not assume any traffic improvements from the recently approved Hitachi Mixed-Use project.

The analysis concluded that up to 385,000 square feet of commercial/retail uses could be developed on the site without any significant intersection impacts or triggering the need for any impact-related traffic mitigation improvements. Therefore, the Retail-Only Alternative assumes 385,000 square feet of retail development on the site.

2. Comparison to Proposed Project

The proposed project would result in significant impacts to three intersections and require mitigation measures to reduce those impacts to a less than significant level. As discussed above, the 385,000 square feet of commercial development was determined for this Retail-Only Alternative because this specific amount of development would not trigger any significant transportation impacts or result in the need for traffic impact related improvements. The Retail-Only Alternative, therefore, would not result in significant transportation impacts or require any traffic-related mitigation improvements. In addition, by reducing the amount of traffic, air quality impacts would also be reduced proportionally, resulting in substantially fewer air quality impacts than the proposed project.

The proposed project, which would allow for a mix of industrial and commercial uses on the site, could expose sensitive commercial uses to hazardous materials, which would be a significant impact. The proposed project includes mitigation to reduce this impact to a less than significant level. Under the Retail-Only Alternative, there would be no land use conflicts or hazardous materials impacts resulting from mixing industrial and commercial, especially sensitive commercial, uses on the site. For this reason, this Alternative would not result in significant hazardous material impacts or require impact-related mitigation.

By developing a physically smaller portion of the project site, the Retail-Only Alternative would result in less designated agricultural land being converted, and less burrowing owl habitat loss, in comparison to the proposed project. In addition, this Alternative would have a smaller mass and presence than the proposed project, reducing the project's significant visual and aesthetic impacts. This Alternative would also reduce the project's impacts on noise, trees, utility and service systems, energy, and public services. Construction impacts related to clearing and grading operations, such as short-term noise, dust, and water quality impacts, would be less than those from to the proposed project.

This Alternative, similar to the proposed project, would preserve the fruit dehydrator building.

Overall, the Retail-Only Alternative would be environmentally superior to the proposed project because it would eliminate the proposed project's traffic and land use/hazardous materials impacts. In addition, the Retail-Only Alternative would reduce the proposed project's air quality, agricultural resources, burrowing owl habitat, visual and aesthetic, noise, tree, utility and service systems, energy, and public service impacts.

3. Finding

The City finds this Alternative infeasible for the following reasons. Overall, this Alternative would not adequately meet the project's identified objectives. Because this Alternative would allow for no industrial development and less commercial development, it would not meet the objective of providing a mixed office/R&D and commercial/retail development that will complement the approved Hitachi mixed-use project. The elimination of the industrial component of the project also does not achieve the objective of preserving industrial land uses in the Edenvale area. In addition, this Alternative is inconsistent with the project's stated objective of developing up to one million square feet of industrial uses and up to 450,000 square feet of commercial/retail uses. The elimination of industrial uses and reduction in retail use would greatly reduce the project's potential job generation and would exacerbate the City's existing jobs/housing imbalance. By reducing both sales tax and property tax revenue, the reduced development would also fail to achieve the objective of increasing revenues from the property to the City and Redevelopment Agency.

E. ALTERNATIVE LOCATIONS

1. Description

Two sites, one located at Santa Teresa Boulevard and San Ignacio Avenue and the other at Silver Creek Road and Hellyer Avenue, were evaluated as potential alternative locations for the proposed project.

2. Comparison to Proposed Project

Since these alternative sites are not designated as farmland, development of the proposed project at either of these alternative sites would not result in the loss of designated farmland. In comparison to the project site, these alternative sites have fewer trees and therefore, would result in fewer impacts to trees.

Unlike the project site, where burrowing owl habitat is located along the road bank for SR 85 and a dirt road between Manassas Road and the Equinix buildings, both alternative sites appear to contain larger, contiguous areas of suitable burrowing owl habitat. For

this reason, development of the proposed project at either of the alternative sites could result in greater impacts to burrowing owl habitat.

Development of the proposed project at either of these alternative sites would result in similar visual and aesthetic, traffic, land use, cultural, utilities, and energy impacts as the proposed project. Construction-related impacts, such as short-term noise, dust, and water quality impacts, would be greater than those from the proposed project because demolition of more buildings would be required.

3. Finding

Overall, development of the proposed project at one of the above identified alternative locations would be environmentally superior to the proposed project because it would eliminate the proposed project's significant impact on agricultural land. It would also have lesser impacts on biological resources (trees) because fewer trees exist on the alternative sites. Other impacts, including, visual and aesthetic, burrowing owl, and traffic, would be similar to those of the proposed project. This alternative would meet the project's objectives of developing mixed industrial and retail uses in Edenvale and fostering economic development. However, the City finds this alternative infeasible, in that it would involve properties that are privately owned by others and are not under the control of the project applicant.

III. MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution as Attachment "1" and incorporated herein by this reference and adopted as a part of this Resolution herein, is the Mitigation Monitoring and Reporting Program for the Project. The Program identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action. This Program will be followed in any implementation of the Project.

IV. STATEMENT OF OVERRIDING CONSIDERATIONS

The City Council of the City of San José adopts and makes the following Statement of Overriding Considerations regarding the significant, unavoidable impacts of the Project and the anticipated benefits of the Project.

A. SIGNIFICANT UNAVOIDABLE IMPACTS

With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that the Project will result in significant unmitigated impacts to **Agricultural Land and Cumulative impacts to Agricultural Land, Visual and Aesthetics and Cumulative Visual and Aesthetics impacts,**

Regional Air Quality and Cumulative Regional Air Quality impacts, Burrowing Owl Habitat and Cumulative Impacts on Burrowing Owl Habitat impacts, Cumulative Long-Term Traffic, and Cumulative Temporary Construction Noise as disclosed in the FEIR prepared for this Project. The impacts would not be reduced to a less than significant level by feasible changes or alterations to the Project.

B. OVERRIDING CONSIDERATIONS

After review of the entire administrative record, including, but not limited to, the FEIR, the staff report, applicant submittals, and the oral and written testimony and evidence presented at public hearings, the City Council finds that specific economic, legal, social, technological and other anticipated benefits of the Project outweigh the unavoidable adverse environmental impacts, and therefore justify the approval of this Project. 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 (including the incorporation of feasible mitigation measures), and finds that the remaining significant, unmitigated or unavoidable impacts of the Project described above are acceptable because the benefits of the Project outweigh them. The City Council finds that each of the overriding considerations expressed as benefits and set forth below constitutes a separate and independent ground for such a finding. The Project will result in the following substantial benefits, which constitute the specific economic, legal, social, technological and other considerations that justify the approval of the Project:

C. BENEFITS OF THE PROJECT

1. The Project will generate immediate and long-term revenue to the City's general fund, especially by providing retail use as a major new source of sales tax revenue (approximately \$1,500,000 net General Fund revenue annually) thereby furthering the City's economic development goals. The Project could provide increased property tax revenue to the City Redevelopment Agency.
2. The Project will create new job opportunities for different income and job skill levels in the near and long-term, including construction jobs. Up to approximately 1,100 jobs could be created in the near-term and 5,100 jobs at buildout.
3. The Project will create a new mix of employment opportunities proximate to housing in South San Jose.
4. The Project will help address the City's substantial unmet retail demand and capture sales tax revenue leakage outside the City by providing retail services in South San Jose, an underserved area for retail in the City.
5. The Project will develop an under-utilized, in-fill property into a mixed-use development that takes advantage of nearby transit facilities.

6. The Project preserves up to a million square feet of industrial use through incorporating intensified development standards and could accommodate a large corporate headquarters or campus facility.
7. The Project will help to revitalize an unused industrial property and help rejuvenate the Edenvale area. The Project's mix of services and uses will help attract new business and investment to the area.
8. The Project will provide retail commercial land uses in a suitable location with freeway visibility and access.
9. The Project will help create a mixed-use, transit-oriented area in the "Edenvale 1" vicinity adjacent to the Hitachi mixed-use project.
10. The Project will contribute to transportation improvements serving the Edenvale area and surrounding neighborhoods to address traffic congestion and facilitate ongoing industrial development.

ADOPTED this 20th day of June, 2006, by the following vote:

AYES:	CAMPOS, CHAVEZ, CORTESE, LeZOTTE, NGUYEN PYLE, REED, WILLIAMS, YEAGER; GONZALES
NOES:	NONE
ABSENT:	CHIRCO
DISQUALIFIED:	NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk