

RESOLUTION NO. 73956

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT EFFECTS, MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE FLEA MARKET PLANNED DEVELOPMENT REZONING PROJECT, FOR WHICH AN ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970, AS AMENDED

WHEREAS, prior to the adoption of this Resolution, the Planning Commission of the City of San Jose has certified that the Final Environmental Impact Report for the San Jose Flea Market General Plan Amendment and Planned Development Rezoning (the "FEIR") was completed in accordance with the requirements of the California Environmental Quality Act of 1970, as amended, and related state and local guidelines (collectively, "CEQA"); and

WHEREAS, the certification of the FEIR by the Planning Commission was appealed to the City Council; and

WHEREAS, the City Council has held a *de novo* public hearing on the certification of the FEIR on April 24, 2007 pursuant to the provisions of Title 21 of the San Jose Municipal Code at which time the Council received the full record of the entire proceedings, took public testimony, and heard additional City staff response related thereto; and

WHEREAS, the Flea Market Planned Development Rezoning ("Project") requires the City of San Jose ("City") to approve a Planned Development Rezoning (File No. PDC03--108), which action constitutes a Project under CEQA; and

WHEREAS, the Project analyzed and more fully described under the FEIR consisted of a Planned Development Rezoning including the following elements:

The Project would rezone the Project site to A(PD) Planned Development Zoning District, which would allow the development of up to 215,622 square feet of industrial and/or commercial building space north of Berryessa, up to 152,700 square feet of commercial space south of Berryessa, and a combined total of 2,818 dwelling units north and south of Berryessa. Conversely, the minimum amount of development that could occur on the Project site is a total of 2,580 dwelling units, 71,874 square feet of industrial and/or commercial building space north of Berryessa and a minimum of 91,000 square feet of commercial space

south of Berryessa. The only commercial uses proposed south of Berryessa must be incorporated with residential into a mixed-use configuration.

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed Project, the Flea Market Planned Development Rezoning; and

WHEREAS, the City Council of the City of San José intends to take approval actions related to the Project, specifically the adoption of the proposed Planned Development Rezoning; and

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

WHEREAS, the City Council of the City of San José hereby adopts this resolution, together with any and all exhibits incorporated herein, in recognition of its responsibilities as a lead agency under CEQA.

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 as each impact is described more fully in the FEIR:

I. FINDINGS CONCERNING SIGNIFICANT ENVIRONMENTAL EFFECTS

A. LAND USE

1. **Impact:** Buildings up to 120 feet tall near the north boundary of the Project site would conflict with General Plan policies for protecting existing residential uses.

Mitigation: The Project proposes to construct single-family detached dwelling units with a maximum height of 35 feet adjacent to the north boundary of the Project site and gradually step up building heights in a southerly direction towards Berryessa Road, possibly reaching the maximum allowable height of 120 feet near Berryessa Road.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

B. TRANSPORTATION

- 1. Impact:** The proposed Project traffic would significantly impact the intersection of Commercial Street and Oakland Road.

Mitigation: A second westbound left-turn lane will be added to the intersection of Commercial Street and Oakland Road.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

- 2. Impact:** The proposed Project traffic would significantly impact the intersection of US 101 and Oakland Road (North).

Mitigation: The Project will convert the southbound through lane to a shared through-right lane and add a second northbound left-turn lane to the intersection of US 101 and Oakland Road (North). The second northbound left-turn lane requires the widening of the Oakland Road bridge structure over the freeway.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

- 3. Impact:** The proposed Project traffic would significantly impact the intersection of US 101 and Oakland Road (South).

Mitigation: A second right-turn lane will be added to the US 101 southbound offramp at the intersection of US 101 and Oakland Road (South).

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

4. **Impact:** The proposed Project traffic would significantly impact the intersection of Hedding Street and Oakland Road.

Mitigation: The improvements required to mitigate the Project's impact at this intersection to a less than significant level are the addition of a separate westbound right-turn lane and conversion of the southbound approach to two left turns, a through lane, and a shared through-right lane. This mitigation shall not be required in the event the City Council, prior to Public Works clearance, adds the Hedding/Oakland intersection to the Transportation Level of Service Policy list of protected intersections and adopts a Statement of Overriding Considerations therefor.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]** .

5. **Impact:** The proposed Project traffic would significantly impact the unsignalized intersection of Mabury Road and Mabury Road.

Mitigation: The Project proposes to signalize the intersection of Mabury Road and Mabury Road.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

6. **Impact:** The proposed Project traffic would significantly impact three protected intersections (Hedding Street and 10th Street, Taylor Street and 1st Street, and Taylor Street and 11th Street).

Mitigation: There is no feasible mitigation consistent with the City's level of service policy that reduces or avoids this impact.

Finding: Specific economic, legal, social, technological, or other considerations as described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

7. **Impact:** The proposed Project traffic would significantly impact 18 freeway segments on SR 87, US 101, I-280, I-680, and I-880.

Mitigation: There is no feasible mitigation measure that could be incorporated into this Project that would reduce or avoid this impact.

Finding: Specific economic, legal, social, technological, or other considerations as described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

C. NOISE AND VIBRATION

Impacts

1. **Impact:** Residential interior noise levels could be above 45 dBA Ldn.

Mitigation: In conformance with Chapter 12 of the State Building Code, a noise analysis shall be prepared that demonstrates that the Project incorporates those building elements necessary to achieve an interior Ldn of 45 dBA or less in all habitable residential rooms.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

2. **Impact:** Residential outdoor activity areas could be exposed to noise levels above 60 dBA Ldn.

Mitigation: A noise analysis shall be prepared that demonstrates that the Project incorporates those elements necessary to achieve an Ldn of 60 dBA or less in all outdoor activity areas. Noise levels up to 65 dBA Ldn may be allowed, if no feasible measures are available to achieve an Ldn of 60 dBA. Noise levels above 65 dBA shall not be allowed.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

3. **Impact:** Residential development adjacent to the BART corridor south of Berryessa Road would be exposed to maximum noise events up to approximately 82 dBA.

Mitigation: A noise analysis shall be prepared that demonstrates that the Project incorporates those elements necessary to achieve a maximum single-event noise level from individual BART passbys of 50 dBA in bedrooms and 55 dBA in all other rooms.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

4. **Impact:** Residences within approximately 1,000 feet of the industrial activity centers at the asphalt plant would be exposed to noise levels that exceed 55 dBA Ldn.

Mitigation: Residences within 1,000 feet of the industrial activity centers at the asphalt plant shall be provided with forced-air, mechanical ventilation so windows may be kept closed at the discretion of occupants to control intrusive intermittent noises. Six-foot high sound walls shall be constructed along the western boundaries of residential areas within 1,000 feet of the industrial activity centers at the asphalt plant.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

5. **Impact:** Project sanitary sewer service may require the installation of a pump station, which would require a backup diesel generator. Noise from the backup diesel generator could expose residents of the Project to substantial noise levels.

Mitigation: If the sanitary sewer system requires a pump station as determined at the PD Permit stage, a soundwall shall be constructed around the backup diesel generator. The final height of the noise barrier shall be determined during development of the final plan to ensure adjacent sensitive receptors are not exposed to noise levels in excess of 55 dBA Ldn at the property line.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

6. **Impact:** Dwelling units within 100 feet of the BART tracks could be exposed to vibration levels above Federal Transit Agency thresholds.

Mitigation: The Project would implement the vibration mitigation measures identified in the Silicon Valley Rapid Transit Corridor FEIR and housing shall not be located within 25 feet of the nearest BART track. If these vibration mitigation measures are not implemented by the Project, then housing shall not be located within 100 feet of the nearest BART track.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

7. **Impact:** Noise levels near non-residential uses constructed on the Project site may exceed City guidelines for residential development.

Mitigation: At the PD Permit stage, City Staff shall review future commercial and/or combined industrial/commercial uses to ensure that significant noise impacts will not result upon the proposed non-residential uses.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

D. AIR QUALITY

1. **Impact:** Emissions from the proposed Project would exceed the Bay Area Air Quality Management District threshold of significance for ozone precursors and PM₁₀ of 80 pounds per day.

Mitigation: The following measures for reducing long-term air quality impacts shall be implemented by the Project:

- Provide a satellite telecommute center within or near the development.
- Provide secure and conveniently placed bicycle parking and storage facilities at parks and other facilities.
- Allow only natural gas fireplaces, wood pellet fueled heater or EPA-Certified wood-burning fireplaces or stoves in residences. Conventional open-hearth fireplaces are not permitted in San José (Ordinance 26133 Municipal Code 9.11.300).
- Require outside power receptacles that would allow use of electric lawn and garden equipment for landscaping.
- Construct transit amenities such as bus turnouts/bus bulbs, benches, shelters, etc.

- Provide direct, safe, attractive pedestrian access from Project land uses to transit stops and adjacent development.
- Utilize reflective (or high albedo) and emissive roofs and light colored construction materials to increase the reflectivity of roads, driveways, and other paved surfaces, and include shade trees near buildings to directly shield them from the sun's rays and reduce local air temperature and cooling energy demand.
- Provide physical improvements, such as sidewalk improvements, landscaping and bicycle parking that would act as incentives for pedestrian and bicycle modes of travel.

A Transportation Demand Management program shall be implemented by the Project that includes the following elements:

- Provide physical improvements, such as sidewalk improvements, landscaping and bicycle parking, that would act as incentives for pedestrian and bicycle modes of travel.
- Connect site with regional bikeway/pedestrian trail system.
- Provide transit information kiosks.
- Implement a carpool/vanpool program (e.g., carpool ridematching for employees, assistance with vanpool formation, provision of vanpool vehicles, etc.).
- Develop a transit use incentive program for employees (e.g., free transit passes and/or subsidized passes for local transit system).
- Provide preferential parking for alternative power vehicles.
- Provide secure and conveniently located bicycle parking and storage for workers.

Finding: Specific economic, legal, social, technological, or other considerations as described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

- 2. Impact:** Construction activities will produce increased dustfall and locally elevated levels of PM10 downwind of construction activity. Construction dust could possibly create a nuisance at nearby properties.

Mitigation: The following dust control measures shall be implemented by contractors during demolition of existing structures:

- Watering shall be used to control dust generation during demolition of structures and break-up of pavement.
- All trucks hauling demolition debris from the site shall be covered.
- Dust-proof chutes to load debris into trucks shall be used whenever feasible.

The following dust control measures shall be implemented by contractors during construction of the Project:

- Water all active construction areas at least twice daily and more often during windy periods; active areas shall be kept damp at all times, or shall be treated with non toxic stabilizers or dust palliatives;
- Cover all trucks hauling 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; and
- Sweep daily (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

3. **Impact:** Operation of construction equipment will result in increased exhaust emissions.

Mitigation: The following exhaust emission reduction measures shall be implemented by contractors during construction of the Project:

- Use alternative fueled construction equipment;
- Minimize idling time (5 minutes maximum);
- Maintain properly tuned equipment; and
- Limit operation hours of heavy equipment and/or amount of equipment used.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

E. CULTURAL RESOURCES

1. **Impact:** Grading and excavation during construction of the Project could result in the exposure or destruction of subsurface prehistoric archaeological resources.

Mitigation: The following measures shall be implemented by the Project, which will reduce impacts to prehistoric and historic archaeological resources to a less than significant level:

- Mechanical subsurface presence/absence testing shall be completed for the Project site as the Flea Market is abandoned and parcels are considered for development. Testing shall consist of backhoe testing for suspected prehistoric deposits, combined with selected stripping of soils to search for the smaller, more discrete historic deposits which may exist near the former farm residences known to have existed on the site. To the maximum extent possible, stripping would be confined to the immediate environment of the former building sites. If no resources are discovered during the presence/absence testing, the consulting archaeologist shall decide if archaeological monitoring during construction is warranted and shall submit the recommendations to the Director of Planning, Building, and Code Enforcement, which recommendations shall be implemented.
- In the event that any actual prehistoric archaeological deposits are discovered during presence/absence testing, a program for evaluation of the deposits through hand excavation of the suspected resource shall be submitted to the Director of Planning, Building, and Code Enforcement for approval and shall be implemented as approved. If evaluation demonstrates that the resource is eligible for inclusion on the California Register of Historic Resources, a plan for mitigation of impacts shall be submitted to the Director of Planning, Building, and Code Enforcement for approval, which plan as approved shall be implemented.
- If feasible, mitigation shall take the form of avoidance of impacts to the resource through Project redesign, such as the incorporation of the resource into proposed open space, or placement under future landscaping and/or parking lots. In those cases where avoidance is not possible, mitigation shall take the form of additional hand excavation to retrieve a representative sample of the archaeological resource for analysis.
- Any human remains encountered shall be handled in accordance with State law and any applicable Native American agreements. All human remains and burial-associated artifacts shall be repatriated in a location that shall not be subject to further disturbance. Using professionally-accepted methods, all archaeological resources shall be catalogued and analyzed and a report summarizing such work shall be prepared and provided to the City's Director of Planning, Building, & Code Enforcement.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant

environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

2. **Impact:** Grading and excavation during construction of the proposed Project could result in the exposure or destruction of subsurface historic archaeological resources.

Mitigation: The following measures shall be implemented by the Project, which will reduce impacts to prehistoric and historic archaeological resources to a less than significant level:

- Mechanical subsurface presence/absence testing shall be completed for the Project site as the Flea Market is abandoned and parcels are considered for development. Testing shall consist of backhoe testing for suspected prehistoric deposits, combined with selected stripping of soils to search for the smaller, more discrete historic deposits which may exist near the former farm residences known to have existed on the site. To the maximum extent possible, stripping would be confined to the immediate environment of the former building sites. If no resources are discovered during the presence/absence testing, the consulting archaeologist shall decide if archaeological monitoring during construction is warranted and shall submit the recommendations to the Director of Planning, Building, and Code Enforcement, which recommendations shall be implemented.
- In the event that any actual historic archaeological deposits are discovered during presence/absence testing, a program for evaluation of the deposits through hand excavation of the suspected resource shall be submitted to the Director of Planning, Building, and Code Enforcement for approval and shall be implemented as approved. If evaluation demonstrates that the resource is eligible for inclusion on the California Register of Historic Resources, a plan for mitigation of impacts shall be submitted to the Director of Planning, Building, and Code Enforcement for approval, which plan as approved shall be implemented.
- If feasible, mitigation shall take the form of avoidance of impacts to the resource through Project redesign, such as the incorporation of the resource into proposed open space, or placement under future landscaping and/or parking lots. In those cases where avoidance is not possible, mitigation shall take the form of additional hand excavation to retrieve a representative sample of the archaeological resource for analysis.
- Any human remains encountered shall be handled in accordance with State law and any applicable Native American agreements. All human remains and burial-associated artifacts shall be repatriated in a location that shall not be subject to further disturbance. Using

professionally-accepted methods, all archaeological resources shall be catalogued and analyzed and a report summarizing such work shall be prepared and provided to the City's Director of Planning, Building, & Code Enforcement.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

3. **Impact:** Development of the Project site south of Berryessa would result in the loss of the original San José Flea Market, a significant cultural historic resource.

Mitigation: The following measures shall be implemented by the Project, which would partially mitigate the loss of the San José Flea Market:

- Develop and implement a Mitigation Implementation Program to the satisfaction of the Director of Planning, Building, & Code Enforcement. The program shall specifically focus on the significant historical patterns of development and important personages and include public outreach, and could include the following:
 - Document the culture and use of the site, not solely the structures on the site, according the Level III procedures outlined in the National Park Service, Standards and Guidelines for Architectural and Engineering Documentation, 1990, including the updated HABS/HAER Guidelines – National Park Service, HABS Historical Reports, 2000, which could include using a combination of photos, video, and oral interviews.
 - Incorporate physical attributes of the Flea Market into the proposed Project, such as signs and logos.
 - Incorporate historic names (e.g., Bumb) and other exhibits into the new buildings on the Project site.
 - Based on additional historical research and personal interviews, develop a public exhibit/education program to present interpretive information on the historic patterns of development in the area.

Additional Mitigation: The FEIR identifies relocation of the Flea Market as the only mitigation that could fully mitigate the cultural resource impacts of losing the Flea Market. To accomplish the mitigation, the relocation site must, according to the FEIR, be “accessible to the communities that currently serve as vendors, customers, and other patrons of the market and ... supported by permanent support facilities.”

The FEIR also addresses the factors that would need to accompany the relocation and the characteristics of a new site which could be smaller than

the 120 acres currently utilized for the Flea Market and its parking. In addition to its accessibility to vendors and customers, and the need for permanent support facilities on the site, the FEIR provides that the basic elements of a relocated Flea Market that would mitigate the cultural resource impacts of its dislocation include:

- At least 30 acres for the Flea Market and additional area (now estimated to be 50 acres) for parking;
- The necessity that the market be economically sustainable, since its economic failure would not mitigate the loss of the existing Flea Market; and
- The need for a collaborative relocation process involving the various vendors, customers and representatives of the varied cultural and ethnic groups that currently use the Flea Market. The EIR points out that the Flea Market is not an artifact of past social forces but a vital economic entity and that the ability of the relocation to mitigate the impacts of its loss is “a complex question that cannot be definitely answered.”

While an alternate location for the Flea Market does not have to be in the immediate vicinity of its current location, it is assumed that a new location in San José would be necessary for the relocation to be mitigation for the following reasons:

- The City of San José could then oversee the relocation process, ensuring that it includes measures to replicate or preserve the cultural, ethnic, and community characteristics that make the Flea Market a significant cultural resource.
- The City of San José cannot ensure that relocation to a site in another jurisdiction would satisfy the criteria necessary to mitigate the impact of the loss of this cultural resource.
- Relocating to a site in San José would have the greatest potential for continuing to attract existing vendors and customers associated with the existing Flea Market.

It was also assumed that a location must be consistent with General Plan policies and the General Plan land use designation; consistency with the existing zoning would be desirable, or rezoning consistent with the General Plan must be feasible.

With the required parking, it is estimated that the relocation site would need to be approximately 80 acres, including parking. Access to transit might allow for a smaller site due to a reduced need for parking.

Availability of Alternate Flea Market Site: To date, no viable relocation site has been identified by the City, the Project proponent or

anyone else, as described below. The Project proponent has provided the City with documentation describing the search for another location for the Flea Market. The Project proponent retained the services of an experienced commercial real estate broker, Ralph Borelli, who identified what he has stated was every possible large property that might be suitable in the City of San José and within a 25 mile radius of San José. As described below, the broker also evaluated all recent large site property sales or pending sales to evaluate the likelihood of being able to find a suitable site that met the relevant criteria. He states that price is an overwhelming barrier to finding such a site. The summarized results of that search for an alternative site are included in the August 8, 2007 memorandum from Ralph Borelli, which written testimony is hereby noted and incorporated herein by this reference.

Information provided in the record before the City Council on this matter has also included the results of a *pro forma* evaluation of the Flea Market as a business by Economics and Planning Systems, Inc. (EPS), which is a firm of professional real estate/economic consultants. The August 7, 2007 EPS report quantifies the maximum feasible price that should be paid for land as a relocation site in order that the Flea Market business remain viable. The analysis found that the supportable cost of a relocation site would be approximately \$15 per square foot (\$650,000/acre) or a total of \$52.8 million.

The discussion below summarizes the results of the Borelli search for a site, based on criteria identified in the EIR and in the EPS report.

Privately Owned Property

No privately owned land within or near the City of San José that would meet the size, location, and land use/planning criteria has been identified by any of the following: (1) the Project proponent and his agents, (2) persons who have testified and/or commented on the EIR, (3) persons who have testified either for or against the Project at any of the public hearings held to date, (4) City staff, based on their current knowledge and experience, or (5) through any other channel.

In their search for an alternative location for the Flea Market, the twelve largest privately owned properties currently for sale or recently sold in or near San José were identified by Borelli. The properties range in size from 16 acres to 279 acres. Only three of the properties identified were valued at less than \$1 million per acre, and all three are in Coyote Valley. One of the three Coyote Valley sites is in escrow to Gavilan College. While the three properties are valued at \$522,000 to \$871,000 per acre, there are assessments against the properties of approximately \$12/acre, which would result in a site cost that substantially exceeds the supportable cost

of a relocation site identified above. The three Coyote Valley sites are designated for *Campus Industrial* uses by the General Plan and are currently the subject of an EIR in process on a proposed specific plan for the area. The Flea Market use would not be consistent with either the existing General Plan designation or the proposed specific plan for the three properties.

The largest site outside Coyote Valley identified in the Borelli search was the Pleasant Hills Golf Course, which is the subject of a pending proposal to develop as residential. The site is in escrow for a \$3.3 million dollar/acre price. The cheapest per acre site identified outside Coyote Valley was the GE property which was sold in 2006 to a developer for \$1.1 million/acre. That land cost was substantially in excess of the supportable cost of relocation identified in the EPS report. The GE site is designated on the General Plan for commercial uses, but is too small for the relocated Flea Market and is not currently available.

Based on this information, it is unlikely that a privately owned property of sufficient size will become available in or near San José in the near future. It is also unlikely that a privately owned property will become available that is near the price of approximately \$650,000 identified as a supportable cost of a relocation site for the Flea Market business to purchase. Other than the three sites in Coyote Valley, the sales price of all of the properties listed in the Borelli report exceeded the supportable cost of a relocation site by at least 70 percent. In the absence of any known site and given the most recent prices of land sold in the area, the use of privately owned land as part of a required mitigation measure would not be feasible.

Publicly Owned Property

Two possible locations were identified by the Project proponent, the County Fairgrounds and a site in Morgan Hill, that are presently the subject of competitive processes overseen by the County and the City of Morgan Hill, who have solicited submittal of Statements of Qualifications for possible developers. Representatives for the Flea Market owners have submitted an SOQ to the City of Morgan Hill and stated that they will also submit an SOQ to the County. Neither the Project proponent nor the City of San José have any authority or jurisdiction over those development processes and cannot predict or control the outcomes. While the Project proponent is pursuing these sites, these sites are not within the control of either the lead agency or the Project proponent, and their use for a Flea Market cannot be guaranteed. For these reasons, these sites cannot be considered part of a feasible mitigation measure.

The Project proponent and City staff identified three possible sites on San José City-owned land: the closed Singleton landfill site; the Water

Pollution Control Plant (WPCP) buffer lands; the FMC site on Coleman Avenue. None of these three sites is currently considered an appropriate or viable location for the Flea Market for the following reasons:

- The Singleton landfill site is more than 80 acres in size, is designated *Public Park/Open Space* in the General Plan, and is zoned R-1: Single Family Residential. The site contains hazardous materials for which final mitigation is still unknown. This property was identified in a voter-approved ballot measure as the planned location for a major recreational complex for which funds are intended to accrue from an approved bond measure. Pending resolution of these two issues, the City of San José cannot consider any other development on this property at this time. A Flea Market would not be consistent with either the General Plan or the zoning. This would not be a feasible mitigation site.
- The WPCP buffer lands are the 287 acres of vacant property immediately south, southeast and southwest of the operating sewage treatment plant and its biosolids lagoons, and are designated in the General Plan for *Public/Quasi-Public* land uses. Approximately 200 acres are identified by adopted Council Policy as protected for future Plant expansion. The remainder of the buffer lands are stipulated by the Council Policy to be used only for purposes that (1) will protect the public from adverse impacts from odors and hazardous chemicals stored on the Plant site and (2) will not create any operational or security problems for the Plant. The introduction of thousands of people onto the Plant lands four days a week during Flea Market operating hours would not be consistent with this policy or with the General Plan designation for the land. This is not a feasible location for the Flea Market.
- The FMC property is presently being used for staging construction at the Airport. The land was purchased with funds provided by HUD. Restrictions on the property include that it must be sold for fair market value. The land is designated as *Combined Industrial/Commercial* on the General Plan. The estimated fair market value for 80 acres of land with this designation immediately adjacent to the Airport would be substantially in excess of the \$650,000 per acre that the EPS report referenced above indicates would be a viable price. The City is also in negotiations with another private party for future use of the FMC property as a possible soccer stadium. Should the City offer this property on the open market in the future, it is unlikely that the cost would be viable for the Flea Market. For these reasons, this does not appear to be a feasible site for the relocated Flea Market.

In the absence of an alternative site that can be reasonably acquired by the Project proponent and/or that would be subject to the authority and/or control of the City of San José, the City cannot identify relocation of the Flea Market as a feasible mitigation measure for the following reasons:

1. There is no known suitable alternative site for the Flea Market, with appropriate zoning and General Plan designations, that presently is available for sale or lease.
2. In the absence of a specific site, no analysis of the economic viability of relocation can be prepared.
3. In the absence of a specific site and an economic viability analysis, it cannot be ascertained that relocation could be accomplished in an economically viable manner, in a time frame that would be consistent with future development of the existing site.
4. In the absence of a specific site and site location, no specific program for relocation of the Flea Market can be prepared. There is no time frame for relocation, there is nothing on which to solicit participation by interested communities, and nothing upon which the vendors and customers can provide advice or input.

To qualify as a feasible mitigation measure, a viable alternative location for the Flea Market is one that is at least 80 acres in size, is within the City of San José, designated on the General Plan for commercial uses, can be acquired or controlled by the Flea Market owners, and can contain permanent structures and other facilities to support the Flea Market. No viable alternative location for the Flea Market has been identified.

Finding: Specific economic, legal, social, technological, or other considerations as described in this Resolution make infeasible the mitigation measures identified in the FEIR for relocation of the Flea Market. **[Significant Unavoidable Impact]**

F. BIOLOGICAL RESOURCES

Impact: The Project would result in the loss of some or all of the existing trees on the Project site, including trees protected by the City of San José Tree Ordinance.

Mitigation: The following measures shall be implemented by the Project, which will reduce tree removal impacts to a less than significant level:

- Site design, as well as any public improvements, shall preserve existing trees to the maximum extent practicable, to the satisfaction of the Director of Planning, Building, and Code Enforcement.
- In locations where preservation of existing trees is not feasible due to site constraints, trees to be removed by the Project shall be replaced at the

ratios shown in Table 1, which is included at the end of this Mitigation, Monitoring, and Reporting Program.

- The species and exact number of trees to be planted on the site during the construction phase shall be determined in consultation with the City Arborist and to the satisfaction of the Director of Planning, Building and Code Enforcement.
- In the event there is not sufficient area to accommodate the required tree mitigation on the Project site, one or more of the following measures shall be implemented at the planned development permit stage to the satisfaction of the Director of Planning, Building and Code Enforcement:
 - The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.
 - An alternative site(s) shall be identified for additional tree planting (e.g., local parks and schools or adjoining properties for screening purposes).
 - A donation of \$300 per mitigation tree to Our City Forest or San José Beautiful for in-lieu off-site tree planting in the community. These funds shall be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting shall be provided to the Director of Planning, Building and Code Enforcement, prior to issuance of a development permit.

The following measures shall be implemented by the Project, which will protect trees to be preserved from harm that could occur during construction:

- Prior to the issuance or approval of any permit, all trees on the site shall be inventoried by a certified arborist as to size, species and location on the lot and the inventory shall be submitted on a topographical map to the Environmental Principal Planner.
- Damage to any tree during construction shall be reported to the City's Environmental Principal Planner, and the applicant shall treat the tree for damage in the manner specified by the Environmental Principal Planner.
- No construction equipment, vehicles or materials shall be stored, parked or standing within the tree dripline.
- Drains shall be installed according to city specifications so as to avoid harm to trees due to excess watering.
- Wires, signs and other similar items shall not be attached to trees.
- Cutting and filling around the base of trees shall be done only after consultation with the city arborist and then only to the extent authorized by the city arborist
- No paint thinner, paint, plaster or other liquid or solid excess or waste construction materials or wastewater shall be dumped on the ground or into any grate between the dripline and the base of the tree or uphill from any tree where certain substances might reach the roots through a leaching process.

- Barricades shall be constructed around the trunks of trees as specified by a qualified arborist so as to prevent injury to trees making them susceptible to disease causing organisms.
- Wherever cuts are made in the ground near the roots of trees, appropriate measures shall be taken to prevent exposed soil from drying out and causing damage to tree roots.
- A final report shall be submitted to the Environmental Principal Planner stating if tree protection standards achieved the desired result, how many mitigation trees were planted and where, or if money was donated.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

Impact: The Project would result in the loss of riparian habitat.

Mitigation: The following measures shall be implemented by the Project, which will reduce impacts to riparian habitat to a less than significant level:

- Disturbance to and loss of the riparian habitat of Coyote and Upper Penitencia Creeks resulting from the proposed removal/construction of bridges and stormwater outfalls, and enhancement of the riparian setback areas (i.e., removal of asphalt and provision of passive recreation uses) will be avoided to the maximum extent practicable. All temporary staging areas and construction access roads, if necessary, will be located away from the 100-foot setback area. Drainage/wetland boundaries will be clearly demarcated with Environmentally Sensitive Area chain link fencing to avoid inadvertent disturbance during construction activities.
- An Erosion Control Plan that includes the design and location of the Best Management Practices that shall be implemented during Project construction for the purpose of avoiding impacts to the riparian habitat and water quality downstream of the Project site will be submitted to the Director of Planning Building and Code Enforcement, prior to Building Permit approval.
- Riparian habitat that will be permanently impacted by removal/construction of bridges and stormwater outfalls, or indirectly affected by setback encroachment, will be replaced with native plantings at a level that will ensure no net loss of habitat functions and values. All mitigation sites will be protected in perpetuity.
- Mitigation for any direct and indirect impacts to the riparian habitat, including shaded riverine aquatic (SRA), shall be mitigated at a 2:1 (mitigation:impacts) ratio. Mitigation using native plantings shall be accommodated within the proposed 100-foot setback area. Additionally, mitigation credit could be achieved by removing the undesirable and non-native species that occur within the riparian habitat, particularly the highly invasive giant reed and cape ivy.

- The required mitigation area will be determined based on the actual impacts calculated from a final grading plan and an evaluation of the as-built condition. As currently proposed, the Project would require 55,760 square feet (1.28 acres) of riparian mitigation, and at least 808 linear feet of new SRA plantings. The riparian habitat and proposed 100-foot setback provide ample mitigation opportunities throughout the site to accommodate this mitigation need.
- A Mitigation and Monitoring Plan will be prepared and implemented to the satisfaction of the Director of Planning by a qualified restoration ecologist and will provide the following:
 - Summary of habitat impacts and proposed mitigation ratios.
 - Goal of the restoration to achieve no net loss of habitat functions and values.
 - Location of mitigation site(s) and description of existing site conditions.
 - Mitigation design:
 - existing and proposed site hydrology.
 - grading plan if appropriate, including bank stabilization or other site stabilization features.
 - soil amendments and other site preparation elements as appropriate
 - planting plan.
 - irrigation and maintenance plan.
 - remedial measures/adaptive management, etc.
 - Monitoring plan (including final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc.)
 - Contingency plan for mitigation elements that do not meet performance or final success criteria
- Permits would be required from the regulatory agencies prior to Project construction or mitigation installation that will impact jurisdictional wetlands, drainages, streams etc. These agencies would typically include the USACE, CDFG, RWQCB, and (due to the possibility for impacts to steelhead) NOAA Fisheries.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

Impact: The Project could result in the abandonment of active raptor and/or migratory bird nests and/or direct mortality to individual raptors and/or migratory birds.

Mitigation: The following measures shall be implemented by the Project, which will avoid impacts to Cooper's hawks and other nesting raptors and migratory birds during construction:

- Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors, in the San Francisco Bay area extends from February through August.
- If it is not possible to schedule demolition and construction between September and January, then pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during Project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 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 shall inspect all trees and other possible nesting habitats (e.g., buildings, bridges) in and immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with CDFG, shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during Project construction.
- If vegetation and buildings are to be removed by the Project and all necessary approvals have been obtained, possible nesting substrate (e.g., trees and buildings) that will be removed by the Project shall be removed before the start of the nesting season (February) to help preclude nesting.
- A report summarizing the results of the pre-construction survey and subsequent efforts to protect nesting raptors (if found to be present) shall be submitted to the Director of Planning, Building and Code Enforcement.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

Impact: Development allowed by the proposed Project could inadvertently directly harm steelhead and/or western pond turtles.

Mitigation: The following measures, which are included in the Project, will avoid direct impacts to steelhead trout and western pond turtles during bridge demolition:

- Because it is possible that juveniles could be moving downstream during any time of year, including the dry season, measures shall be taken to ensure that movement of steelhead trout is not prevented by any water diversion structures used during construction, regardless of when construction occurs. Diversion of the entire creek will not be necessary, but small diversion dams may be required for the demolition of existing footings of the upstream (eastern) bridge on Upper Penitencia Creek. These diversion dams will minimally encroach into the creek and will be temporary. Measures will be taken to ensure constant flow suitable for

fish passage. Immediately prior to installation of the diversion dams, a survey will be completed by a qualified biologist for western pond turtles. If any pond turtles are found within the work area, they will be relocated to an adjacent portion of the creek outside of the work area (as approved by the CDFG). The diversion dams will be installed from upstream to downstream, and efforts will be taken to avoid inadvertent entrainment of steelhead trout. After the installation of the diversion dams, a survey will be completed by a qualified biologist for any steelhead trout that may have been inadvertently trapped within the diversion dam. If any steelhead trout are found within the dam, they will be relocated to the live stream channel (as approved by NOAA Fisheries).

- During demolition, the live stream channel of Upper Penitencia Creek will be protected within 25 feet upstream and downstream of the demolition area. The contractor will take measures to ensure that demolished portions of the bridges will not fall into the creek.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

Impact: Development allowed by the proposed Project could degrade water quality downstream of the Project site during Project construction, which could negatively affect aquatic wildlife species, including steelhead trout.

Mitigation: In addition to the Best Management Practices recommended by the Regional Water Quality Control Board (RWQCB) and included in the Project to reduce impacts to water quality during and after Project construction (refer to Section 4.8, Hydrology and Water Quality), the following Best Management Practices (BMPs) will be implemented by the proposed Project during construction in and adjacent to Coyote and Upper Penitencia Creeks to reduce impacts to species downstream of the Project to a less than significant level:

- No equipment will be operated in the live stream channel.
- No debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products, or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the U.S./State.
- Installation of temporary diversion dams around the footings of the existing upstream bridge during demolition.
- Standard erosion control and slope stabilization measures will be required for work performed in any area where erosion could lead to sedimentation of a waterbody.
- Work in riparian areas will be limited to the dry season (June 15 to October 15).

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

F. GEOLOGY AND SOILS

Impact: Development allowed by the proposed Project could expose people, structures, and/or improvements to major geologic or soils hazards that cannot be mitigated through the use of standard engineering design and seismic safety techniques.

Mitigation: The following measure would reduce the affects of expansive soils, liquefaction, and lateral spreading on the Project to a less than significant level:

- A detailed, design-level geotechnical investigation for the Project shall be completed by the applicant and shall be reviewed and approved by the City Geologist, prior to approval of a PD Permit for any phase of the Project. The geotechnical investigation shall identify and describe the specific engineering practices to be used to reduce or avoid all possible geologic hazards on the site. All recommendations in the design-level geotechnical report shall be incorporated into the Project design.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

G. HYDROLOGY AND WATER QUALITY

Impact: Construction of the Project in advance of the USACE flood control Project for Upper Penitencia Creek would place housing within a 100-year flood plain, which could impede flood flows.

Mitigation: If Project construction precedes completion of the USACE flood control Project for Upper Penitencia Creek, the Project would be built in conformance with FEMA and City of San Jose requirements. The following measures will reduce floodplain impacts to a less than significant level:

- In conformance with FEMA requirements and the City of San José Flood Hazard Ordinance, the finished floor of all buildings within the floodplain shall be elevated to or above the 100-year flood elevation and residential structures will not include below grade parking.
- The Project shall be designed to allow for sheetflow through the site (e.g., east-west streets, open space areas, and surface parking areas).
- Prior to obtaining a building permit, the Project shall obtain a FEMA letter of map revision (LOMR) to define the new (post-construction) flood plain areas and flood elevations. If there is no LOMR, the development would be required to meet flood plain management requirements based on the

existing map and the property owners would be required to buy flood insurance on the buildings. The majority of the site is in AH zones, which is based on ponded water on the site. North of Berryessa, the flood elevation is 79 ft NGVD. South of Berryessa, the flood elevation is 79 ft NGVD. The buildings would need to be raised, with finished floors above the flood elevation. In some areas this could be over three feet or more of fill.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

Impact: The operation of the Project site would pollute stormwater.

Mitigation: The following measures ensure compliance with City policies and the NPDES permit requirements, which will reduce post-construction water quality impacts to a less than significant level:

- At the PD Permit stage, a stormwater control plan shall be prepared by the applicant and submitted to the Transportation and Development Services division of the City of San José Department of Public Works for review and approval. The plan will identify and include site design measures, post-construction structural controls, and BMPs for reducing the contamination in storm water runoff as permanent features of the Project. A sufficient number of post-construction treatment measures would be incorporated into the Project in compliance with provision C.3 of the City of San José's NPDES permit and all other applicable local, state, and federal requirements. 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. These devices are appropriate if used in combination with BMPs that are capable of removing the fine particulate matter

- that is not amenable to removal by hydrodynamic separators, and in combination with filter media that permanently absorbs hydrocarbons.
- 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.
 - Bioretention Cells- small landscaped, graded areas that are constructed with a special soil mix that can absorb and filter runoff.
- The final design of all BMPs, including but not limited to locations, sizes, depths, infiltration rates, and side slopes, shall require review by the City and approval by the Director of Planning, Building & Code Enforcement, prior to issuance of a Building Permit. This will ensure that the final design not only meets the requirements of City Council Policies 6-29 and 8-14, but also addresses related issues such as groundwater protection, dual use, safety, visual and aesthetic considerations, vector control, the capacity of receiving pipelines, and provisions for emergency release of water. BMPs upstream of any new outfalls to Coyote or Upper Penitencia Creeks will also require review by the RWQCB. The Project applicant shall defer to the California Stormwater Quality Association’s Stormwater Best Management Practice Handbook for New Development and Redevelopment (January 2003) for the design and sizing of extended detention basins. Basin depths should optimally range from two to five feet with side slopes of 4:1 (horizontal:vertical) or flatter for dual park use purposes.
 - Maintenance techniques listed in Landscape Maintenance Techniques for Pest Reduction (prepared by the Santa Clara Valley Urban Runoff Pollution Prevention Program) shall be utilized. This will minimize the amount of pesticides that will be contained in stormwater runoff.
 - To ensure all stormwater BMPs are maintained for the life of the development, a maintenance and monitoring plan shall be developed at the PD Permit stage, to the satisfaction of the Director of Planning, Building & Code Enforcement. The maintenance and monitoring plan shall be implemented to ensure that all stormwater treatment BMPs will be permanently maintained by the Homeowner Association(s), or equivalent for rental housing or commercial uses, for the life of the development, to the satisfaction of the Director of Planning, Building & Code Enforcement.
 - The following measures, based on RWQCB Best Management Practices and City requirements, are included in the proposed Project to ensure compliance with NPDES permit requirements to reduce post-construction water quality impacts:
 - When the construction phase is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the RWQCB and the City of San José. The NOT will document that all elements of the SWPPP are executed, construction materials and waste area properly disposed, and a post-construction stormwater

control plan is in place as described in the SWPPP for the Project site.

- All post-construction treatment control measures (TCMs) will be installed, operated, and maintained by qualified personnel. On-site inlets will be stenciled per City requirements and cleaned out a minimum of once per year, prior to the wet season.
- The property owner/site manager will keep a maintenance and inspection schedule and record to ensure that the TCMs continue to operate effectively for the life of the Project. Copies of the schedule and record shall be provided to the City upon request and shall be available for inspection on-site at all times.
- All post-construction TCMs will be hydraulically sized pursuant to City Policy 6-29.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

Impact: Construction of the Project would generate dust, sediment, litter, oil, paint, and other pollutants that would contaminate runoff from the site and construction adjacent to the creeks can result in the short-term degradation of the water quality, due to erosion and/or sedimentation.

Mitigation: The following measures ensure compliance with City policies and the NPDES permit requirements, which will reduce water quality impacts during construction to a less than significant level:

- During construction, burlap bags filled with drain rock will be installed around storm drains to route sediment and other debris away from the drains.
- During construction, earthmoving or other dust-producing activities will be suspended during periods of high winds.
- During construction, all exposed or disturbed soil surfaces will be watered at least twice daily to control dust as necessary.
- During construction, stockpiles of soil or other materials that can be blown by the wind will be watered or covered.
- During construction, all trucks hauling soil, sand, and other loose materials will be covered and/or all trucks will be required to maintain at least two feet of freeboard.
- During construction, all paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites will be swept daily (with water sweepers).
- During construction, vegetation in disturbed areas will quickly be replanted.
- Prior to construction grading for the proposed land uses, the applicant will file a "Notice of Intent" (NOI) to comply with the General Permit administered by the RWQCB and will prepare a Stormwater Pollution

Prevention Plan (SWPPP). The SWPPP will describe measures included in the Project to minimize and control construction and post-construction runoff, including the following:

- Preclude non-stormwater discharges to the stormwater system.
- Implement effective, site-specific Best Management Practices for erosion and sediment control during the construction and post-construction periods.
- Cover soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff.
- Perform monitoring of discharges to the stormwater system.
- The applicant will submit a copy of the draft SWPPP to the City of San José for review and approval prior to construction of the Project site. The certified SWPPP will be posted at the site and will be updated to reflect current site conditions.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

G. HAZARDS AND HAZARDOUS MATERIALS

Impact: Due to a long history of various uses on the Project site, construction of the Project could create a hazard to construction workers, the general public, and/or the environment. The Project may expose people to hazardous levels of lead-contaminated soil, VOCs, PCBs, petroleum hydrocarbons, and organochloride pesticides and pesticide-related metals. During construction, the Project could expose construction workers and the general public to airborne asbestos and/or lead dust.

Mitigation: The following measures would reduce on-site hazardous material impacts to a less than significant level:

- Prior to the issuance of any Planned Development Permits for the Project site, the Project applicant will enter into an agreement with either the California Regional Water Quality Control Board or the Department of Toxic Substances Control to provide regulatory oversight. A Remedial Action Work Plan and/or a Soil Management Plan shall be prepared and submitted to the agency for their approval to demonstrate that cleanup standards will be met for the residential redevelopment of the site. All measures identified in the Plan(s) shall be implemented during all phases of construction, as applicable.
- A site-specific health and safety plan (HSP) for construction workers shall be prepared. Contractors are responsible for the health and safety of their own employees and are required to have their own HSPs and Injury and Illness Prevention Plans (IIPPs). The HSPs shall be developed to provide general health and safety guidance such that field activities can be completed in a safe manner. Per Cal/OSHA requirements (California

Code of Regulations, Title 8), each contractor working at this site shall prepare a health and safety plan that addresses the safety and health hazards of each phase of Site operations and includes the requirements and procedures for employee protection. The HSP shall provide standard operating procedures for personnel involved in activities that may expose them to chemical and physical hazards associated with the impacted soil that may be encountered at the site. The plan shall be kept on-site and each contractor is solely responsible for the health and safety of their own employees. Prior to commencing work on-site, Project management and field staff shall be familiar with the contents of the HSP.

- If contaminated soil is encountered during site redevelopment activities, the contaminated area shall be secured such that no unauthorized personnel can access the area. All soil suspected to be contaminated shall be over-excavated and placed on top of and covered with visqueen by licensed hazardous substances removal contractors to reduce infiltration by rainwater and contamination of underlying soil. Sandbags or tires shall be placed on stockpiles to secure the visqueen. While remaining on-site, stockpiles shall be checked daily to verify that they are adequately covered. If this soil is required to be off-hauled from the site, appropriate sampling, as required by the disposal facility and oversight regulatory agency, shall be performed.
 - The Project shall implement all the mitigation and avoidance measures identified for construction-related air quality impacts.
 - The Project shall implement all the mitigation and avoidance measures identified for construction-related water quality impacts.
 - The existing underground fuel storage tank shall be removed in accordance with the San José Fire Department procedures, prior to the issuance of a PD Permit that encompasses the portion of the property containing the UST.
 - Petroleum hydrocarbon contaminated soils shall be excavated and disposed at an appropriately licensed facility.
 - The two subgrade hydraulic lifts in the corporate yard shall be appropriately removed, prior to site redevelopment. Following removal of the lifts, verification soil samples shall be collected to document soil quality, and remediation shall be completed to applicable regulatory standards, if necessary, to the satisfaction of the Director of Planning, Building, and Code Enforcement.
- Per National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidelines, an asbestos survey shall be completed and all potentially friable ACM shall be removed prior to building demolition or renovation that may disturb the ACM.
- The requirements outlined by Cal/OSHA Lead in Construction Standard, Title 8, California Code of Regulations (CCR) 1532.1 shall be followed during demolition activities; these requirements include employee training, employee air monitoring, and dust control. If lead based paint is peeling, flaking or blistered, it shall be removed prior to demolition and shall be

managed and disposed as a separate waste stream. Any debris or soil containing lead paint or coating shall be disposed at landfills that are permitted to accept the waste being disposed.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

Impact: If improperly closed wells exist on the Project site, construction of the Project could contaminate groundwater.

Mitigation: All existing irrigation or other unused wells discovered during construction of the Project shall be closed in accordance with SCVWD procedures.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

Impact: The Project could be exposed to worst-case chemical releases at eight facilities in the Project area, which would be life threatening to people on the Project site.

Mitigation: There are no feasible measures available to reduce this impact to a less than significant level. Shelter-in-Place and Evacuation Plans for residents, workers, and visitors of the Project would not be effective because the source and type of hazardous material release cannot be known in advance and the air intake for the residential uses cannot be controlled.

Finding: Specific economic, legal, social, technological, or other considerations as described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

H. UTILITIES AND SERVICE SYSTEMS

Impact: Existing water mains in the Project area may be inadequate to serve the Project.

Mitigation: Prior to issuance of a PD Permit, the site plan for the Project will be submitted to San José Water Company, and San José Water Company will document the ability of the existing water mains within the developed public right-of-ways of Mabury and/or Berryessa Road to serve the proposed Project, including both potable water and fire water demands. The written determination of capacity by San José Water Company will be submitted to the City of San

José Director of Planning, Building, and Code Enforcement for review and approval, prior to the issuance of a PD Permit for the Project site. If San José Water Company determines that existing water lines are insufficient to serve the Project and/or major upgrades (i.e., new lines not within developed public road right-of-way) to the water system are required to serve the Project, then additional environmental review shall be undertaken and additionally mitigation or other measures required through that evaluation shall be implemented.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

Impact: The Project would generate substantial construction waste.

Mitigation: The Project shall have and implement a waste management plan for recycling of construction and demolition materials operating at the start of construction. The plan will be submitted to the Director of Environmental Services or the Construction & Demolition (C&D) Recycling Program Manager for review and approval, prior to the issuance of building permits. This plan shall demonstrate how Project construction will recycle or salvage a minimum of 50 percent (by weight) of construction, demolition, and land clearing waste.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

Impact: The Project will increase demand upon solid waste service systems.

Mitigation: Prior to issuance of PD Permits, the Project shall demonstrate to the satisfaction of the Director of Environmental Services that adequate space for recycling facilities, including the operation of solid waste vehicles, is provided.

Prior to issuance of Building Permits, a post-occupancy waste management plan shall be submitted to the Director of Environmental Service for review and approval to ensure that adequate levels of recycling service are provided for the mixed-use development proposed by the Project. Such plan, as approved, shall be implemented.

Finding: Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the FEIR. **[Less than Significant Impact with Mitigation]**

I. ENERGY

Impact: The Project would result in a substantial increase in demand upon energy resources in relation to Projected supplies.

Mitigation: The U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Rating System is designed for rating new and existing commercial, institutional, and high-rise residential buildings. It evaluates environmental performance from a "whole building" perspective over a building's life cycle, providing a definitive standard for what constitutes a green building. A building is scored in six different green building categories: sustainability, water efficiency, energy and atmosphere, materials and resources, indoor environmental quality, and innovation and design process. Based on the building's score, the building may be awarded a LEED Certified, LEED Silver, LEED Gold, or LEED Platinum status.

Buildings constructed by the Project shall incorporate elements of the LEED Project Checklist into the design and construction to the satisfaction of the Director of Planning, Building, and Code Enforcement. The following measures are examples of LEED measures that may be incorporated into the Project:

- The Project design shall incorporate principles of passive solar design. 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. **[Included in Project]**
- The Project shall include reflective, EnergyStar™ cool roofs. 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. **[Included in Project]**
- The Project shall utilize local and regional building materials in order to reduce energy consumption associated with transporting materials over long distances.
- The Project shall utilize building products that contain post-consumer recycled materials.
- All dwelling units shall be constructed to meet the requirements of the EnergyStar™ program for new homes. Such dwelling units improve energy efficiency by a minimum of 15% as compared to dwelling units that simply meet the Title 24 requirements. The additional efficiency is typically accomplished through the use of tight construction, energy-saving windows, improved insulation, and super-efficient heating/cooling systems. [Note: Numerous California builders (e.g., Shea Homes,

- Summerhill Homes, D.R. Horton, Pulte Homes, KB Homes, Avalon Bay) have been certified as EnergyStar partners.] **[Included in Project]**
- Although there is not a formal EnergyStar program for non-residential buildings, all buildings to be constructed by the Project shall be constructed to meet the same standards as those that apply to the residential program.
 - All new buildings shall include a photovoltaic (i.e., solar electric) system on rooftops. An average-sized residential system (2.5 kW) in California produces in excess of 4,000 kWhr annually, which equates to 62% of the average electricity demand per residential unit. Commercial systems are generally larger than residential systems and produce commensurately more electricity. (Note: The rule of thumb is that each square foot of photovoltaic cells produces 10 watts of power in bright sunlight.)
 - Geothermal heat pumps should be installed to provide heating, cooling, and hot water. Geothermal heat pumps are generally more efficient and less expensive to operate and maintain than conventional systems.
 - In addition to the LEED measures described above, the Project shall include the following measures to reduce energy consumption:
 - 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.fscoaz.org/index.html>).
 - The Project shall select materials with volatile organic compound limits set by the SCAQMD Rule #1168. **[Included in Project]**
 - The idling of construction vehicles shall be avoided to reduce fuel consumption, emissions, and noise. **[Included in Project]**
 - The Project shall have a waste management plan for recycling of construction and demolition materials operating at the start of construction. The plan will be submitted to the Director of Environmental Services or the Construction & Demolition (C&D) Recycling Program Manager for review and approval, prior to the issuance of building permits. The plan shall demonstrate how Project construction will recycle or salvage a minimum of 50 percent (by weight) of construction, demolition, and land clearing waste. **[Included in Project]**

Finding: Specific economic, legal, social, technological, or other considerations as described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

II. CUMULATIVE IMPACTS

A. Land Use

Impact: The development proposed by the cumulative Projects identified in the EIR could limit the viability of existing industrial uses and would substantially decrease the amount of industrial land within the City. This is not consistent with Balanced Community Policy #1 and General Plan policies for preserving industrial businesses and lands designated for industrial uses. The proposed Project would result in the loss of approximately 10 acres of land designated for *Combined Industrial/Commercial* uses and; therefore, its incremental effect is cumulatively considerable.

Mitigation: No feasible mitigation measures are available to reduce the cumulative land use impact to a less than significant level; the impact remains significant and unavoidable.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

B. Transportation

Cordon Analysis

Impact: The percent increase of traffic across the North San Jose cordon line during the AM peak hour results in a significant traffic impact according to the cordon line impact criteria and the incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The percent increase of traffic across the North San Jose cordon line during the PM peak hour results in a significant traffic impact according to the cordon line impact criteria and the incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Aggregated Screenline Analysis

Impact: During the AM peak hour, the results of the Aggregated V/C analysis for the CVSP Partial Build-out scenario show that for all links in Link Set 1 (East of US-101) there is an increase in the V/C ratio of 0.051 and in the volume of 1,281 vehicles. For the LOS E/F links, there is an increase in the V/C ratio of 0.045 and in the volume of 859 vehicles. Both of these changes exceed the impact criteria and result in a significant impact to all study roadways in Link Set 1 during the AM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The results of Link Set 2 (South of Jackson and Mabury) during the AM peak hour show that for all links there is an increase in the V/C ratio of 0.051 and in the volume of 1,059 vehicles. For the LOS E/F links there is an increase in the V/C ratio of 0.037 and in the volume of 640 vehicles. Both of these changes exceed the impact criteria and result in a significant impact to all study roadways in the Link Set 2 during the AM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: During the AM peak hour, the results of the Aggregated V/C analysis for the CVSP Partial Build-out scenario show that for all links in Link Set 3 (West of US-101) there is an increase in the V/C ratio of 0.065 and in the volume of 1,049 vehicles. For the LOS E/F links, there is an increase in the V/C ratio of 0.066 and in the volume of 680 vehicles. Both of these changes exceed the impact criteria and result in a significant impact to all study roadways in Link Set 3 during the AM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The results of Link Set 4 (West of I-680) during the AM peak hour show that for all links there is an increase in the V/C ratio of 0.022 and in the volume of 541 vehicles. For the LOS E/F links there is an increase in the V/C ratio of 0.049 and in the volume of 509 vehicles. Both of these changes exceed the impact criteria and result in a significant impact to all study roadways in Link Set 4 during the AM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: During the PM peak hour, the results of the Aggregated V/C analysis for the CVSP Partial Build-out scenario show that for all links in Link Set 1 there is an increase in the V/C ratio of 0.027 and in the volume of 690 vehicles. For the LOS E/F links, there is an increase in the V/C ratio of 0.021 and in the volume of 417 vehicles. Both of these changes exceed the impact criteria and the proposed Project would create a significant impact to all study roadways in Link Set 1 during the PM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The results of Link Set 2 during the PM peak hour show that for all links there is an increase in the V/C ratio of 0.046 and in the volume of 960 vehicles. For the LOS E/F links, there is an increase in the V/C ratio of 0.045 and in the volumes of 857 vehicles. Both of these changes exceed the impact criteria and the impact to this set of links would be considered a significant impact to all study roadways in the second set during the PM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: During the PM peak hour, the results of the Aggregated V/C analysis for the CVSP Partial Build-out scenario show that for all links in Link Set 3 there is an increase in the V/C ratio of 0.020 and in the volume of 323 vehicles. For the LOS E/F links, there is an increase in the V/C ratio of 0.016 and in the volume of 198 vehicles. Both of these changes exceed the impact criteria and the proposed Project would create a significant impact to all study roadways in Link Set 2 during the PM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The results of Link Set 4 during the PM peak hour show that for all links there is an increase in the V/C ratio of 0.016 and in the volume of 367 vehicles. For the LOS E/F links, there is an increase in the V/C ratio of 0.022 and in the volumes of 323 vehicles. Both of these changes exceed the impact criteria and

the impact to this set of links would be considered a significant impact to all study roadways in the Link Set 4 during the PM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Proximity Analysis

Impact: For TAZ 543, the all links analysis increase by 1,735 and 1,149 vehicle miles during the AM and PM peak hours, respectively. Both peak-hour values exceed the threshold of an increase of 1% and 200 vehicle miles and significant impacts would occur during both peak hours for the all links proximity analysis. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The congested links analysis would also result in a significant impact during both peak hours within TAZ 543. The change in traffic would result in an increase of 1,095 vehicle miles during the AM peak hour and an increase of 453 vehicle miles during the PM peak hour. These changes exceed the threshold of one half the all links VMT and 100 vehicle miles during both peak hours. The effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: For TAZ 1008, the all links analysis increase by 2,021 and 1,669 vehicle miles during the AM and PM peak hours, respectively. Both peak-hour values exceed the threshold of an increase of 1% and 200 vehicle miles and significant impacts would occur during both peak hours for the all links proximity analysis. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The congested links analysis would also result in a significant impact during both peak hours within TAZ 1008. The change in traffic would result in an increase of 2,783 vehicle miles during the AM peak hour and an increase of 2,978 vehicle miles during the PM peak hour. These changes exceed the threshold of one half the all links VMT and 100 vehicle miles during both peak hours. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Coyote Valley Specific Plan Full Build-out Scenario

Cordon Analysis

Impact: The percent increase of traffic across the North San Jose cordon line during the AM peak hour results in a significant traffic impact according to the cordon line impact criteria and the incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of

employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The percent increase in traffic across the North San Jose cordon line during the PM peak hour indicates a significant impact according to the cordon line impact criteria and the incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Aggregated Screenline Analysis

Impact: During the AM peak hour, the results of the Aggregated V/C analysis for the CVSP Full Build-out scenario show that all links in the first set increased the V/C ratio and volume by 0.053 and 1,332 vehicles, respectively. The LOS E/F links increased the V/C ratio and volume by 0.042 and 833 vehicles, respectively. Both of these changes exceed the impact criteria and result in a significant impact to all study roadways in Link Set 1 during the AM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The results of Link Set 2 during the AM peak hour show that all links increased the V/C ratio and volume 0.065 and 1,352 vehicles, respectively. The LOS E/F links increased the V/C ratio and volume 0.051 and 878 vehicles, respectively. Both of these changes exceed the impact criteria and result in a significant impact to all study roadways in Link Set 2 during the AM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: During the AM peak hour, the results of the Aggregated V/C analysis for the CVSP Full Build-out scenario show that for all links in Link Set 3 there is an increase in the V/C ratio of 0.041 and in the volume of 669 vehicles. For the LOS E/F links, there is an increase in the V/C ratio of 0.061 and in the volume of 613 vehicles. Both of these changes exceed the impact criteria and result in a significant impact to all study roadways in the third set during the AM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: During the PM peak hour, the results of the Aggregated V/C analysis for the CVSP Full Build-out scenario show that all links in Link Set 1 increased the V/C ratio and volume 0.040 and 1,009 vehicles, respectively. The LOS E/F links increased the V/C ratio and volume 0.040 and 1,009 vehicles, respectively. Both of these changes exceed the impact criteria and result in a significant impact to all study roadways in the first set during the PM peak hour. The effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The results of Link Set 2 during the PM peak hour show that all links increased the V/C ratio and volume 0.049 and 991 vehicles, respectively. The LOS E/F links increased the V/C ratio and volume 0.049 and 991 vehicles, respectively. Both of these changes exceed the impact criteria and the impact to this set of links would be considered a significant impact to all study roadways in

Link Set 2 during the PM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The results of Link Set 4 during the PM peak hour show that for all links there is an increase in the V/C ratio of 0.017 and in the volume of 372 vehicles. For the LOS E/F links, there is an increase in the V/C ratio of 0.034 and in the volumes of 505 vehicles. Both of these changes exceed the impact criteria and the impact to this set of links would be considered a significant impact to all study roadways in the fourth set during the PM peak hour. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Proximity Analysis

Impact: For TAZ 543, the all links analysis increase by 1,683 and 848 vehicle miles during the AM and PM peak hours, respectively. Both peak-hour values exceed the threshold of an increase of 1% and 200 vehicle miles and significant impacts would occur during both peak hours for the all links proximity analysis. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The congested links analysis would also result in a significant impact during both peak hours within TAZ 543. The change in traffic would result in an increase of 1,845 vehicle miles during the AM peak hour and an increase of 397 vehicle miles during the PM peak hour. These changes exceed the threshold of one half the all links VMT and 100 vehicle miles during both peak hours. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: For TAZ 1008, the all links analysis increase by 1,865 and 1,095 vehicle miles during the AM and PM peak hours, respectively. Both peak-hour values exceed the threshold of an increase of 1% and 200 vehicle miles and significant impacts would occur during both peak hours for the all links proximity analysis. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

Impact: The congested links analysis would also result in a significant impact during both peak hours within TAZ 1008. The change in traffic would result in an increase of 2,147 vehicle miles during the AM peak hour and an increase of 2,880 vehicle miles during the PM peak hour. These changes exceed the threshold of one half the all links VMT and 100 vehicle miles during both peak hours. The incremental effect of the proposed Project is cumulatively considerable.

Mitigation: No feasible mitigation measures have been identified to reduce this cumulative traffic impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the

mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

C. Hazardous Materials

Impact: The cumulative projects would place sensitive residential populations near existing industrial facilities that could use large quantities of hazardous materials. Approval of sixteen of the cumulative projects, including the proposed Project, would result in additional residential units being allowed adjacent or very near to existing industrial uses that use or store hazardous materials. This would increase the probability of future residents being exposed to harmful levels of various chemicals, in the event of an accidental hazardous material release. This would also increase the probability of multiple accidental hazardous material releases affecting multiple residential populations in the event of a catastrophe (e.g., major earthquake). Such a catastrophe would overextend existing public emergency services, thereby, limiting their ability to provide adequate service. This is a significant cumulative hazardous material impact.

Mitigation: No feasible mitigation measures have been identified to reduce the cumulative hazardous materials impact resulting from accidental releases to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

D. Noise

Impact: The construction noise impacts from each individual Project in the vicinity of the Project site would be reduced to a less than significant level with the use of standard construction noise mitigation measures. However, the cumulative impact of construction noise in the Project vicinity would be significant because there are several projects in close proximity and construction in the Project area would occur over an extended period of time.

Mitigation: No feasible mitigation has been identified to reduce the cumulative impacts of construction noise in areas planned for multiple developments.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

E. Air Quality

Impact: The cumulative projects will add a significant number of dwelling units to the City's General Plan, which will exceed the assumptions reflected in the regional CAP. The cumulative projects will also substantially increase VMT and VHT, which will generate air pollution. The Project's contribution to this cumulative air quality impact is cumulatively considerable.

Mitigation: Reductions in air pollution generated by the cumulative development proposed will be achieved by the same techniques used to reduce cumulative traffic congestion. Most of the cumulative projects, including the proposed Project, are consistent with the general policy direction of the Clean Air Plan, in that they propose high density residential uses along planned transit lines, at infill locations.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

F. Population, Jobs, and Housing

Impact: A comparison of the existing General Plan buildout and the cumulative effect of the proposed GPAs on the number of jobs and housing units within the City is shown in Table 55, below. Under the current General Plan, there would be 0.99 jobs per employed resident. Under cumulative conditions there would be approximately 0.92 jobs per employed resident, which is inconsistent with the City's objective of a jobs/housing balance of greater than 1.0 job per employed resident objective in the City's General Plan. Therefore, development proposed by the cumulative projects would result in a significant cumulative population, jobs, and housing impact. The Project would re-designate approximately 10 acres of employment generating uses with residential uses; therefore, its incremental effect is cumulatively considerable.

Mitigation: No feasible mitigation has been identified to reduce the cumulative population, jobs, and housing impact to a less than significant level.

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

G. Energy

Impact: The cumulative projects are projected to use a substantial amount of energy and the California Energy Commission is projecting future energy shortages. The incremental effect of the proposed Project is cumulatively considerable. This conclusion is consistent with the thresholds of significance used for energy impacts, which state that energy usage needs to be evaluated in the context of projected supplies.

Mitigation: The proposed Project would construct residences in the vicinity of job centers, as would the Coyote Valley Specific Plan Project. Proximity of jobs to housing and the availability of efficient public transit are important goals of land use planning, as embodied in the policies of San José's General Plan, because they can substantially reduce the adverse effects of automobile usage (i.e., energy consumption, congestion, and air pollution).

Finding: Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR. **[Significant Unavoidable Impact]**

III. ALTERNATIVES TO THE PROPOSED PROJECT

A. "NO PROJECT" ALTERNATIVE

1. Description

The No Project Alternative would allow the continued indefinite operation of the Flea Market on the Project site or development allowed under the existing General Plan land use designations.

2. Comparison to Proposed Project

The development allowed on the Project site under the existing General Plan land use designations compared to the proposed land use designations would result in over one-half million less square feet of commercial development and approximately 1,340 fewer housing units. Due to the fewer housing units, development under the existing General Plan land use designations would reduce the magnitude of most impacts identified to occur as a result of the proposed Project. Although incrementally reduced, the No Project alternative would still result in significant unavoidable air quality, transportation and traffic, hazards and hazardous materials, and cultural resources impacts, the same types of impacts as the proposed Project. Significant unmitigated energy impacts would also occur, as would the same types of significant impacts that are

mitigated to a less than significant level with mitigation proposed by the Project.

Development under the existing General Plan land use designations would not increase the severity of any impacts or result in any new impacts that were not identified to occur under the proposed Project. This alternative is environmentally superior to the proposed Project.

3. Finding

Specific economic, legal, social, technological, or other considerations set forth in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR.

B. NO BART ALTERNATIVE

1. Description

The No BART alternative assumes that BART would not be extended to San José. The density of development on the Project site under the No BART alternative would be substantially less. The Project site would not be located near a major transit station; therefore, the likelihood of the site being able to support residential development with an average density of 55 dwelling units per acre would be substantially reduced.

2. Comparison to Proposed Project

Because the amount of development on the Project site under the No BART alternative would be substantially reduced, this alternative would reduce the magnitude of most impacts identified to occur as a result of the proposed Project. Although substantially reduced, the No BART alternative would still result in significant unavoidable air quality, transportation and traffic, hazards and hazardous materials, and cultural resources impacts, but of a lesser magnitude than the proposed Project. Significant energy impacts would also occur, as would the same types of significant impacts that are mitigated to a less than significant level with mitigation proposed by the Project. The No BART alternative would also reduce the need to construct a new school in the Project area.

Development under the No BART alternative would not increase the severity of any impacts or result in any impacts that were not identified to occur under the proposed Project. This alternative is environmentally superior to the proposed Project.

3. Finding

Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR.

C. NORTH ONLY ALTERNATIVE

1. Description

The North Only alternative assumes that the Project site north of Berryessa would be redeveloped exactly as proposed by the Project (i.e., up to 1,000 dwelling units and up to 215,622 square feet of either commercial or office/industrial development) and the Project site south of Berryessa would continue to operate as the San José Flea Market.

2. Comparison to Proposed Project

Because the amount of development included under the North Only alternative would be substantially reduced, the alternative would reduce the magnitude of most impacts identified to occur as a result of the proposed Project. Although substantially reduced, the North Only alternative would still result in significant unavoidable air quality, transportation and traffic, and hazards and hazardous materials impacts but of a lesser magnitude compared to those from the proposed Project. Significant energy impacts could also occur, as would the significant impacts that are mitigated to a less than significant level with mitigation proposed by the Project.

The construction of a parking structure could provide parking for the Flea Market. It is possible that the Flea Market could continue to operate at its current location under the North Only alternative; thereby, avoiding the significant unavoidable historic impact resulting under the proposed Project (i.e., the loss of the San Jose Flea Market).

The North Only alternative would reduce the need to construct a new school in the Project area and would avoid bridge and outfall construction impacts to Upper Penitencia Creek and the construction of two-story, high-density residential development within 250-feet of a high-pressure gas line. These impacts are, however, reduced to a less than significant level with mitigation included in the proposed Project.

Development under the North Only alternative would not increase the severity of any impacts or result in any new impacts that were not

identified to occur under the proposed Project. This alternative is environmentally superior to the proposed Project.

3. Finding

Specific economic, legal, social, technological, or other considerations described in this Resolution, including without limitation the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or Project alternatives identified in the FEIR.

D. MITIGATE OAKLAND/HEDDING ALTERNATIVE

1. Description

Project-generated traffic would significantly impact the intersection of Oakland Road and Hedding Street during the AM peak hour. The improvements required to mitigate the Project's impact at this intersection to a less than significant level during the AM peak hour are the addition of a separate westbound right-turn lane and conversion of the southbound approach to two left turns, a through lane, and a shared through-right lane.

2. Comparison to Proposed Project

The project incorporates the mitigation associated with the Mitigate Oakland/Hedding alternative to reduce the Project's significant traffic impact to the intersection of Oakland Road and Hedding Street during the AM peak hour to a less than significant level. The Mitigate Oakland/Hedding alternative would not result in any new significant impacts, but it might require the use of eminent domain by the City of San Jose, if the right-of-way could not be acquired from willing sellers.

3. Finding

The project incorporates the mitigation identified in the EIR to reduce impacts to the intersection of Oakland Road and Hedding Street during the AM peak hour to a less than significant level..

IV. MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution and incorporated herein as EXHIBIT "A", and adopted as a part of this Resolution, 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.

V. STATEMENT OF OVERRIDING CONSIDERATION

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 land use (cumulative) transportation (Project and cumulative), hazards and hazardous materials (Project and cumulative), noise (cumulative), cultural resources (Project), air quality (Project and cumulative), and energy (Project and cumulative), 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 as described in this Resolution outweigh the unavoidable adverse environmental impacts of the Project, 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 further the City's Smart Growth Policies by being located near public transit and other existing neighborhood services thereby maximizing the existing public infrastructure investments made by the City and other public agencies.
2. The Project facilitates development of an in-fill property into a mixed-use development centered on BART transit, providing significant support for future

operation of the BART system and supporting investment in transit by generating more ridership at the proposed Berryessa BART station than the current uses.

3. The Project will provide additional housing to achieve the MTC Transit Oriented Policy criteria for an average of 3,850 housing units at each planned BART Station to qualify for transit funding to support the BART Project.
4. The Project includes potential intensification of development immediately adjacent to the planned BART station resulting in high-density housing that meets the goals for transit-oriented development to support future BART ridership.
5. The Project will create a new mix of workforce housing opportunities proximate to employment centers in North San Jose and Downtown.
6. The Project provides an opportunity for increased residential and commercial activity that will help rejuvenate this part of Northeast San Jose by facilitating mixed-use infill development centered on future BART transit.
7. The Project will create new job opportunities including near-term jobs in construction and preserve long-term industrial and commercial jobs onsite and provide employment opportunities for highly trained workers.
8. The Project provides an opportunity to enhance an existing residential neighborhood and create uniformity in this community around a future transit village.
9. The Project through its future residents will help support existing and future development of neighborhood serving businesses in this part of Northeast San José.
10. The Project provides an overall improvement in access and mobility for the surrounding neighborhoods.
11. The balanced mix of land uses will further the Economic Development and Housing objectives of the City's General Plan
12. The Project will contribute to major transportation improvements in the area by modernizing and improving the US 101/Oakland Road interchange.
13. The applicant had entered into an agreement with the Berryessa Union School District whereby the Project will provide for the dedication of an elementary school site to serve not only the Project generated students but other school needs in the area.

14. The Project provides substantial site area, approximately 31% of the 120 acre property, dedicated to riparian setbacks, open space, and public parks including regional trails, sports fields and neighborhood serving parks.

15. The Project will implement certain "Green Building" measures to reduce energy consumption during construction and occupancy of the buildings.

ADOPTED this 14th day of August , 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CORTESE, LICCARDO,
NGUYEN, PYLE

NOES: CONSTANT, OLIVERIO, WILLIAMS; REED

ABSENT: NONE

DISQUALIFIED: NONE

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk