

**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 2026-

**CONSIDERING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR
THE SAN JOSE DATA CENTER PROJECT AND ITS ADDENDUM AND MAKING
CEQA RESPONSIBLE AGENCY FINDINGS FOR THE SITE WORKS AGREEMENT**

WHEREAS, Microsoft Corporation (Microsoft) is developing a new data center, San Jose Data Center Project (SJDC Project) on a private property to the east of the existing Santa Clara Valley Water District (Valley Water) Silicon Valley Advanced Water Purification Center (SVAWPC); and

WHEREAS, Microsoft will be extending and modifying McCarthy Lane as a part of the SJDC Project; and

WHEREAS, Microsoft's SJDC Project conflicted with the current location of the SVAWPC's visitor center trailer on McCarthy Lane; and

WHEREAS, On July 13, 2022, California Energy Commission (CEC), as the lead agency, certified the San Jose Data Center (SJDC) Final Environmental Impact Report (EIR), adopted a Mitigation Monitoring and Reporting Program (MMRP) for the implementation of the mitigation measures identified therein, adopted CEQA Findings of Fact pursuant to State CEQA Guidelines section 15091, and approved the SJDC Project; and

WHEREAS, After the Final EIR was certified, the City of San José (City), as the responsible agency under the California Environmental Quality Act (CEQA) and local land use agency, requested modifications to the roadway improvements and utility infrastructure (City Modified Project) included in the SJDC Project; and

WHEREAS, the City completed an Addendum to the Final EIR to evaluate the City Modified Project; and

WHEREAS, the City's Addendum concluded that implementation of the City Modified Project would not result in new or more severe significant environmental impacts not considered in the prior CEC certified Final EIR; and

WHEREAS, the City found that the City Modified Project shall conform to all applicable requirements of the MMRP approved for the SJDC Project; and

WHEREAS, Microsoft, Valley Water, and the City negotiated a Site Works Agreement to construct a new parking lot, certain required land improvements, and move the visitor center trailer; and

WHEREAS, the elements of the City Modified Project applicable to Valley Water included in the Site Works Agreement are the construction of a new parking lot and the relocation of the visitor center trailer (Valley Water Purification Center Modifications); and

WHEREAS, the City has evaluated the SJDC road improvement and Valley Water Purification Center Modifications in the adopted Addendum and filed a Notice of Determination (NOD); and

WHEREAS, the City adopted a resolution and filed an Addendum on April 10, 2025; and

WHEREAS, Valley Water is also a responsible agency under CEQA for approving the Site Works Agreement and must consider the Certified Final EIR by the lead agency, CEC, and City's Addendum to approve the Site Work Agreement, and file its own NOD for the Site Works Agreement; and

WHEREAS, Valley Water only seeks to approve the Site Works Agreement and is not approving or committing to the SJDC or the entire City Modified Project; and

WHEREAS, the Final EIR analyzed the potential environmental impacts for the SJDC; and

WHEREAS, the Addendum analyzed the impacts of the City Modified Project compared to the findings of the Final EIR regarding the following environmental issues and concluded that the modifications involve no new significant environmental effects or a substantial increase in the severity of previously identified significant effects on resources such as Air Quality, Biological Resources, Cultural Resources/Tribal Cultural Resources, Energy, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Transportation, and Utilities; and

WHEREAS, the Final EIR and the Addendum concluded that the SJDC Project and City Modified Project would have less than significant impacts with the implementation of mitigation measures identified in the MMRP; and

WHEREAS, pursuant to State CEQA Guidelines section 15096, Valley Water hereby intends to adopt CEQA Findings of Fact under State CEQA Guidelines section 15091; and

WHEREAS, Valley Water has heard, been presented with, reviewed, and considered all of the information and data presented to the Valley Water Board of Directors, including the CEC certified EIR for the SJDC Project, the City Addendum, and the findings made by those respective agencies under State CEQA Guidelines section 15091 and 15093; and all public comments; and

NOW, THEREFORE BE IT RESOLVED by the Board of Directors of the Santa Clara Valley Water District as follows:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Adequacy of the Final EIR and Addendum under CEQA. Valley Water has independently reviewed and considered the certified Final EIR and Addendum for the SJDC Project and City Modified Project, CEC's record of proceedings, City's record of proceeding, and Valley Water's record of proceedings, and finds that the EIR and the Addendum adequately and properly analyze the potential environmental impacts of the SJDC and City Modified Project only as it related to the Site Works Agreement that Valley Water seeks to approve.

Valley Water further hereby finds that none of the conditions set forth in State CEQA Guidelines section 15162 that could potentially trigger the need for a Subsequent EIR or Subsequent Negative Declaration apply to the approval of the Site Works Agreement. The Site Works Agreement does not entail or propose any substantial changes to the SJDC Project or City Modified Project that will require major revisions of the EIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously

identified significant effects. There have been no substantial changes that have occurred with respect to the circumstances under which the SJDC and the City Modified Project, which was analyzed in the EIR and the Addendum, will be undertaken that will require major revisions of the EIR or Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There has been no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified, which shows that (1) the SJDC and the City Modified Project will have one or more significant effects not discussed in the EIR; (2) significant effects previously examined will be substantially more severe than shown in the EIR; (3) mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the SJDC or City Modified Project; or (4) mitigation measures or alternatives, which are considerably different from those analyzed in the EIR and the Addendum, would substantially reduce one or more significant effects on the environment. None of these conditions, as set forth in State CEQA Guidelines section 15162, apply here.

SECTION 3. Finding concerning Alternatives and Mitigation Measures. Valley Water, as a responsible agency under CEQA, is more limited than the lead agency (i.e., CEC) when considering alternatives and mitigation measures for the SJDC Project and the City Modified Project. A responsible agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of a project that the responsible agency decides to carry out, finance, or approve; moreover, a responsible agency is required to adopt a feasible alternative or feasible mitigation measures for a project only if (1) such alternative or mitigation measures are within the responsible agency's powers, and (2) the alternative or mitigation measures would substantially lessen or avoid any significant effect the project would have on the environment.

Here, Valley Water is not approving or committing to carrying out, financing, or approving the SJDC Project or the City Modified Project. Instead, Valley Water seeks only to approve the Site Works Agreement, which would authorize the modifications to the SVAWPC's parking lot and visitor center. Valley Water finds that the mitigation measures to be implemented by CEC and City, as set forth in the EIR and the Addendum, and the MMRP adopted by CEC, mitigate and avoid potential environmental impacts to the extent feasible of the SJDC and City Modified Project. Valley Water finds there are no feasible alternatives or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effects of the Site Works Agreement on the environment, beyond what was identified in the EIR and the MMRP.

SECTION 4. CEQA Findings of Fact under State CEQA Guidelines section 15091. Valley Water adopts CEC's Findings of Facts (**Exhibit A**) and City CEQA Resolution and Findings of Fact (**Exhibit B**), a true and correct copy of which is attached hereto and incorporated herein by reference, as to the Site Works Agreement.

SECTION 5. Notice of Determination. Valley Water Board hereby directs staff to prepare, file, and cause to be posted a Notice of Determination (NOD) with the County Clerk or Clerk to the Board of Supervisors in the County of Santa Clara. A draft NOD is included as **Exhibit C**.

SECTION 6. Custodian of Documents. The custodian of documents constituting the record of proceedings for this matter is Valley Water's Clerk of the Board. The documents constituting the record of proceedings for this matter are located at 5750 Almaden Expressway, San Jose, California.

SECTION 7. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 8. Effective Date. This Resolution shall become effective immediately upon its adoption and filing of the NOD.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on July 14, 2026.

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

TONY ESTREMER
Chair, Board of Directors

ATTEST

CANDICE KWOK-SMITH
Clerk, Board of Directors

EXHIBIT A COVERSHEET

CEC FINDINGS OF FACT

No. of Pages: 2

Exhibit Attachments: None

CALIFORNIA ENERGY COMMISSION CONCLUSION REGARDING POTENTIAL ENVIRONMENTAL IMPACTS

CALIFORNIA ENERGY COMMISSION

715 P Street Sacramento, California 95814

energy.ca.gov

CEC-70 (Revised 11/2021)

IN THE MATTER OF:

SAN JOSE CITY Backup Generating Facility Docket No. 19-SPPE-04

DECISION

Potential Environmental Impacts: The Final EIR establishes that no substantial adverse impact on the environment will result from the construction or operation of the Backup Generators or the Project. Page 19-26

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=244835&DocumentContentId=79021>

After reviewing the evidence in the record, we find that the Project will not have a significant adverse impact, individually or cumulatively, on the environment. Furthermore, we find that the Final EIR considered and analyzed a reasonable range of alternatives. We also find that the mitigation measures incorporated into the Project design, proposed in the Final EIR, and set forth in the MMRP, will reduce any potentially significant impacts to less than significant levels and will be enforced by the City of San José. Therefore, we conclude that the construction and operation of the Project will not have a substantial adverse impact on the environment.

FINDINGS AND CONCLUSIONS

Based on the record of this proceeding, we find:

1. The Final EIR and March 29th Addendum have been prepared in compliance with CEQA and thoroughly and adequately analyze potential environmental and energy resources impacts.
2. This Decision was prepared in accordance with the public review process mandated by the Warren-Alquist Act, CEC regulations, and CEQA.
3. The Backup Generators are thermal powerplants that have a generating capacity of up to 99 MW.
4. The imposition and implementation of Conditions of Exemption PD-1 and PD-2 will ensure that the generating capacity of the Backup Generators will not exceed 99 MW.
5. The imposition and implementation of mitigation measure AQ-1 will ensure that the Project will not have any significant environmental impacts on air quality.
6. The imposition and implementation of mitigation measures BIO-1 through BIO-20 will ensure that the Project will not have any significant environmental impacts on biological resources.

7. The imposition and implementation of mitigation measures CUL-1 through CUL-6 will ensure that the Project will not have any significant environmental impacts on cultural and tribal cultural resources.

8. The imposition and implementation of mitigation measure GEO-1 will ensure that the Project will not have any significant environmental impacts on geology and soils (paleontology).

9. The imposition and implementation of mitigation measures GHG-1 and GHG-2 will ensure that the Project will not have any significant environmental impacts related to greenhouse gas emissions.

10. The imposition and implementation of mitigation measures HAZ-1 and HAZ-2 will ensure that the Project will not have any significant environmental impacts related to hazards and hazardous materials.

11. The imposition and implementation of mitigation measure NOI-1 will ensure that the Project will not have any significant environmental impacts related to noise.

12. The imposition and implementation of mitigation measure TRA-1 will ensure that the Project will not have any significant environmental impacts on transportation.

13. BAAQMD will require the Project to fully offset NOx emissions during BAAQMD's permitting process.

14. The adoption of the MMRP, set forth in Appendix C, and the City of San José's agreement to serve as the enforcement agency for the MMRP will ensure that the Project complies with all requirements in the MMRP.

15. The Project will not cause any significant adverse environmental impacts with implementation of the Project design features and mitigation measures imposed by this Decision, which incorporates the Final EIR and March 29th Addendum by reference.

16. The Project will not cause any significant adverse impacts to energy resources.

17. Based on the above findings, the CEC may grant a small powerplant exemption in accordance with California Public Resources Code section 25541.

We hereby **CERTIFY** the Final EIR, including the March 29th Addendum to the Final EIR contained in Appendix B, for the CEC's Decision for the Small Power Plant Exemption for the San Jose City Backup Generating Facility. In certifying the Final EIR, we do so through the exercise of our independent judgment and review after finding substantial evidence, considering the record as a whole, to support certification.

We hereby **ADOPT** the MMRP to ensure the Project design features and additional mitigation measures from this Decision will be implemented by the City of San José.

EXHIBIT B COVERSHEET

SAN JOSE RESOLUTION AND FINDINGS OF FACT

No. of Pages: 84

Exhibit Attachments: None

April 10, 2025

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Dear Microsoft Corporation:

RE: **Conditional Use Permit, File No. CP23-016, V24-001 & ER20-219**, located on the
Northwesterly corner of State Route 237 and McCarthy Lane (1657 Alviso-Milpitas Road).

The enclosed is your copy of the Planning Commission's action on this Conditional Use Permit.

This permit may contain one or more conditions, such as revised plans, which must be met within a specific deadline. If conditions are not met the permit will automatically expire. Please read your permit carefully!

The Planning Commission's action taken on this permit or any of the conditions of this permit may be appealed by the applicant to the City Council by filing a Notice of Appeal and a \$13,991.00 fee. The appeal must be submitted in person or by e-mail at planningtechs@sanjoseca.gov and presented on the Notice of Appeal form available from this department on or before **5:00 p.m, April 21, 2025**. If you have any questions, please contact the Project Manager, Cameron Gee at (408) 535-6807 or by e-mail at cameron.gee@sanjoseca.gov.

Sincerely,



Manira Sandhir,
Deputy

Enclosures

CG;sg

RESOLUTION NO. 25-008

A Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit to allow for the relocation of an existing approximately 1,440-square-foot Valley Water Purification Visitors Center and the removal of 79 trees (35 ordinance-size, 44 non-ordinance-size, and 273 replacement trees) for the construction and operation of a data center with ancillary office use as well as related on- and off-site improvements, consisting of two single-story data center buildings totaling approximately 397,205 square feet, an associated electrical substation, sanitary sewer pump station, storm drain pump station, water storage tank, 226 standby backup generators, surface parking lots, and a Development Exception to allow a parking reduction, on an approximately 64.5-gross-acre site, located at the northwesterly corner of State Route 237 and McCarthy Lane (1657 Alviso-Milpitas Road; APNs 015-31-063 & 015-31-054)

FILE NOS. CP23-016 & V24-001

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on November 21, 2019, Microsoft Corporation, the applicant and property owner, (“Permittee”) filed applications (File Nos. CP23-016 & V24-001) with the City of San José for a Conditional Use Permit to allow the relocation of an existing approximately 1,440-square-foot Valley Water Purification Visitors Center and the removal of 79 trees (35 ordinance-size, 44 non-ordinance-size, and 273 replacement trees) for the construction and operation of a data center with ancillary office use as well as related on- and off-site improvements, consisting of two single-story data center buildings totaling approximately 397,205 square feet, an associated electrical substation, sanitary sewer pump station, storm drain pump station, water storage tank, 226 standby backup generators, surface parking lots, and a Development Exception to allow a parking reduction (“Project”) on an approximately 64.5-gross-acre site, on that certain real property situated in the LI Light Industrial Zoning District and located at the northwesterly corner of State Route 237 and McCarthy Lane (1657 Alviso-Milpitas Road; APN 015-31-054, San José, sometimes referred to herein as the the “data center site” or the “subject property”); and

WHEREAS, related off-site improvements to be installed to serve the Project will be located within off-site supporting infrastructure improvement areas (collectively, the “SIAs”), as well as additional lands owned by the City and leased by Valley Water District (“Valley Water”); and

WHEREAS, the data center site is all that real property consisting of approximately 64.5 acres (APN 015-31-054) more particularly described in Exhibit "A," entitled "Legal Description," which is attached and incorporated by reference; and

WHEREAS, the SIAs, collectively, is all that real property that consists of approximately 6.7 linear miles where off-site improvements will be located on portions of APNs 015-30-061, 015-31-061, 015-31-062, 015-31-063, 015-30-109, 015-31-072, 015-31-044, and 015-31-060, along Zanker Road (no parcel number), and across Alviso Milpitas Road (no parcel number), all of which are owned by the City; and

WHEREAS, in addition, to enable the extension of McCarthy Lane, the existing Valley Water District Visitors Center will be relocated to the southern portion of the new Visitors Center parking lot being installed (along with related relocated utility improvements), all of which will be on lands owned by the City and leased by Valley Water (collectively, the "Valley Water Lands"); and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a duly noticed public hearing on said application, gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter, received and considered the reports and recommendations of the Director of Planning, Building and Code Enforcement, received in evidence a development plan for the subject property entitled, "Microsoft Corporation SJC02 Data Center," dated February 18, 2022, and last revised January 23, 2025; said plan is on file in the Department of Planning, Building and Code Enforcement and is incorporated by reference (collectively, the "Approved Plans" or "Approved Plan Set");

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE THAT:

The foregoing recitals are hereby incorporated by reference as if fully set forth herein. The Planning Commission has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the Permittee, City staff, and other interested parties and hereby determines, concludes, and finds as follows:

1. **Site Description and Surrounding Uses.** The data center site consists of approximately 64.5 gross acres of vacant land located at 1657 Alviso-Milpitas Road (APN 015-31-054). To the west of the data center site are lands owned by the City of San José and leased by Valley Water District, upon which the San José-Santa Clara Regional Wastewater Facility and Silicon Valley

Advanced Water Purification Center are located, and where the Valley Water Purification Visitors Center will be relocated (APN 015-31-063). This parcel is referred to herein as “Valley Water Lands.”

The two parcels are located northerly of California State Route 237 between Zanker Road and Coyote Creek. Both parcels are surrounded by San José-Santa Clara Regional Wastewater Facility biosolid drying beds to the north, Los Esteros Energy Center and California State Route 237 to the south, Coyote Creek and the City of Milpitas to the east, and vacant land to the west across Zanker Road.

Associated off-site improvements, including new roadway infrastructure and utility connections will be located on APNs 015-30-061, 015-31-061, 015-31-062, 015-31-063, 015-30-109, 015-31-072, 015-31-044, and 015-31-060, along Zanker Road (no parcel number), and across Alviso Milpitas Road (no parcel number) (collectively, the “Supporting Infrastructure Improvement Areas” or “SIIAs”).

The data center site is currently accessible via a private driveway off Alviso-Milpitas Road at the southern boundary of the data center site.

2. **Project Description.** As detailed more fully below, the Project consists of the construction and operation of a data center with ancillary office use, involving two single-story data center buildings totaling approximately 397,205 square feet with a maximum electrical load of 99 MW and supporting infrastructure improvements west of the data center site located on the Supporting Infrastructure Improvement Areas (SIIAs) and other off-site improvements located on the Valley Water Lands.

Data Center Site

The northern data center building (referred to as SJC02) will be approximately 244,771 square feet and consist of five colocation units with supporting amenities to facilitate data center operations. The southern data center building (referred to as SJC03) will be approximately 152,434 square feet and consist of three colocation units with supporting amenities. Both buildings will include approximately 13,826 square feet of administrative space, including restrooms and shower facilities, storage areas, and loading docks. A new 115-kilovolt electrical substation will be located in the northwestern corner of the data center site with two underground 115-kilovolt electrical supply lines that will connect the new 115-kilovolt substation to the existing PG&E Los Esteros Substation, located adjacent to the western boundary of the data center site. The electrical supply lines from the 115-kilovolt substation to the PG&E Los Esteros Substation will be approximately 0.2 miles long. Electricity for the data center will be supplied via a new 115-kilovolt substation that will be constructed on the data center site and connected through the existing PG&E Los Esteros Substation 115-kilovolt bus system.

A total of 224 renewable natural gas emergency generators with an output capacity of 0.45 megawatts will be installed surrounding the data center buildings to provide electrical support to the buildings during utility outages, electrical equipment interruptions or failure, load shedding, demand response, and for resource adequacy purposes. In addition to the renewable natural gas emergency generators, there will be one 0.5-megawatt and one 1.25-megawatt administrative emergency diesel generator to provide continuous power for facility operation,

which will include electrical supply, cooling and heating, network links, and fire monitoring in each data center building.

Additional data center improvements include a water storage tank, pump stations, and bioretention basins. An approximately 54,400-square-foot water storage tank will be located in the northwestern area of the data center site for fire protection/fire flow and backup cooling purposes. The water storage tank will be accompanied by two fire pumps rated at 0.164 megawatts with 220-horsepower engines. An approximately 1,600-square-foot sanitary sewer lift pump station and 3,000-square-foot storm drain pump station will be constructed in between the SJC02 and SJC03 buildings. The sanitary sewer pump station will convey wastewater to an existing sanitary sewer pipeline in Thomas Foon Chew Way via a new sanitary sewer line that will be constructed for the Project. This sanitary sewer pump station will also include a mechanical grinder within a compartment of a wet well for the pump station. The storm drain pump station will pump stormwater from the data center site to a new proposed roadway drainage network within Zanker Road via a new storm drain line for the Project. Both pump stations will be powered by the administrative emergency diesel generators within the data center site during emergency electrical outages. To manage the increased runoff from the data center site, approximately 62,560 square feet of bioretention basins will be provided.

Primary access to the data center site will be via an extension of McCarthy Lane (described in more detail below) with secondary access via the private driveway off Alviso Milpitas Road at the southern boundary of the data center site. A total of 122 vehicle parking spaces and 34 bicycle parking spaces will be provided on-site. The 122 vehicle parking spaces that will be provided for the data center buildings is 63 fewer spaces than the number required under the San José Municipal Code at the time the Project was submitted. A Development Exception was submitted to allow the vehicle parking reduction.

The Operations Plan states that there will be a peak of approximately 100 employees on site during a shift change. Approximately 60 employees will be on site during the daytime shift, 40 employees during the swing shift, and 40 employees during the night/early morning swing shift. Typical on-site operations include monitoring and repairing IT equipment, performing security assessments, custodial activities, engine maintenance, building and landscaping maintenance, office management, and administrative activities.

A total of 79 trees (35 ordinance-size and 44 non-ordinance-size) will be removed to facilitate the construction of the data center. A total of 273 15-gallon replacement trees will be planted.

Supporting Infrastructure Improvement Areas

In the supporting infrastructure improvement areas west of the data center site, there will be new roadway infrastructure and utility connections. There will also be modifications to the Santa Clara Valley Water (Valley Water) Purification Center due to the McCarthy Lane Extension described below.

McCarthy Lane Extension

As described above, primary access to the data center site will be via an extension of the existing McCarthy Lane (herein referred to as McCarthy Lane Extension) located between the Valley Water Purification Center and the San José-Santa Clara Regional Wastewater Facility (RWF) Dewatering Facility. The McCarthy Lane Extension will be approximately 1,150 feet

long with the width varying from approximately 22 to 64 feet. The total acreage will be approximately 0.8 acre. This roadway will be a two-lane facility that will primarily be used by employees, vendors, and visitors of the data center site, Valley Water Purification Center, and RWF Dewatering Facility. Runoff from the McCarthy Lane Extension will be treated via an approximately 2,400-square-foot lined bioretention basin with an underdrain located on the data center site.

Zanker Road Widening and Multimodal Infrastructure

The Project will widen Zanker Road between the McCarthy Lane Extension and the State Route 237 interchange. The roadway will include one additional lane of traffic in each direction (e.g., one north and one south traffic lane), which will change Zanker Road from a two-lane roadway to a four-lane roadway. The upgraded four-lane Zanker Road will transition back to the existing two-lane roadway configuration north of the Zanker Road/McCarthy Lane intersection. Stormwater runoff that will result from an increase in impervious surface area will drain to bioretention basins (totaling approximately 7,600 square feet) that will be constructed along both sides of Zanker Road. New traffic signals will be installed at the intersection of Zanker Road and McCarthy Lane. The existing traffic signal equipment at Zanker Road and the State Route 237 off-ramp intersection to accommodate the widening of Zanker Road will also be upgraded as part of the Project.

Additional modifications to Zanker Road include the construction of new sidewalks on either side of the proposed widened roadway. Two new pedestrian crosswalks will also be provided with one signalized pedestrian crosswalk located just south of the Zanker Road/McCarthy Lane intersection (providing direct access to/from the Valley Water Purification Center across Zanker Road) and a second pedestrian crosswalk will be constructed parallel to Zanker Road where the roadway intersects with a private driveway leading to the RWF operations west of Zanker Road. The second pedestrian crosswalk will provide a continuous connection between the southbound sidewalk proposed along Zanker Road. A Class I bicycle trail (a bicycle trail separated from the roadway) will be constructed on the eastern side of Zanker Road and a new Class IV bicycle lane (a protected lane on the roadway) will be constructed on the western side of Zanker Road. A bicycle crossing will be constructed at the intersection of Zanker Road and the State Route 237 off-ramp to allow bicyclists to cross between the Class I bicycle trail and Class IV bicycle lane.

Utility Connections

To support the data center site, there will be several new utility connections constructed. The utility lines are as follows:

- One approximately 0.8-mile-long, six-inch water line for potable water (Water Line Route #1) that will ultimately connect to an existing 12-inch line in Zanker Road.
- One approximately 1.2-mile-long, 12-inch water line for emergency water (Water Line Route #2) that will ultimately connect to an existing 12-inch line in Zanker Road.
- One approximately 0.9-mile-long, 6-inch sanitary sewer line that will connect into an existing sanitary sewer pipeline located at the western side of Thomas Foon Chew Way.

- One approximately 0.7-mile-long, 8-inch recycled water line that will connect into an existing 30-inch recycled waterline in Zanker Road.
- One approximately 0.7-mile-long, 15- to 21-inch (depending on the line location) storm drain line that will connect into a new proposed storm drain gravity pipeline in Zanker Road, where the roadway intersects with Thomas Foon Chew Way.

Valley Water Visitor Center

The McCarthy Lane Extension modification described above will encroach upon an area currently occupied by the Valley Water Purification Center visitor center and associated parking lot. As a result, the Project will necessitate construction of a new parking lot and relocation of the visitor center to a currently undeveloped area referred to herein as the Valley Water Lands (approximately 0.7-gross-acres), directly east of the existing Valley Water Purification Center.

The Valley Water Purification Center currently provides nine parking spaces for its visitor center. For overflow parking, the Valley Water visitor center has vehicles (including passenger vehicles and buses) park along the eastern terminus of McCarthy Lane. The existing McCarthy Lane can accommodate parking for the equivalent of up to approximately 50 passenger vehicles and three buses used for larger tours and events. The new parking lot will provide a total of 42 car parking spaces and three bus parking spaces. Walkways connecting the parking lot to the Valley Water Purification Center will also be constructed for visitor access. The parking lot will include new lighting and stormwater management facilities, such as a storm drain and a bioretention basin.

The current visitor center is a small portable modular building measuring approximately 1,440 square feet (approximately 23 feet wide and 60 feet long). The existing visitor center will be relocated to the southern portion of the new visitor center parking lot described above. The visitor center will be moved to its new location with the use of two cranes to lift the structure and a haul truck to transport it. No expansion of the visitor center facility or its operations will occur.

Construction

The Project will have an approximately 33-month construction period. Temporary construction staging areas will be within the data center site boundaries and within the supporting infrastructure improvement area along Zanker Road.

3. **Envision San José 2040 General Plan Land Use Conformance.** The data center site (which includes the data center buildings, electrical substation, sanitary sewer pump station, storm drain pump station, water storage tank, and standby backup generators) has an Envision San José 2040 General Plan Land Use/ Transportation Diagram designation of Light Industrial. Both the SIIAs and the Valley Water Lands (which includes the relocated Valley Water Purification Visitors Center, along with related relocated utility improvements and new surface parking lot) have a designation of Public/Quasi-Public. Below is an analysis of the Project with respect to the Light Industrial and Public/Quasi-Public designations of the Envision San José 2040 General Plan.

The Light Industrial designation is intended for a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects. Warehousing, wholesaling, and light manufacturing are examples of typical uses in this designation. Light Industrial designated properties may also contain service establishments that serve only employees of businesses located in the immediate industrial area. Office and higher-end industrial uses, such as research and development, are discouraged in order to preserve the scarce, lower cost land resources that are available for companies with limited operating history (startup companies) or lower cost industrial operations. The maximum allowed Floor Area Ratio (FAR) within the Light Industrial designation is 1.5.

Analysis: The data center buildings, associated utility structures, and other related improvements are appropriate uses within the Light Industrial land use designation, as they do not involve industrial uses with nuisance or hazardous characteristics such as heavy manufacturing or extractive processing. The development of the data center buildings would result in an FAR of approximately 0.14, which is within the maximum FAR allowed. Therefore, the Project is consistent with the Light Industrial land use designation.

The Public/Quasi-Public designation is used to designate public land uses, including schools, colleges, corporation yards, homeless shelters, permanent supportive housing, libraries, fire stations, water treatment facilities, convention centers and auditoriums, museums, governmental offices, and airports. Joint development Projects which include public and private participation - such as a jointly administered public/private research institute or an integrated convention center/hotel/restaurant complex - are allowed. This category is also used to designate lands used by some private entities, including private schools, daycare centers, hospitals, public utilities, and the facilities of any organization involved in the provision of public services such as gas, water, electricity, and telecommunications facilities that are consistent in character with established public land uses.

Analysis: The relocated Valley Water Purification Visitors Center and related improvements will remain within the Public/Quasi-Public land use designation. The Visitors Center will continue supporting the larger Valley Water facility, an appropriate land use within the Public/Quasi-Public designation. In addition, the other off-site infrastructure to serve the data center use will be located within the SIAs, which are also within the Public/Quasi-Public land use designation, which will not change as a result of the Project. Therefore, the Project is consistent with the Public/Quasi-Public land use designation.

The Project is consistent with the following General Plan Goals and Policies:

Land Use Policy LU-6.4: Encourage the development of new industrial areas and the redevelopment of existing older or marginal industrial areas with new industrial uses, particularly in locations which facilitate efficient commute patterns. Use available public financing to provide necessary infrastructure improvements as one means of encouraging this economic development and revitalization.

Land Use Policy LU-6.5: Maintain and create Light Industrial and Heavy Industrial designated sites that are at least one acre in size in order to facilitate viable industrial uses.

Land Use Policy LU-6.8: Reserve industrial areas for industrial and compatible support uses, while recognizing that industrial uses come in a variety of types and forms. Allow non-

industrial uses which are only incidental to and totally compatible with primary industrial uses in exclusively industrial areas. Consider allowing supportive, non-industrial activities such as retail sales of materials manufactured or stored on-site.

Analysis for LU-6.4, LU-6.5, and LU-6.8: The data center buildings and associated utility structures and related on- and off-site improvements will preserve existing unused industrial areas. The Project will not establish any non-industrial uses that are incompatible with the data center use. Therefore, the Project is consistent with these policies.

Riparian Corridors Policy ER-2.2: Ensure that a 100-foot setback from riparian habitat is the standard to be achieved in all but a limited number of instances, only where no significant environmental impacts would occur.

Riparian Corridors Policy ER-2.3: Design new development to protect adjacent riparian corridors from encroachment of lighting, exotic landscaping, noise, and toxic substances into the riparian zone.

Attractive City Policy CD-1.25: Apply Riparian Corridor Goals and Policies of this Plan when reviewing development adjacent to creeks. Development adjacent to creekside areas should incorporate compatible design and landscaping, including appropriate setbacks and plant species that are native to the area or are compatible with native species. Development should maximize visual and physical access to creeks from the public right-of-way while protecting the natural ecosystem. Consider whether designs could incorporate linear parks along creeks or accommodate them in the future.

Community Forest Policy MS-21.10: Prohibit London plane trees from being planted in the Coyote Planning Area, which is located near the most significant stands of sycamore alluvial woodland in the City. Planting of this species is discouraged elsewhere, particularly near riparian areas. Prohibit holly-leaved oaks from being planted in areas containing stands of native oaks or in proximity to native oak woodland habitat.

Analysis for ER-2.2, ER-2.3, CD-1.25, and MS-21.10: As the site is located adjacent to Coyote Creek to the east, development of the data center site incorporates a 100-foot setback from the riparian habitat, pursuant to the General Plan Riparian Corridor policies and Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design. Structures and parking facilities will be located approximately 180 feet from the top of the riparian corridor's bank. No London Plane trees will be planted on the subject site. All site lighting will be directed downward and away from riparian areas. Therefore, the Project is consistent with these policies.

4. **Alviso Master Plan Conformance.** The Project site is located within the Alviso Master Plan area. The Alviso Master Plan was adopted in December of 1998 as a Specific Plan for development in the Alviso planning area. The Alviso Master Plan is a Specific Plan for the Alviso Community, which provides a vision and directs positive changes to a unique area of San José. Located at the very northern edge of San José, Alviso is characterized by its small-town atmosphere, rich history, bayside location (San Francisco Bay), wide open spaces, agricultural activities, and a mix of residential, commercial, and industrial uses.

The Project is consistent with the following Alviso Master Plan policies:

Industrial/Non-Industrial Relationships Policy 2: The Light Industrial areas located north of State Street and adjacent to Coyote Creek should mitigate potentially negative environmental impacts to nearby natural resources.

Analysis: The Project provides a 100-foot setback from Coyote Creek. In addition, the Project is mitigating environmental impacts to agricultural resources, air quality, biological resources, cultural resources, greenhouse gas emissions, hazards/hazardous materials, and transportation (as stated in the CEQA Addendum and consistent with the previously certified 2022 FEIR) to the riparian corridor through the Project's Mitigation Monitoring and Reporting Program (MMRP).

Environmental Protection Policy 1: All new parking, circulation, loading, outdoor storage, utility, and other similar activity areas must be located on paved surfaces with proper drainage to avoid potential pollutants from entering the groundwater, Guadalupe River, Coyote Creek, or San Francisco Bay.

Analysis: All activities such as parking, circulation, loading, outdoor storage, utility, and other similar activities will occur on paved surfaces to allow for proper drainage. The Project will ensure that all runoff from the data center use will be fully captured, treated, and pumped off-site via appropriate municipal stormwater systems on the data center site with all applicable stormwater control standards and requirements as conditioned in this Conditional Use Permit.

Environmental Protection Policy 3: The riparian corridors adjacent to Coyote Creek and Guadalupe River should be preserved intact. Any development adjacent to the waterways should follow the City's Riparian Corridor policies.

Analysis: As previously discussed, the Project provides a 100-foot setback from Coyote Creek. Further analysis of the Riparian Corridor policy is included in this Conditional Use Permit.

The Project is consistent with the following Lands Outside of the Village Area – Guidelines for Industrial Development standards of the Alviso Master Plan:

- a. Building Design, Materials, and Architectural Features: Architectural attention should be focused on the overall building volume and shape rather than overly decorating and detailing the structure. Entries should be located along front building elevations.

Analysis: The architectural style of the data center buildings have simple volumes and straight lines with simple articulation and materials. The Project does not necessarily reflect Alviso's small scale development as the Project design is a modern architectural expression with materials that reinforce the modern appearance. However, the Project is located at the edge of the Alviso Master Plan area and is located approximately three miles outside of the Village Area where there is a small-scale development pattern.

- b. Parking, Loading, and Service Areas: Loading and service areas should generally be located behind buildings, visually screened from public roadways with the use of walls and landscaping. Primary consideration should be given to adjoining land uses in locating storage and loading areas.

Analysis: All activities such as parking, circulation, loading, outdoor storage, utility and other similar activities will occur on paved surface to allow for proper drainage.

Furthermore, the parking and loading areas will be located at the sides and rear of the buildings and will retain a 100-foot riparian buffer.

- c. **Flood Mitigation:** Flood Mitigation could be achieved by elevating structures above the anticipated flood level and/or floodproofing buildings to minimize damage.

Analysis: The data center site is located in Flood Zone X, which is not a designated Federal Emergency Management Agency 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X and no specific mitigation is required.

- d. **Landscaping:** Landscaping should be used to screen unattractive uses and soften the effects of taller buildings due to the floor protection requirements.

Analysis: In order to screen the data center site from Coyote Creek and the Coyote Creek trail, a majority of the 273 replacement trees will be planted near a bioretention area to the east of the data center buildings. These replacement trees will create a sufficient screen along the entire length of the property line adjacent to Coyote Creek.

5. **San José Municipal Code Conformance.**

The data center site (which includes all development of the data center buildings and related on-site improvements) is located within the LI Light Industrial Zoning District. The relocated Valley Water Purification Visitors Center is also located within the LI Light Industrial Zoning District. The Project is analyzed for conformance with the use regulations and development standards of the LI Light Industrial Zoning District, pursuant to Section 20.50.100 of the San José Municipal Code. Off-site improvements including new roadway infrastructure and utility connections within the Valley Water Lands as well as the SIIAs are located within the A Agriculture, A(PD) Planned Development (File No. PDC01-088), and LI Light Industrial Zoning Districts.

Use Regulations

Use	Permit
Data center	Special Use Permit
Utility facilities, excluding corporation yards, storage or repair yards and warehouses	Conditional Use Permit

Analysis: Pursuant to Table 20-110 in Section 20.50.100 of the San José Municipal Code, data center uses require a Special Use Permit and utility facility uses require a Conditional Use Permit within the LI Light Industrial Zoning District. Pursuant to Section 20.100.140.C, the Project shall be processed under the procedures required for the highest-level permit, which is the Conditional Use Permit. Therefore, this Conditional Use Permit is the appropriate permit to allow the full Project scope. Site Development Permit findings are also required because the Project includes the erection of new structures.

Development Standards

The table below outlines the development standards of the LI Light Industrial Zoning District, reflected in Table 20-120 of Section 20.50.200.

Development Standard	Requirement	Provided
<i>Easterly parcel (APN 015-31-054)</i>		
Front setback		
Building	15 feet minimum	Approximately 134 feet
Parking and circulation for passenger vehicles	20 feet minimum	Approximately 1,200 feet
Loading docks	60 feet minimum	Approximately 1,080 feet
Side setback		
Building and structures	0 feet	Approximately 132 feet
Parking and circulation for passenger vehicles	0 feet	Approximately 170 feet
Loading docks	0 feet	Approximately 85 feet
Rear setback		
Building and structures	0 feet	Approximately 252 feet
Parking and circulation for passenger vehicles	0 feet	Approximately 110 feet
Loading docks	0 feet	Approximately 570 feet
Maximum height	50 feet	30 feet, 7 inches
<i>Westerly parcel (APN 015-31-063)</i>		
Front setback		
Building	15 feet minimum	Approximately 900 feet
Parking and circulation for passenger vehicles	20 feet minimum	Approximately 1,000 feet
Side setback		
Building and structures	0 feet	Approximately 300 feet

Parking and circulation for passenger vehicles	0 feet	Approximately 750 feet
Rear setback		
Building and structures	0 feet	Approximately 500 feet
Parking and circulation for passenger vehicles	0 feet	Approximately 500 feet
Maximum height	50 feet	Approximately 18 feet

Analysis: As discussed in the Project Description, the data center site consists of one parcel (APN 015-31-054), where the data center buildings, associated utility structures, and other related on-site improvements will be located. The relocated Valley Water Purification Visitors Center and related improvements will be located within APN 015-31-063 to the west. As outlined in the table above, all structures, parking areas, and loading docks comply with the minimum setback and maximum height requirements of the LI Light Industrial Zoning District.

Performance Standards

Section 20.50.300 discusses the maximum noise level for industrial uses, outlined in the table below:

Adjacent Property	Maximum Noise Level in Decibels at Property Line
Used or zoned for residential purposes	55
Used or zoned for commercial purposes	60
Used or zoned for industrial purposes	70

Analysis: As stated in the CEQA Addendum (and consistent with the analysis and impact conclusions in the previously certified 2022 FEIR), the estimated noise level generated by mechanical equipment and backup generators will be approximately 53 dBA at the commercial property approximately 800 feet to the south across State Route 237. The estimated noise level will be approximately 47 dBA at the residential properties approximately 1,600 feet to the south, also across State Route 237. The data center site is not adjacent to any residential or commercial properties. Therefore, the Project complies with the performance standards of the San José Municipal Code.

Parking

As the Project was submitted on November 21, 2019, the Project is subject to the previous parking ordinance in effect at that time. The vehicle and bicycle parking requirements are outlined in the tables below.

Required Vehicle Parking

Use	Square Footage	Ratio	Required
Data Center	27,652 square feet of office space	1 stall per 250 square feet of office space	111 spaces
	369,262 square feet of computer space	1 stall per 5,000 square feet of floor area for computer space	74 spaces
Total Required			185 spaces
Total Provided			122 spaces
Parking Reduction			63 spaces

Analysis: The Project requires a total of 185 vehicle parking spaces based on the square footage of office space and computer space provided by the two data center buildings. The Project will provide 122 vehicle parking spaces, 63 fewer spaces than the requirement. A Development Exception was submitted by the applicant on February 18, 2022 to allow for a reduction in required vehicle parking pursuant to Section 20.100.1320.C. This Conditional Use Permit includes Development Exception findings in the Permit Findings section to allow the Development Exception.

Required Bicycle Parking

Use	Square Footage	Ratio	Required
Data Center	27,652 square feet of office space	1 per 5,000 square feet of office space	6 spaces
	369,262 square feet of computer space	1 for each 50,000 square feet of floor area devoted to computer space	8 spaces
Total Required			14 spaces
Total Provided			34 spaces

Analysis: The Project requires a total of 14 bicycle parking spaces based on the square footage of office space and computer space provided by the two data center buildings. The Project will provide 34 bicycle parking spaces, exceeding the requirement.

- Riparian Corridor Policy Study and Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design.** As the Project is within 300 feet of a riparian corridor, the Project must comply with the City Council approved Riparian Corridor Policy Study and City Council Policy 6-34 for Riparian Corridor Protection and Bird-Safe Design. The City Council adopted the Riparian Corridor Policy Study on May 17, 1994 (later revised in March 1999) and City Council Policy 6-34 entitled "Riparian Corridor Protection and Bird-Safe Design" on August

23, 2016. The purpose of the Council Policy and Study are to (i) protect, preserve, or restore riparian habitat; (ii) limit the creation of new impervious surface to minimize flooding; and (iii) encourage bird-safe design in baylands north of State Route 237.

Riparian Corridor Policy Study

- a. Guideline 1A: Orientation. Site activities should be oriented to draw activity away from the riparian corridor, for example, entrances, loading and delivery areas, noise generating activities and equipment, and activities requiring night lighting should be oriented towards non-riparian property edges. Circulation and maneuvering areas serving loading docks and other similar major activity areas should be oriented away from the riparian setback area or should be separated from the setback area by a minimum seven-foot-high fence and buffer area thickly planted with native species appropriate to the nearest riparian habitat type.

Analysis: The Project includes two loading areas oriented away from the riparian corridor. There will be no activity within the riparian setback area. The Project includes standby backup generators facing the riparian area; however, the screening mechanism for these generators are sound-attenuated and will not exceed noise levels as specified in the Zoning Ordinance and General Plan. These standby backup generators only operate as a back-up power source. Furthermore, the Project includes a landscape buffer in addition to the 100-foot setback required by City Council Policy 6-34.

- b. Guideline 1B: Incompatible Land Uses. Incompatible operations and activities are discouraged within and adjacent to riparian setback areas to protect the health of existing vegetation and wildlife, reduce adverse cumulative impacts to water quality, and protect the quality of recreation uses in the corridor. Incompatible land uses include the following: land uses which typically generate littering and/or dumping; off-road vehicle use; removal of native vegetation; and those uses that create noxious odors, or use, store or create toxic materials (including fertilizers, herbicides, and pesticides), or generate high volumes of vehicular traffic.

Analysis: The Project is not considered an incompatible land use in that it is not a land use that generates littering or dumping activities, is not an off-road vehicle use, does not remove native vegetation, and does not create noxious odors or stores/creates toxic materials. The data center use does not generate high volumes of vehicular traffic.

- c. Guideline 1C: Setback Areas. Development adjacent to riparian habitats generally should be set back 100 feet from the outside edge of the riparian habitat (or top of bank, whichever is greater) to reduce anticipated impacts to riparian biotic communities and hydrologic regimes.

Analysis: The Project does not include any development within the 100-foot riparian setback area.

- d. Guideline 2A: Building Appearance. In riparian forest settings located in more rural or suburban areas of the city, building facades should blend visually with the surrounding natural landscape. The colors of buildings should generally be of darker earth tones (e.g., brown, tan, grey, or greens); the use of bright colors and glossy finishes are discouraged.

- e. Guideline 2B: Glare. Building materials should not produce glare that would adversely impact the riparian corridor. Windows should not be mirrored but otherwise their use is not limited.
- f. Guideline 2C: Visual. The adverse visual impact of existing or unavoidable incompatible uses such as parking areas, loading zones, trash enclosures, mechanical devices, and similar accessory uses should be minimized by landscaping, hedging, berming, low walls and site design. Rooftop equipment should be screened from view from any riparian corridor trail or recreational, educational, or interpretive facilities within the riparian corridor.

Analysis for Guidelines 2A, 2B, and 2C: The building material palette is primarily comprised of earth tones with non-glossy finishes and does not contain any glare elements. The Project is proposing minimal glazing elements on the buildings (primarily limited to the building entryways) and exterior building materials will include precast concrete, coreten metal panels and insulated metal panels. The minimal glazing included in the Project is a low-e glazing with limited reflectivity.

- g. Guideline 2E: Lighting. For all other developments, lighting within the corridor and setback areas should be avoided. Lighting on development sites should be designed and sited to avoid light and glare impacts to wildlife within the riparian corridor, consistent with public safety considerations. Any lighting located adjacent to riparian areas should be as low as feasible in height and must be directed downward with light sources not visible from riparian areas.

Analysis: The Project will adhere to all applicable lighting requirements and includes perimeter lighting in the form of light poles. A total of eight light fixtures that will be located adjacent to the riparian setback area. However, the level in lumens (ranging from 0.1 to 3.5) will have minimal impact to the riparian setback area and there will be no impact to the riparian corridor, as the lighting will be directed away from the regulated area, and shielding will be provided on the luminaires to mitigate light spillage.

- h. Guideline 2F: Noise. Noise-producing stationary mechanical equipment should be located as far as necessary from riparian corridors to preclude exceeding the ambient noise levels in the corridors.

Analysis: The standby backup generators facing the riparian area will be screened and sound-attenuated and will not exceed noise levels as specified in the Zoning Ordinance and General Plan.

- i. Guideline 3A: Development Landscaping. Landscaping of areas adjacent to the riparian corridor should generally utilize plant species native to central California and appropriate to the riparian habitat type of the corridor.

Analysis: The Project includes an additional landscaping buffer adjacent to the riparian corridor. Landscaping will include native plant species such as Western Redbud, Yellow Pine, and Coast Live Oak.

Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design

- a. Riparian Guidance

1. Setbacks: Riparian Projects should be designed and implemented to minimize intrusion into riparian corridors. Land use related operational issues that could affect riparian corridors may need to be addressed through conditions in Development Permits. Consistent with recommendations from the Policy Study, the following general guidelines for setbacks from riparian corridors should be included in riparian Projects:

- i. New buildings in existing urban infill areas: 100 feet
- ii. Parking facilities: 100 feet
- iii. Roads: 100 feet

Analysis: The Project provides a 100-foot setback to the riparian corridor. Structures and parking facilities will be located approximately 180 feet from the top of the riparian corridor's bank. No new impervious surface, structures, or outdoor activity areas will be placed in the riparian setback area.

2. Materials and Lighting

- i. New development should use materials and lighting that are designed and constructed to reduce light and glare impacts to riparian corridors. For example, the use of bright colors, and glossy, reflective, see through or glare-producing building and material finishes is discouraged on buildings and structures.
- ii. Lighting should not be directed into riparian corridors.

Analysis: The building material palette is primarily comprised of earth tones with nonglossy finishes and will not contain any glare elements. The Project includes minimal glazing elements on the building entryways, and exterior building materials will include anodized metal elements and insulated metal panels. The minimal glazing included in the Project is a low-e glazing with limited reflectivity. The Project will adhere to all applicable lighting requirements and includes eight perimeter light fixtures that will be located adjacent to the riparian setback area. However, their lumens will range from 0.1 to 3.5 and have minimal impact to the riparian setback area. There will be no impact to the riparian corridor, as the lighting will be directed away from the regulated area, and shielding will be provided on the luminaires to mitigate light spillage.

- b. Bird-Safe Design Guidance

1. Avoid mirrors and large areas of reflective glass.
2. Avoid transparent glass skyways, walkways, or entryways, free-standing glass walls, and transparent building corners.
3. Avoid funneling open space to a building façade.
4. Strategically place landscaping to reduce reflection and views of foliage inside or through glass.
5. Avoid or minimize up-lighting and spotlights.
6. Turn non-emergency lighting off, or shield it, at night to minimize light from

buildings that is visible to birds, especially during bird migration season (February - May and August - November).

Analysis: As previously described in this section, the building materials will be composed of primarily earth tones and will not contain any glare elements. There will also be minimal glazing on the window areas of the building entries. Additionally, there will be a total of eight light fixtures located on-site adjacent to the riparian setback and directed away from the riparian corridor. There will be no lighting affecting the riparian corridor and lighting that will be adjacent to the building nearest to the riparian buffer zone will be shielded to mitigate light spillage.

7. **City Council Policy 6-30: Public Outreach Policy for Pending Land Use Decisions.** Staff followed Council Policy 6-30: Public Outreach Policy in order to inform the public of the Project. Signs have been posted at the site frontages since October 10, 2023. A community meeting was held at Homewood Suites by Hilton at 4315 North First Street on August 17, 2023. Ten attendees were present at the meeting. Questions raised at the meeting were related to vehicular and truck traffic impacts, as well as the Project's benefits to the community. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the Project site and posted on the City website. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public. To date, no comments have been received for this Project other than inquiries regarding the availability of the previously certified 2022 Final Environmental Impact Report.

8. **Industrial Design Guidelines.** The City of San José Industrial Design Guidelines apply to all industrial development in the City of San José, including areas with industrial zoning or planned development zoning for industrial use. Guidelines address issues of area compatibility, Project function and aesthetics. As the Project was submitted in November 2019, it is subject to the previously adopted Industrial Design Guidelines. The Project is consistent with the following guidelines.

- a. Site Character, Guideline 1: Natural amenities, such as views, mature trees, creeks, riparian corridors, and similar features unique to the site, should be preserved and used to enhance the design of new Project.

Analysis: As described above, the data center site is adjacent to a riparian corridor. The Project includes new landscaping between the data center buildings and the riparian corridor, consisting of native plant species, and preserves a 100-foot setback to the corridor.

- b. Building Orientation, Guideline 4: Multiple buildings in a single Project should have a positive functional relationship as well as an aesthetically pleasing spatial relationship with each other.

Analysis: The Project includes the construction of two data center buildings, a substation, a water storage tank, and pump stations. The substation, water storage tank, and pump stations will supplement the operation of the data center buildings as described in the Project Description section.

- c. Building Form and Scale, Guideline 4: Long, uninterrupted façades should be avoided by adding windows and openings, recessed portals, wall off-sets, varying color and texture, building articulation and architectural details.

Analysis: As described above, the exterior of the data center buildings incorporates metal panels with multiple colors, helping to break up the façades. In addition, the emergency generators and associated screening are located adjacent to the data center buildings to create further articulation.

- d. Internal Site Landscaping, Guideline 5: Parking lot trees should have large canopies and should be a minimum 15- gallon size when planted. They also need a minimum of 14 feet of vertical clearance over driveways.

Analysis: The surface parking lots include 15-gallon Chinese Elm and White Alder trees. Both trees reach between 40 to 50 feet high at maturity, providing sufficient vertical clearance.

- e. Garbage/Trash/Recycling: An adequate number of trash and recycling bins should be provided for the Project and should also be designed to meet contracted garbage collection company requirements. Bin storage areas should be located so as not to create a nuisance for adjacent properties.

Analysis: There will be two trash enclosures, both located on the western sides of the data center buildings and adjacent to the loading areas. The trash enclosures will not be visible from Coyote Creek or the public right-of-way. The trash enclosure serving the northern data center building will be screened by the substation. The trash enclosure serving the southern data center building will be screened by the existing Los Esteros substation.

- f. Loading, Guideline 3: Loading areas should be located away from highly visible areas of the site, preferably at the rear of buildings.

Analysis: There will be two loading areas, both located on the western sides of the data center buildings. The loading areas will not be visible from Coyote Creek or the public right-of-way. Both loading areas will be screened on the west by the on-site substation and the existing Los Esteros substation and will not be visible from public streets. The loading docks will be used to populate the data center during the initial occupancy. Deliveries of materials such as office supplies, IT equipment, and fuel will typically occur only during daytime business hours.

- g. Lighting: Lighting levels should be sufficient for the safety of site occupants and visitors without spilling onto adjacent properties.

Analysis: Based on the operations plan provided, all outdoor lighting will adhere to all applicable requirements and standards and will include safety lighting and emergency lighting. All outdoor lighting will be directed inward and downward, and no lighting will be directed towards the riparian corridor to the east. Only limited employee vehicle traffic will traverse internal roadways within the northeast portion of the facility, minimizing to the extent feasible, any headlight glare to the adjacent riparian corridor.

9. **Environmental Review.** In accordance with the California Environmental Quality Act (CEQA), the California Energy Commission (CEC) is the lead agency for the Project and Certified the Final Environmental Impact Report ("FEIR") on July 13, 2022. The FEIR identified potential environmental impacts to air quality, biological resources, cultural and tribal resources, geology and soils, greenhouse gas emissions, hazards and hazardous materials, noise, and transportation. These impacts will be reduced to less than significant levels with the implementation of identified mitigation measures. The FEIR determined there will be no significant and unavoidable impacts due to the implementation of the Project.

The City of San José is the Responsible Agency for the Project pursuant to CEQA. Whenever a Responsible Agency approves a Project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a Responsible Agency to make its own findings pursuant to Section 15091. When making the findings, a Responsible Agency should adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during Project implementation. The City of San José reviewed the Draft EIR prior to its certification by the CEC and concluded that all impacts were adequately addressed, impacts were reduced to a less than significant level, and that a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as the Responsible Agency for the Project (the "Mitigation Monitoring and Reporting Program").

Since the 2022 FEIR was certified, the City, as the Responsible Agency and local land use agency, has requested modifications to the supporting roadway improvements and utility infrastructure previously included. CEQA Guidelines Section 15162 provides that when an EIR has been certified or a Negative Declaration adopted for a Project, no subsequent EIR shall be prepared for that Project unless the Lead Agency (or Responsible Agency, as applicable) determines that substantial changes to the Project occur that will require major revisions to the EIR or Negative Declaration, or that new information which was not previously known or studied indicates that significant impacts on the environment may arise from the development of the revised Project. Pursuant to CEQA Guidelines Section 15162, the City of San José, acting as a Responsible Agency under CEQA, prepared an Addendum to the San José Data Center Project Final EIR which evaluated the environmental impacts of the changes proposed. As a result, the City prepared an Addendum to the FEIR. The Addendum concluded that no substantive revisions are needed to the FEIR, as no new significant impacts or impacts of substantially greater severity will result from the Project. The FEIR and the addendum are available at <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-review/environmental-review-documents/cp23-016-er20-219-san-jose-data-center>.

10. **Conditional Use Permit and Special Use Permit Findings:** Section 20.100.720 of the San José Municipal Code specifies the required findings for the approval of a Conditional Use Permit. Section 20.100.820 of the San José Municipal Code specifies the required findings for the approval of a Special Use Permit.
- a. The Conditional Use Permit and Special Use Permit, as approved, are consistent with and will further the policies of the general plan, applicable specific plans, and area development policies; and

Analysis: As stated in the Envision San José 2040 General Plan Land Use Conformance section above, the Project is consistent with the Light Industrial land use designations in that the Project retains and develops vacant industrial lands with data center and utility facility uses that do not involve nuisance or hazardous characteristics. The relocated Valley Water Purification Visitors Center will continue supporting the larger Valley Water facility, consistent with the Public/Quasi- Public land use designation.

The Project is located within the Alviso Master Plan area and is consistent with policies related to industrial/non-industrial relationships and environmental protection, as well as design guidelines related to building design, parking, flood mitigation, and landscaping.

- b. The Conditional Use Permit and Special Use Permit, as approved, conform with the zoning code and all other provisions of the San José Municipal Code applicable to the Project; and

Analysis: As stated in the San José Municipal Code Conformance section above, the Project conforms with the LI Light Industrial Zoning District's use regulations, development standards, and noise requirements. The Project is consistent with all minimum setback and maximum height requirements. The Project requires a Development Exception to allow a parking reduction.

- c. The Conditional Use Permit and Special Use Permit, as approved, are consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: The Project is consistent with the Riparian Corridor Policy Study and City Council Policy 6- 34 for Riparian Corridor Protection and Bird-Safe Design in that the Project provides a 100-foot riparian setback, a landscape buffer and fencing materials at the 100-foot riparian setback area, utilizes compatible building materials, and does not propose any activity within the riparian corridor or riparian setback area.

Council Policy 6-30: Public Outreach Policy was also implemented to inform the public of the Project. Signs have been posted at the site frontages since October 10, 2023. A community meeting was held at Homewood Suites by Hilton at 4315 North First Street on August 17, 2023. Ten attendees were present at the meeting. Questions raised at the meeting were related to vehicular and truck traffic impacts, as well as the Project's benefits to the community. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the Project site and posted on the City website. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public. To date, no comments have been received for this Project other than inquiries regarding the availability of the previously certified 2022 Final Environmental Impact Report.

- d. The proposed use at the location requested will not:
 - i. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - iii. Be detrimental to public health, safety, or general welfare.

Analysis: The Project will develop an existing vacant industrial site (and related off-site areas) with two data center buildings and associated utility structures and related on- and off-site improvements. The Project provides a 100-foot riparian setback and a landscape buffer adjacent to Coyote Creek. In addition, mechanical equipment and standby backup generators will not produce noise which exceeds the maximum levels allowed within the zoning district. Therefore, the Project will not adversely affect the peace, health, safety, morals, or welfare, impair the utility or value of property, or be detrimental to public health, safety, or general welfare.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: The data center site is adequate in size and shape to accommodate the two data center buildings, associated utility structures, surface parking areas, landscaping improvements, and other related on- and off-site improvements. The Project will still provide a 100-foot riparian setback, integrating the use with the adjacent Coyote Creek.

- f. The proposed site is adequately served:
 - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use will generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use will generate; and
 - ii. By other public or private service facilities as are required.

Analysis: Access will be provided from McCarthy Lane, which connects to State Route 237 via Zanker Road. The Project includes street improvements to Zanker Road and an extension of McCarthy Lane to facilitate future vehicle traffic from the data center uses.

- g. The environmental impacts of the Project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: As detailed more fully in the CEQA Addendum and consistent with the analysis and impact conclusions of the previously certified 2022 FEIR, the Project does not include any outdoor uses or the installation of equipment that will exceed the zoning district's maximum allowed noise levels. All construction activity and impacts, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor, will be temporary. Construction will be limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, and the Project applicant will comply with standard permit conditions, construction Best Management Practices, and regulatory agency requirements. The Project is required to conform with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharge. The Project also includes standard environmental permit

conditions to reduce and mitigate impacts regarding air quality, dust and emissions control, water quality, and noise. Additionally, the Project is required to adhere to the Mitigation Monitoring and Reporting Program (MMRP) prepared for the Project. Therefore, the Project will not result in significant impacts that will negatively affect adjacent properties.

11. Site Development Permit Findings: Section 20.100.630 of the San José Municipal Code specifies the required findings for the approval of a Site Development Permit.

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies.

Analysis: Please refer to Conditional Use Permit and Special Use Permit Finding (a).

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the Project.

Analysis: Please refer to Conditional Use Permit and Special Use Permit Finding (b).

- c. The Site Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency.

Analysis: Please refer to Conditional Use Permit and Special Use Permit Finding (c).

- d. The interrelationship between the orientation, location, and elevation of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: The two data center buildings will be surrounded by standby backup generators. The associated utility structures will be located to the northwest of the data center buildings, facilitating the operation of the data centers. Therefore, the buildings and structures on site are mutually compatible.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The two data center buildings will be located closest to Coyote Creek. The associated utility structures will be located northwest of the data center buildings, further from Coyote Creek. Landscaping will be provided along the eastern property line, screening the data center buildings and utility structures from Coyote Creek. Therefore, the Project will be compatible with the property's surroundings.

- f. The environmental impacts of the Project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: Please refer to Conditional Use Permit and Special Use Permit Finding (g).

- g. Landscaping, irrigation systems, walls, and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility, and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: Landscaping will be provided along the eastern property line, between the data center buildings and Coyote Creek. The new landscaping will provide a sufficient buffer to screen the data center buildings from Coyote Creek.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: Vehicular access will be provided from McCarthy Lane, which connects to State Route 237 via Zanker Road, and will be extended as part of the Project. The Project includes street improvements to Zanker Road and the extension of McCarthy Lane to facilitate vehicle traffic from the data center use. The improvements to Zanker Road include sidewalks and bike lanes.

- 12. Development Exception Findings:** Chapter 20.100 Part 11 of the San Jose Municipal Code establishes evaluation criteria for issuance of a permit to allow for an exception to the off-street parking and loading requirements and regulations of this title. Pursuant to Section 20.100.1320.C, neither the Planning Commission, nor the City Council on appeal, shall grant a development exception unless it is found that the exception, subject to such conditions as may be imposed thereon, will not impair:

- a. The utility or value of adjacent property or the general welfare of the neighborhood; and
- b. The integrity and character of the zoning district in which the subject property is situated.

Analysis: With a Development Exception, the Project will be allowed to provide 63 fewer vehicle parking spaces on site. A Parking Study prepared by Hexagon Transportation Consultants, Inc. dated August 18, 2017 analyzed two existing data centers in Santa Clara. The Parking Study concluded that both data centers had a peak demand of 0.23 parking space per 1,000 square feet of floor area. Based on this observed peak parking demand rate, the Project will need to provide 92 vehicle parking spaces.

The Project will provide 122 vehicle parking spaces, which will exceed the Parking Study's calculated peak parking demand by 30 parking spaces. Based on the findings of the Parking Study, the parking reduction will not impair the utility or value of adjacent property, the general welfare of the neighborhood, or the integrity and character of the subject property's zoning district.

- 13. Demolition Permit Findings:** Chapter 20.80 Part 5 of the San José Municipal Code establishes evaluation criteria for the issuance of a permit to allow demolition.

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight, or dangerous condition; and
- b. The failure to approve the permit would jeopardize public health, safety, or welfare; and
- c. The approval of the permit should facilitate a Project that is compatible with the surrounding neighborhood; and
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José; and
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible; and

- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal, or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Analysis: The Project includes the relocation of the existing approximately 1,440-square-foot Valley Water Purification Visitors Center, located on the Valley Water Lands, along McCarthy Lane, on land owned by the City and leased by Valley Water. The approval of the demolition permit will not result in the creation or continued existence of a nuisance, blight, or dangerous condition, as the relocation of the building (and related improvements) will allow for McCarthy Lane to be extended to serve the Project's vehicle traffic. The failure to approve the demolition permit will not jeopardize public health, safety, or welfare, as the rest of the Valley Water facility will continue its current operations. Furthermore, as previously discussed, the Project is consistent with all applicable General Plan goals and policies, zoning code requirements, applicable city council policies, and design standards. The relocated Visitors Center will be located on the same parcel within the existing larger Valley Water facility and therefore will be compatible with the surrounding site. The approval of the demolition permit will not impact the existing housing stock in the City. The analysis in the CEQA addendum found that the existing Visitors Center is not of historical significance and relocation of the existing building (along with the related relocated utility improvements and new surface parking lot) is necessary to allow the extension of McCarthy Lane.

14. Tree Removal Permit Findings: Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees.

- a. That the tree affected is of a size, type, and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010; or
- b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
- c. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.

Analysis: The Project includes the removal of 79 trees, including 35 ordinance-sized and 44 non- ordinance-sized trees. An Arborist Report prepared by Dave Laczko, certified arborist, dated December 13, 2021 assessed the trees to be removed. The trees to be removed are located within the footprint of the data center buildings, associated utility structures and related improvements, including surface parking areas, therefore retention of the trees will unreasonably restrict the economic development of the parcel in question. The Project is subject to the following tree replacement ratios as shown in the table below.

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
x:x = tree replacement to tree loss ratio Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial, and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. A 24-inch box tree = two 15-gallon trees.				

Analysis: Thirty-two trees are native species, and 47 trees are non-native species. Fourteen trees require replacement at a 5:1 ratio, 21 trees require replacement at a 4:1 ratio, 15 trees require replacement at a 3:1 ratio, 22 trees require replacement at a 2:1 ratio, and 7 trees require replacement at a 1:1 ratio. Based on the requirements listed in the table above, the removal of the 79 trees requires the replacement of either 250 15-gallon trees or 125 24-inch box trees. The Project will plant a total of 273 15-gallon trees, meeting the requirement.

In accordance with the findings set forth above, a Conditional Use Permit and Development Exception to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby **granted**. This Planning Commission expressly declares that it will not have approved this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should the Permittee fail to file a timely and valid appeal of this Conditional Use Permit ("Permit") within the applicable appeal period, such inaction by the Permittee shall be deemed to constitute all of the following on behalf of the Permittee:
 - a. Acceptance of the Permit by the Permittee; and
 - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.

2. **Permit Expiration.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by the Planning Commission, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Use Authorization.** Subject to all conditions herein, this Permit allows the construction and operation of data center and ancillary office uses and related on- and off-site improvements, consisting of two single-story data center buildings totaling approximately 397,205 square feet, an associated approximately 98,600-square-foot electrical substation, an approximately 1,600-square-foot sanitary sewer pump station, an approximately 3,000-square-foot storm drain pump station, an approximately 54,400-square-foot water storage tank, and 226 standby backup generators, the removal of 79 trees (35 ordinance-size and 44 non-ordinance-size) and the relocation of an approximately 1,440-square-foot Valley Water Purification Visitors Center (along with the related relocation of utility lines and installation of a new surface parking lot), all as further detailed in the Approved Plans. This Permit also allows a parking reduction of 63 vehicle parking spaces pursuant to the associated Development Exception.

6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved CP23-016 plans entitled, "Microsoft Corporation SJC02 Data Center," dated February 18, 2022, and last revised January 23, 2025, on file with the Department of Planning, Building and Code Enforcement, as may be amended, and approved by the Director of Planning, Building and Code Enforcement, and shall conform to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "Approved Plans" or the "Approved Plan Set."
7. **Demolition Permit.** A demolition permit may be issued for the relocation of the approximately 1,440-square-foot Valley Water Purification Visitors Center only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
8. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
9. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
10. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
11. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
12. **Outdoor Storage.** No outdoor storage during operation is allowed or permitted unless designated on the Approved Plan Set.
13. **Utilities.** Except for the substation (which will be above-ground), all new on-site telephone, electrical, and other service facilities shall be placed underground as set forth in the Approved Plan Set.
14. **Anti-Graffiti.** All graffiti shall be removed from buildings, signs, and wall surfaces, including job sites for Projects under construction, within 48 hours of defacement.
15. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts, and garbage.
16. **No Sign Approval.** Any signage shown on the Approved Plan Set are conceptual only. No signs are approved at this time. Any signs shall be subject to review and approval by the Director of Planning, Building and Code Enforcement through a subsequent Permit Adjustment.
17. **Building and Property Maintenance.** The data center site shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
18. **Required Parking.** This Project shall conform to the vehicular, motorcycle, and bicycle parking requirements as applicable in the Zoning Ordinance, as amended. Any change to the

parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

19. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown and screened as indicated on the Approved Plans. Changes to the mechanical equipment require the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning, Building, and Code Enforcement.
20. **Generators.** This Permit includes the approval of one 0.5-megawatt administrative emergency diesel generator, one 1.5-megawatt administrative emergency diesel generator, and 224 0.45-megawatt natural gas emergency generators throughout the data center site. The required noise standards and air quality standards have been met according to Title 20 of the San Jose Municipal Code. Any modification or substitution requires a Permit Adjustment or Amendment as required by Title 20.
21. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
22. **Construction Disturbance Coordinator.** Rules and regulations pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
23. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development on the data center site shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.
24. **Tree Protection Standards.** The Permittee shall maintain any trees and other vegetation shown to be retained in this Project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the data center site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree on the data center site, all such trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the Permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
25. **Tree Replacement Enforcement.** Failure to plant trees in conformance with the Approved Plan Set may be subject to in-lieu fees for trees not planted.
26. **Verification of Payment and/or Planting of Replacement Tree(s).** After payment of the in-lieu fee (if applicable) and/or the planting of required replacement trees on-site, the Permittee shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager to verify compliance with the mitigation

requirements. Such evidence shall be uploaded to www.sjpermits.org using these instructions: (1) how to set up an account: <https://www.sanjoseca.gov/business/development-services-permit-center/online-permits-at-sjpermits-org>, and (2) how to upload: <https://www.sanjoseca.gov/home/showpublisheddocument/88853/638088605255430000>. Such evidence shall also be e-mailed to the Planning Project Manager and labeled File Nos. CP23-016 & V24-001.

27. **Replacement Tree Failure.** On-site tree replacement trees that fail within three years after planting shall be promptly replaced.
28. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
29. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
30. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and included on the Landscape Sheets in the Approved Plan Set submitted to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the Project.
31. **Replacement Landscaping.** All landscaping removed with the construction of the Project shall be installed in conformance with the Approved Plan. All landscaped areas shall be automatically irrigated to the extent shown in the Approved Plan Set.
32. **Green Building Requirements.** This development is subject to the City's Green Building Ordinance for Private Sector New Construction as set forth in San José Municipal Code Section 17.84. Prior to the issuance of any shell permits, or complete building permits, for the construction of buildings approved through the scope of this Permit, the Permittee shall pay a Green Building Refundable Deposit. In order to receive a refund of the deposit, the Project must achieve the minimum requirements as set forth in Municipal Code Section 17.84. The request for the refund of the Green Building Deposit together with evidence demonstrating the achievement of the green building standards indicated in Municipal Code Section 17.84 shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305(D) of the Municipal Code.
33. **Building Division Clearance for Issuing Permits:** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit File Nos. CP23-016 & V24-001 shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The Permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).

- c. *Construction Plan Conformance.* A Project construction plan conformance review by the Planning Division is required. Planning Division review for Project conformance begins with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning Permits and applicable conditions.
 - d. *Other.* Such other requirements as may be specified by the Chief Building Official.
34. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the Project, including information on available haulers and processors.
35. **South Bay Water Recycling (SBWR).** The development is adjacent to an existing recycled water pipeline and therefore shall conform to Chapters 15.10 and 15.11 of the San José Municipal Code. These chapters require all new and restored landscaping for Projects that require a development permit from the City to be designed and constructed to receive recycled water. All irrigation systems shall be metered separately from the potable water supply system, shall have no on-site cross-connections to the potable water supply, and shall meet all other legal requirements necessary to allow for recycled water use. The use of potable water to irrigate any outdoor landscaping plumbed for recycled water where recycled water is available to the property is prohibited.
- a. The design and construction of the irrigation system shall conform to SBWR Rules and Regulations and shall be submitted to and approved by SBWR. Standard details, specifications, and notes are available online at www.sanjoseca.gov/sbwr or by calling (408) 793-1865. The Permittee shall also consider using recycled water in lieu of drinking water for other non-potable applications such as toilet flushing, commercial laundry, and building cooling. Refer to SBWR's website for a complete list of approved uses of recycled water. Questions regarding recycled water use should be directed to SBWR staff at the above number.
36. **Bureau of Fire Department Clearance for Issuing Permits:** Prior to the issuance of any Building Permit, the Project must comply with the California Fire Code as adopted by the City.
37. **Conformance to MMRP.** This Project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program approved for this development.
38. **Standard Environmental Permit Conditions.**
- a. **Biological Resources.**
 - i. **Santa Clara Valley Habitat Plan.** The Project may be subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The Permittee shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

- ii. **Tree Replacement.** Trees removed for the Project shall be replaced at ratios required by the City, as stated in Table 4 below, as amended.

Table 4: Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon

x:x = tree replacement to tree loss ratio
 Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial, and Industrial properties, a permit is required for removal of trees of any size.
 A 38-inch tree equals 12.1 inches in diameter.
 A 24-inch box tree = two 15-gallon trees.

- a) Seventy-nine trees will be removed from the site. Fourteen trees require replacement at a 5:1 ratio, 21 trees require replacement at a 4:1 ratio, 15 trees require replacement at a 3:1 ratio, 22 trees require replacement at a 2:1 ratio, and 7 trees require replacement at a 1:1 ratio. In total, 250 15-gallon replacement trees are required. Two hundred seventy-three 15-gallon trees will be planted on-site, meeting the requirement.

b. **Geology and Soils.**

Seismic Hazards

- i. To avoid or minimize potential damage from seismic shaking, the Project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The Project shall be designed to withstand soil hazards identified on the site and the Project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iii. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- iv. The Project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior

to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

- v. If dewatering is needed, the design-level geotechnical investigations to be prepared for individual future development Projects shall evaluate the underlying sediments and determine the potential for settlements to occur. If it is determined that unacceptable settlements may occur, then alternative groundwater control systems shall be required.
- c. **Construction-related Water Quality.**
- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
 - ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
 - iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
 - iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
 - v. All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
 - vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
 - viii. All unpaved entrances to the data center site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
 - ix. The Permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- d. **Construction-Related Noise.** Noise minimization measures include, but are not limited to, the following:
- i. Pile Driving is prohibited.
 - ii. Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.

- iii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - iv. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - v. Prohibit unnecessary idling of internal combustion engines.
 - vi. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
 - vii. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
 - viii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the Project site.
 - ix. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
 - x. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
 - xi. Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.
39. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Permittee will be required to have satisfied all of the following Public Works conditions. The Permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Transportation:** A Transportation Analysis (TA) has been completed for this Project based on a 34 net AM peak-hour trips and 28 net PM peak hour trips. See separate Traffic Memo dated March 19, 2025 for additional information. The following conditions shall be implemented.

- i. Implement the following multimodal physical mitigation measures to reduce the Project employee VMT and partially mitigate the VMT impact:
 - 1) Traffic Calming Measures
 - (a) Construct a raised median along Zanker Road between McCarthy Lane and the SR-237 westbound off-ramp, per the City's Zanker Road plan line design.
 - 2) Pedestrian Network Improvements
 - (a) Construct sidewalks on both sides of Zanker Road, from SR-237 to McCarthy Lane to improve pedestrian connectivity.
 - 3) Install a new signal with crosswalks and sidewalks at the intersection of Zanker Road and McCarthy Lane.
 - 4) Bike Access Improvements
 - (a) Construct a Class I Bikeway Trail extension along the east side of Zanker Road.
 - (b) Construct a Class IV protected bike lane on the west side of Zanker Road, connecting the existing SR-237 Bikeway Trail segment with McCarthy Lane.
 - (c) Install bicycle racks near the administrative buildings and install wayfinding signage and bike route markings on the site's internal roadway network.
 - 5) Limit Parking Supply
 - (a) Provide a total of 122 parking spaces, which is 63 fewer spaces than the City of San Jose Municipal Code requires.
 - 6) Provide End of Trip Bike Facilities
 - (a) Provide a total of 34 bicycle spaces as bicycle racks.
- ii. Refer to the approved TDM Plan dated January 1, 2025 for the following measures to fully mitigate the VMT impact:
 - 1) Commute Trip Reduction Marketing and Education
 - (a) Implement a marketing campaign that encourages active modes of transportation with an expected participation rate of 100% of Project employees.
 - 2) On-site TDM Coordinator
 - (a) Include an annual monitoring requirement establishing an average daily trip (ADT) cap of 44 gross AM peak-hour trips and 36 gross PM peak-hour trips. The annual monitoring report must demonstrate the Project is within 10% of the ADT cap and must be prepared by a traffic engineer.
 - (b) If the Project is not in conformance with the trip cap, the Project may add additional TDM measure to meet the trip cap. A follow up report will be required within six months. If the Project is still out of conformance, penalties will be assessed. See Council Policy 5-1.

- iii. Implement additional pavement at the on-site loading docks to provide adequate maneuverability space, as needed, for the CA Legal design vehicle access.
 - iv. Restrict the driveway along Milpitas-Alviso Road to emergency access only after the completion of the Project construction.
 - v. Implement the parking exemption obtained from the City of San Jose Planning Department to allow for a reduction in parking supply from the City's Municipal Code requirements as set forth in the approved Conditional Use Permit.
- c. **Grading/Geology.**
- i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The Project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
 - iii. If the Project proposes to haul more than 10,000 cubic yards of cut/fill to or from the Project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. Because this Project involves a land disturbance of one or more acres, the Permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d. **Stormwater Runoff Pollution Control Measures:** This Project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design

measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.

- i. The Project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this Project shall be in conformance with City Policy 6-29.
 - ii. Stormwater treatment planters in the public right-of-way and onsite treatment planters subject to vehicular loading/surcharge will require structural calculations and drawings at implementation review.
 - iii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iv. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.
- e. **Stormwater Peak Flow Control Measures:** The Project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- f. **Flood Zone X:** The Project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone X.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- h. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact Ricardo Rubio-Benitez at (408) 335-9864 for further information.
- i. **Undergrounding:** Undergrounding conversion of the overhead utility facilities along the east side of Zanker Road is not required.
- j. **Master Agreement:** A Master Agreement shall be executed with the City of San Jose, which shall encompass all proposed Utility Easements. Such Easements shall be subject to review and coordination with the Department of Public Works prior to the execution of the Master Agreement.
- k. **Environment Assessment of Easement Dedication:** A street easement dedication is required as part of this permit. An environmental assessment of the easement dedication area from an environmental consultant is required prior to recordation of the easement.
- l. **Street Improvements:**
- i. Prior to final occupancy of SJCO2, the following improvements shall be completed:

- 1) Construct Zanker Road widening from approximately 300 feet north of Highway 237 off-ramp to approximately 700 feet north of the McCarthy Lane intersection. The 127-foot (varies) Zanker Road cross section will include four travel lanes (two lanes in each direction). The southbound sidewalk section shall include a six-inch curb, five-foot, six-inch-park strip, five-foot Class IV bikeway, two-foot buffer, six-foot sidewalk, and two-foot shoulder. The northbound sidewalk section shall include a six-inch curb, five-foot, six-inch park strip, six-foot sidewalk, two-foot shoulder, eight-foot Class I bike trail, and two-foot shoulder. The Zanker Road widening shall begin west of the existing PG&E poles. Street configuration of the Zanker Road widening will be coordinated and finalized at the implementation stage.
- 2) Construct a traffic signal at the intersection of Zanker Road/McCarthy Lane.
- ii. Prior to final occupancy of SJCO3, the following improvements shall be completed:
 - 1) Construct Zanker Road improvements from Highway 237 off-ramp to approximately 300 feet north to align with road widening improvements as conditioned above.
 - 2) Reconstruct asphalt pavement and restripe roadway along Alviso-Milpitas Rd. Project frontage.
 - 3) Construct a 26-foot-wide City standard driveway at the Alviso-Milpitas Road Project site access road.
- iii. Permittee shall be responsible to remove, repair, and replace curb, gutter, and sidewalk damaged by the Permittee during construction of the proposed Project.
- iv. Close unused driveway cut(s).
- v. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- vi. Permittee shall be responsible for adjusting existing utility boxes/vaults to grade, locating, and protecting the existing communication conduits (fiber optic and copper) along the Project frontage.
- vii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- m. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Permittee shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
 - i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
 - 1) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the

construction site. The Letter of Intent should provide a description of operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. The letter must also provide a detailed discussion if covered pedestrian walkways are infeasible (ex. swinging loads over the sidewalk are not safe for pedestrians).

- 2) **Multi-Phased Site-Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
- ii. Permittee shall minimize the potential impact to vehicular and pedestrian traffic by:
 - 1) Implementing the closures at the time the onsite activities dictate the need for the closure.
 - 2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition i.2 above.
 - iii. If the proposed lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at: <http://www.sanjoseca.gov/?navid=1629>. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.
 - n. **Storm:** At the implementation stage, the Permittee shall submit a design/analysis which minimizes the rate of 10-year stormwater flows to the Oakmead pump station to the satisfaction of the Director of Public Works (approximately 50%), i.e. using a restrictor device or installing a weir for metering the flow. Analysis should also include an evaluation of the existing storm sewer system to determine if downstream storm sewer capacity upgrades are necessary.
 - o. **Electrical:** Existing electroliers along the Project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - p. **Street Trees:** Street trees will not be required for this development due to the protected species habitat.
 - q. **Referrals:** This Project should be referred to the California Department of Transportation (CalTrans) and Valley Water.
40. **Revocation, Suspension, Modification.** This Conditional Use Permit and Development Exception may be revoked, suspended, or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after

a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit and Development Exception was not abated, corrected, or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected, or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

APPROVED and issued this **9th day of April 2025**, by the following vote:

AYES: TORDILLOS, CANTRELL, BAROCIO, BHANDAL, BICKFORD, LARDINOIS,
OLIVERIO, ROSARIO, YOUNG

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

Anthony Tordillos
Anthony Tordillos (Apr 11, 2025 13:12 PDT)

ANTHONY TORDILLOS
Chairperson

ATTEST:

Manira Sandhir
MANIRA SANDHIR
Deputy Director for
CHRISTOPHER BURTON,
Director of Planning, Building & Code Enforcement
Planning Commission Secretary

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

RESOLUTION NO. 25-009

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS AS THE RESPONSIBLE AGENCY FOR PURPOSES OF AND PURSUANT TO THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970 IN CONNECTION WITH THE APPROVAL OF DISCRETIONARY ACTIONS BY THE CITY NECESSARY FOR THE CONSTRUCTION AND OPERATION OF THE SAN JOSE DATA CENTER PROJECT; ADOPTING AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT PREPARED AND CERTIFIED BY THE CALIFORNIA ENERGY COMMISSION; AND ADOPTING THE RELATED MITIGATION MONITORING AND REPORTING PROGRAM, IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, on July 13, 2022, the California Energy Commission ("CEC"), acting as the Lead Agency under the California Environmental Quality Act ("CEQA"), certified a Final Environmental Impact Report ("EIR") to evaluate the potential environmental effects of the development of the San José Data Center Project ("project"), in compliance with CEQA, the CEQA Guidelines, the Warren-Alquist Act, and California Code of Regulations, Title 20 (Small Power Plant Exemptions); and

WHEREAS, the project includes an approximately 396,914 gross-square-foot data center facility consisting of two single-story buildings, a new 115 kilovolt electrical substation, and two underground 115 kilovolt electrical supply lines approximately 0.2 miles long that would connect the substation to the PG&E Los Esteros Substation, with a maximum electrical load of 99 MW, on a 64.5-acre site located at 1657 Alviso-Milpitas Road, along with supporting roadway improvements and utility infrastructure, which together constitute the "project" under CEQA; and

WHEREAS, the City of San José ("City") considers the certified EIR as final and no longer subject to challenge and further desires to support the CEC with the design and construction of the project; and

WHEREAS, since the Final EIR was certified, modifications to the Final EIR were proposed for the supporting roadway improvements and utility infrastructure included in the project at the behest of the City as a Responsible Agency and local land use agency, and the project applicant also proposed modifications to certain components of the proposed data center facility (which include a pump station, water storage tank, reduced substation footprint, bioretention basins, a 1.5 MW administrative emergency diesel generator, increased soil remediation haul volumes, a prolonged construction schedule, and lighting design measures); and

WHEREAS, the project, including the proposed modifications to the area where the data center would be constructed and operated ("Data Center Site") and the roadway and utility components that would connect and support operations of the proposed data center ("Supporting Infrastructure Improvement Areas"), may be referred to herein as the "Modified Project" or the "Modified Project Site;" and

WHEREAS, CEQA Guidelines Section 15162 provides that when an EIR has been certified or a Negative Declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the Lead Agency (or Responsible Agency, as applicable) determines that substantial changes to the project occur that will require major revisions to the EIR or Negative Declaration, or that new information which was not previously known or studied indicates that significant impacts on the environment may arise from the development of the revised project; and

WHEREAS, the lead agency (or Responsible Agency, as applicable) shall prepare an addendum tiering from a previously certified EIR if some changes or additions are necessary, but none of the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent EIR or Negative Declaration have occurred, and

an addendum to the San José Data Center Project Final EIR, pursuant to CEQA Guidelines Section 15164, has appropriately been prepared ("Addendum"); and

WHEREAS, the City of San José, acting as a Responsible Agency under CEQA, prepared an Addendum to the San José Data Center Project Final EIR which evaluated the environmental impacts of the extension of McCarthy Lane, modifications to the Santa Clara Valley Water Purification Center Visitor Center, widening of Zanker Road, construction of new multimodal infrastructure, construction of new utility lines, installation of pump stations, modifications to a water storage tank along with substation and bioretention basins, upsizing of an administrative emergency diesel generator, increase in soil remediation hauling, extension of the construction schedule, use of a larger construction staging area, and commitment to lighting design measures; and

WHEREAS, the Addendum concluded that implementation of the project could result in certain significant effects on the environment and identified mitigation measures that would reduce those significant effects to a less than significant level; and

WHEREAS, the Addendum concluded that implementation of the project would not result in new or more severe significant environmental impacts not considered in the prior certified Final EIR; and

WHEREAS, the Addendum concluded that implementation of the project would not result in any substantial increase in the severity of previously identified significant effects in the prior certified Final EIR; and

WHEREAS, the Addendum concluded that implementation of the project would not result in any new or more severe significant environmental impacts that will require major revisions to the prior certified Final EIR; and

WHEREAS, the Addendum concluded that implementation of the project would not alter one or more significant effects discussed in the prior certified Final EIR due to substantial new information or information of substantial importance; and

WHEREAS, the City will be considering proposed discretionary actions necessary to support the implementation of the project within its jurisdiction, including but not limited to the approval of a Conditional Use Permit for the project; and

WHEREAS, approval of the project would constitute a project under the provisions of CEQA of 1970, together with related State and local implementation guidelines and policies promulgated thereunder, all as amended to date (collectively, "CEQA"); and

WHEREAS, whenever a Responsible Agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a Responsible Agency to adopt a mitigation monitoring and reporting program ("Mitigation Monitoring and Reporting Program") to ensure compliance with the mitigation measures during project implementation, and such a Mitigation Monitoring and Reporting Program has been prepared for the project for consideration by the decision-maker of the City as the Responsible Agency for the project; and

WHEREAS, prior to approving discretionary actions necessary to support the implementation of the project within its jurisdiction, the Planning Commission, deemed the decision-maker of the City as the Responsible Agency under CEQA, desires to make certain findings pursuant to Title 14 of the California Code of Regulations, Sections 15091 and 15096, promulgated under CEQA in connection with the reasonably foreseeable discretionary actions to be considered and taken by the City in connection with the implementation of the project within the City's jurisdiction;

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

1. That the above recitals are true and correct; and

2. That the City has reviewed the information contained in the Final EIR that is relevant to its approval of discretionary actions within the City's jurisdiction necessary for City support of the design and construction of the project as described in the Final EIR; and
3. That the City has reviewed the CEQA Findings, and the Planning Commission hereby determines and concludes all of the following:
 - a. The CEC has identified, disclosed and adopted the mitigation measures recommended in the Final EIR; and
 - b. The City retains its responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which the City decides to implement, finance, or approve; and
 - c. The Planning Commission has reviewed and considered the Final EIR together with the related CEQA Findings and determines that the information and analyses contained in the Final EIR, together with the related CEQA Findings, are adequate for its use as a decision-making body for a responsible agency and for its consideration of discretionary actions necessary to implement the project within its jurisdiction; and
 - d. Approvals of the discretionary actions within the City are within the scope of the activities described and evaluated in the Final EIR; and
 - e. Since the Final EIR was finalized there have been no substantial changes to the project and no substantial changes in project circumstances that would require major revisions to the Final EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR; and
 - f. The City has not identified any feasible alternative or additional feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect that the Project would have on the environment; and
 - g. The Addendum concluded that implementation of the Modified Project would not result in new or more severe significant impacts than those analyzed in the Final EIR and that minor revisions have been made to the mitigation measures to provide clarity, and

4. Therefore, based upon all of the foregoing, the City, as a responsible agency under CEQA, hereby approves the CEC's CEQA findings for the project as its own findings under CEQA to the fullest possible extent that said CEQA findings are relevant to City's decision to approve discretionary actions necessary to implement the project within its jurisdiction; and
5. That the Planning Commission does hereby find that the Addendum modifying the San José Data Center Project Final EIR has been prepared and completed in compliance with CEQA; and
6. That the Planning Commission was presented with, and has independently reviewed and analyzed the Addendum to the Final EIR and other information in the record and has considered the information contained therein prior to acting upon and approving the Project, and has found that the Addendum to the Final EIR represents the independent judgment of the City, and designates the Director of Planning, Building and Code Enforcement at the Director's office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and record of proceedings on which the decision of the City is based; and
7. The Planning Commission does hereby make the following findings with respect to the significant effects of the environment of the Project, as identified in the Addendum; and
8. The Planning Commission does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the project will have any new significant effect on the environment and does hereby adopt the Addendum prepared for the Project (Planning File Nos. CP23-016 and ER20-219).

SAN JOSE DATA CENTER PROJECT FINAL EIR AND ADDENDUM SIGNIFICANT ENVIRONMENTAL IMPACTS

Air Quality

Impact: The Final EIR determined that the project could result in a cumulatively considerable net increase of a criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard. The Modified Project would be constructed over a 33-month period and would include the export of 320,000 cubic yards of soil and import of 186,000 cubic yards of soil (an additional 16 months of

construction and a 74 percent increase in earthwork volume compared to the construction assumptions in the Final EIR).

Mitigation: **Mitigation Measure (MM) AQ-1:** To incorporate the Bay Area Air Quality Management District (BAAQMD) recommendations for Best Management Practices to control fugitive dust, the project owner shall implement a fugitive dust control plan that has been reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any grading or building permits, whichever occurs earliest. The project owner shall implement the following measures during construction:

- Minimize fugitive dust generation by watering exposed soils two times per day or as needed.
- Cover truck loads when transporting soil, sand, or other loose materials to or from the site.
- Perform street sweeping to remove all visible mud or first track-out onto adjacent public roads at least once per day. The use of dry power sweeping is prohibited.
- Limit onsite vehicle speeds on unpaved surfaces to 15 miles per hour.
- Pave onsite roads and driveways, and sidewalks as soon as possible in the construction schedule.
- Pour foundations for building pads as soon as possible after grading.
- Install wind breaks (e.g., trees, fences) on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50 percent air porosity.
- Suspend excavation, grading, and/or demolition activities when average wind speeds exceed 20 mph.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways from sites with a slope greater than one percent.
- Limit construction equipment idling times to a maximum 5 minutes, or shut equipment down when not in use.
- Maintain and tune construction equipment in accordance with manufacturer's specifications.
- Ensure that construction off-road equipment greater than 25 horsepower (hp) uses engines that meet or exceed Tier 4 final off-road emission standards, and that zero-emission and hybrid-powered equipment is encouraged. Ensure that all heavy-duty diesel trucks used for material

delivery or hauling meet or exceed California Air Resources Board emissions standards for engine model year 2010.

- Ensure that all heavy-duty diesel trucks used for material delivery or hauling meet or exceed California Air Resources Board emissions standards for engine model year 2010.
- Use grid power where available instead of portable diesel engines.
- Employ a certified visible emission evaluator to verify that construction equipment is functioning properly.
- Post a publicly visible sign with the telephone number and name of the person to contact regarding dust complaints and the BAAQMD telephone number. The contact person shall implement corrective measures, as needed, within 48 hours, and the BAAQMD shall be informed of any legitimate complaints received to verify compliance with applicable regulations.

Finding: With implementation of MM AQ-1 during construction, the project would not result in a cumulatively considerable net increase of any criteria pollutant or result in any new impacts or substantially increase the severity of impacts identified in the Final EIR. The impact is less than significant with mitigation.

Facts in Support of the Finding: MM AQ-1 requires the project to adhere to BAAQMD Best Management Practices that are designed to control fugitive dust, and the mitigation includes requirements to reduce exhaust emissions of air pollutants during construction. As shown in Table 1 of the Addendum, the Modified Project's average daily emissions would remain below the applicable BAAQMD thresholds for construction criteria pollutant emissions. Due to the change in the construction schedule, average daily emissions would be lower than the 2022 Project, with the exception of ROG emissions. The daily ROG emissions for the Modified Project are shown to be higher than the 2022 Project because the modeling software used to calculate emissions has been updated with new and more conservative ROG emission factors since the preparation of the 2022 FEIR. Similarly, the particulate matter emission factors in the model were also updated to assume lower brake wear and exhaust emissions, resulting in lower average daily emissions for the Modified Project. However, both ROG emissions and particulate matter emissions would still be below BAAQMD thresholds. Emissions calculations completed by air quality professionals show that, with implementation of the measures required by MM AQ-1, construction of the project would not result in a cumulatively considerable net increase of criteria pollutants.

Biological Resources

Impact: The Final EIR determined that the project could have a substantial adverse effect, either directly or through habitat modifications, on a species identified as candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.

The Modified Project would include a new primary access roadway via the proposed McCarthy Lane Extension, additional widening of Zanker Road, relocated utility lines, and changes to the Valley Water visitor center (e.g., new parking lot, relocation of the visitor center, and a new storm drain line for the parking lot). These specific modifications are located in areas not previously surveyed or analyzed for biological resource impacts in the Final EIR. Therefore, the Modified Project could have a substantial adverse effect, either directly or through habitat modifications in a previously undisclosed location, on a species identified as candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.

Note: Consistent with the CEC's Final EIR, the Modified Project would be required to implement MM BIO-1 to reduce impacts to nesting birds. MM BIO-1 was updated in the Addendum to be more protective for golden eagles and further ensure compliance with the Bald and Golden Eagle Protection Act by incorporating typical protections for active nests of golden eagles applicable under this regulation. The updates to Mitigation Measure BIO-1 also clarify that the appropriate consulting agency for golden eagles is the United States Fish and Wildlife Service. The text edits to Mitigation Measure BIO-1 are shown below. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

Mitigation: **MM BIO-1:** If initial site disturbance activities, including tree, shrub, or vegetation removal, are to occur during the breeding season (defined as February 1st to August 31st inclusive for most species, and December 15 to July 31 for golden eagle), a qualified biologist shall conduct pre-construction surveys for nesting migratory birds on-site, ~~and within 250 feet (for raptors other than golden eagle) of the site, and within 1.0 mile (for golden eagles) of the site,~~ where accessible. The survey shall occur within seven days prior to the onset of ground disturbance if ~~disturbances are to commence between February 1st and June 30th and within 30 days prior to the onset of ground disturbance between July 1st and August 31st.~~ If a nesting migratory bird were to be detected, either (1) an appropriate construction-free buffer shall be established by a qualified biologist in consultation with the California Department of Fish

and Wildlife and the Santa Clara Valley Habitat Agency (for most species), or the United States Fish and Wildlife Service (for golden eagles); or (2) the project would obtain approval from the applicable agency, as determined by a qualified biologist, to proceed with work within a protective buffer in accordance with applicable laws and regulations intended to avoid take of individuals. The actual size of the buffer, which shall be determined by the project's qualified biologist, would depend on species, topography, and type of activity that would occur in the vicinity of the nest. The project buffer would be monitored periodically by the project biologist to verify compliance. After the nest is completed, as determined by the biologist, the buffer would no longer be required. The project owner shall notify the Director of Planning, Building and Code Enforcement or Director's designee of a nesting bird within 24 hours of detection, including sharing avoidance (buffer) placement and size.

MM BIO-2: The Santa Clara Valley Habitat Plan identifies the project site to be within 250 feet of potentially suitable tricolored blackbird nesting habitat occurring along Coyote Creek. The project applicant shall conduct surveys for tricolored blackbirds within 250 feet of this habitat, where visual access is possible, prior to the start of construction following protocols in Condition 17 in Chapter 16 of the Santa Clara Valley Habitat Plan. Such protocols would include the following:

- Prior to any ground disturbance, a qualified biologist shall complete a background assessment to determine if there has been nesting at the site or near the site in the past 5 years. This includes checking the CNDDDB, contacting local experts, and looking for evidence of historical nesting (i.e., old nests).
- If nesting in the past 5 years is not evident, the qualified biologist shall conduct a preconstruction survey in areas identified in the habitat survey as supporting potential tricolored blackbird nesting habitat. Surveys shall be made at the appropriate times of year when nesting use is expected to occur and shall document the presence or absence of nesting colonies of tricolored blackbird. Surveys shall conclude no more than 2 calendar days prior to construction, per Condition 17 of Chapter 6 in the Santa Clara Valley Habitat Plan.
- Should a nesting colony of tricolored blackbirds be located, a 250-foot construction-free buffer shall be established from the edge of all hydric vegetation associated with the nest site and the buffer shall be avoided, and the California Department of Fish and Wildlife and United States Fish Wildlife Service shall be notified immediately.
- If construction occurs in the project site during the nesting season and when the 250-foot buffer is in place around active nesting habitat, a qualified biologist shall conduct periodic monitoring of the site to confirm that the 250-foot buffer is enforced. The biologist shall have the authority to increase the buffer size if needed based on tricolored blackbird behavior at the active nesting area.

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

The project owner shall notify the Director of Planning, Building and Code Enforcement or Director's designee, the California Department of Fish and Wildlife, and the United States Fish and Wildlife Service within 24 hours of detection of tricolored blackbird nests and all avoidance measures taken.

MM BIO-3: If necessary, to mitigate impacts to mapped occupied burrowing owl habitat, the project applicant shall pay the applicable burrowing owl fee as specified in the Santa Clara Valley Habitat Plan for each acre of burrowing owl habitat impacted as a result of project buildout. Pursuant to the Santa Clara Valley Habitat Plan (2012), impacts to both temporary and permanent burrowing owl nesting habitat are to be mitigated, via the project owner paying the most up-to-date fees as reported by the Santa Clara Valley Habitat Agency. Fees are to be paid to the City of San José Department of Planning, Building and Code enforcement, before or at the time that the grading permit for the project is issued.

Note: MM BIO-4 was updated in the Addendum to clarify that pre-activity surveys are required on the Data Center Site and in all of the Supporting Infrastructure Improvement Areas. This revision ensures that Mitigation Measure BIO-4 is interpreted in a manner consistent with the requirements of Santa Clara Valley Habitat Plan, which requires surveys for the entire Modified Project Site. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

MM BIO-4: The project applicant shall conduct preconstruction surveys to ascertain whether burrowing owls occupy burrows on the Data Center Site and ~~along the utility alignments offsite the Supporting Infrastructure Improvement Areas~~. The preconstruction surveys shall be performed by a qualified biologist and shall consist of a minimum of two surveys, with the first survey no more than 14 days prior to initial construction activities (i.e., vegetation removal, grading, excavation, etc.) and the second survey conducted no more than 2 days prior to initial preconstruction activities. If no burrowing owls or fresh sign of burrowing owls are observed during preconstruction surveys, construction may continue. However, if a burrowing owl is observed during these surveys, occupied burrows shall be identified by the monitoring biologist and a buffer shall be established, as follows:

- If an active nest is found, a qualified biologist shall study nesting behavior and shall establish at a minimum a 250-foot non-disturbance buffer around all nest sites, based on stress response of the birds and the 2012 Staff Report (California Department of Fish and Wildlife 2012). If the biologist determines that the nest is vacant, the non-

disturbance buffer zone may be removed, in accordance with measures described in the Santa Clara Valley Habitat Plan. The biologist shall supervise hand excavation of the burrow to prevent reoccupation only after receiving approval from the wildlife agencies (California Department of Fish and Wildlife and United States Fish Wildlife Service) in accordance with Chapter 6, Condition 15 of the Santa Clara Valley Habitat Plan.

- For permission to encroach within the nest buffer, (February 1st through August 31st), an Avoidance, Minimization, and Monitoring Plan shall be prepared and approved by the City and the wildlife agencies prior to such encroachment in accordance with Chapter 6 of the Santa Clara Valley Habitat Plan.

An Avoidance, Minimization, and Monitoring Plan shall be prepared, provided to the agencies, and approved by the Director of Planning, Building and Code Enforcement or Director's designee and the wildlife agencies prior to nest encroachment in accordance with Chapter 6 of the Santa Clara Valley Habitat Plan.

MM BIO-5: Should a burrowing owl be located during the non-breeding season (September through January), a 250-foot buffer shall be established, and construction activities shall not be allowed within the 250-foot buffer of the active burrow(s) used by any burrowing owl unless the following avoidance measures are adhered to:

- A qualified biologist shall monitor the owls for at least 3 days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).
- The same qualified shall monitor the owls during construction. If the biologist determines there is a change in owl nesting and foraging behavior as a result of construction activities shall cease within the 250-foot buffer.
- If the owls are gone from the burrows for at least 1 week, the project applicant may request approval from the habitat agency to excavate all usable burrows within the construction area to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone shall be removed, and construction may continue.

The project applicant shall request approval from the Santa Clara Valley Habitat Agency to excavate usable, unoccupied burrows within the project site during the non-breeding season.

MM BIO-6: In the event the voluntary relocation of site burrowing owls does not occur (defined as owls having vacated the site for 10 or more consecutive days), the project applicant can request permission to engage in passive relocation during the non-breeding season through the standard Santa Clara Valley Habitat Plan application process (Section 6.8 of the Santa Clara Valley Habitat Plan). If passive relocation is granted, additional measures may be required by the Habitat Agency.

- If the owls voluntarily vacate the site for 10 or more consecutive days, as documented by a qualified biologist, the project applicant could seek permission from the Santa Clara Valley Habitat Agency to have the qualified biologist take measures to collapse vacated and other suitable burrows to confirm that owls do not recolonize the site, in accordance with the Santa Clara Valley Habitat Plan, by preparing a written request and submitting supporting documentation to the Director of Planning, Building and Code Enforcement or Director's designee.

MM BIO-11: The project applicant shall comply with all applicable laws and regulations regarding requirements of the California Department of Fish and Wildlife, United States Army Corps of Engineers, and the Regional Water Quality Control Board for aspects of the project, if any, which fall within those agencies' respective purview, including obtaining any permits required for the construction of the utility lines in the offsite infrastructure alignment areas, as well as compliance with any additional conditions attached to any required permits and monitoring requirements (if any). Copies of the permits, along with an updated Worker Environmental Awareness Program (if necessary per BIO-13) shall be available to the Director of Planning, Building and Code Enforcement or Director's designee at the Santa Clara Valley Habitat Agency upon request.

MM BIO-13: Worker environmental awareness program biological resources module will be conducted for onsite construction personnel prior to the start of construction activities. The module will explain the measure and any other measures developed to prevent impacts on special-status species, including marsh species (saltmarsh common yellowthroat and salt marsh harvest mouse) and nesting birds. The module will also include a description of special-status species and their habitat needs, as well as an explanation of the status of these species and their protection under Endangered Species Act, California Endangered Species Act, and other statutes. A brochure will be provided with color photos of sensitive species, as well as a discussion of any permit measures. A copy of the program and brochure shall be provided for review and approval to Director of Planning, Building and Code Enforcement or Director's designee and the Santa Clara Valley Habitat Agency at least 30 days prior to the start of construction, and updated as necessary per BIO-11. This includes the following measures:

- **Environmental Inspector:** A qualified Environmental Inspector shall verify implementation and compliance with all mitigation measures. The Environmental Inspector shall have the authority to stop work or determine alternative work practices where safe to do so, as appropriate, if construction activities are likely to affect sensitive biological resources.
- **Litter and Trash Management:** Food scraps, wrappers, food containers, cans, bottles, and other trash from the project area shall be deposited into closed trash containers. The containers shall be removed from the project work areas at the end of each working day unless located in an existing substation, potential staging area, or the switching station site.

- **Parking:** Vehicles and equipment shall be parked on pavement, existing roads, and previously disturbed or developed areas, or work areas as identified in this document.
- **Work Areas, Staging Areas:** Work, staging, vehicle parking and equipment parking areas shall be contained within the final areas that are negotiated with the relevant property owner, or as noted above.
- **Wetland and Waters Avoidance:** Wetlands and waters as identified in the Aquatic Resources Delineation Report shall be avoided during all work activities.
- **Pets and Firearms:** No pets or firearms shall be permitted at the project site.

Note: MM BIO-15 was revised in the Addendum to clarify that a protocol-level survey shall be completed prior to disturbance of any wetland that would be impacted by the Modified Project. The mitigation measure has also been modified to clarify which agency would review the results of the protocol survey. The text edits to MM BIO-15 are shown below. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

MM BIO-15: Thirty (30) days ~~P~~prior to any disturbance of the ~~on-site~~ wetland(s) that would be impacted by the project, the authorized biologist shall perform protocol-level surveys for the Congdon's tarplant, during the appropriate blooming season (July through October, inclusive). A report shall be prepared and provided to ~~California Department of Fish and Wildlife, the Santa Clara Valley Habitat Agency, and the Director of Planning, Building and Code Enforcement or Director's designee~~ 30 days prior to any disturbance.

MM BIO-16: Pre-construction survey for San Francisco dusky-footed woodrats and ringtail avoidance.

1. A qualified biologist shall conduct a preconstruction survey for San Francisco dusky-footed woodrat nests and ringtail individuals no more than 30 days prior to the onset of construction activities within 50 feet of construction zones. This survey shall be conducted prior to vegetation removal or initial grading activities.
 - a. Non-breeding season nest deconstruction for San Francisco dusky-footed woodrat: Identified nests of the San Francisco dusky-footed woodrat shall be avoided, where possible. If avoidance is not possible, the nest(s) shall be manually deconstructed under supervision of a qualified biologist when helpless young are not present, typically during the nonbreeding season (October through January).
 - b. Breeding season temporary buffer for San Francisco dusky-footed woodrat: If it is determined that San Francisco dusky-footed woodrat young may be present during the pre-construction survey (e.g., during the breeding season), a suitable buffer shall be established around the nest until the young are independent enough to successfully move from the nest.
2. Avoidance of ringtail. If an individual ringtail is identified within the project site during preconstruction surveys, a follow-up survey shall be conducted within 12- hours of

project initiation. If a ringtail is identified during the second survey, the project biologist shall continue to monitor the ringtail to ensure that the individual has moved out of any areas of potential danger of its own volition. Project activities can only commence once the project biologist has determined that the identified animal has moved outside of potential danger from project actions.

A report shall be prepared and provided to the California Department of Fish and Wildlife, the Santa Clara Valley Habitat Agency, and the Director of Planning, Building and Code Enforcement or Director's designee 30 days prior to any disturbance.

MM BIO-17: Temporary disturbance to and permanent loss of salt marsh harvest mouse habitat shall be avoided to the maximum extent practicable. Although avoidance of wetland impacts is described, further attempts to avoid impacts to potentially suitable habitat shall be made. Prior to the issuance of building permits, all temporary staging areas and construction access roads shall be located away from suitable habitat for this species and limits of all wetlands that are to be avoided shall be clearly demarcated by a qualified biologist with Environmentally Sensitive Area fencing to avoid inadvertent disturbance of any habitat outside of the designated construction areas during construction activities.

Prior to issuance of grading permits and under the supervision of a qualified biological monitor, a barrier to exclude salt marsh harvest mice from impact areas shall be installed at the perimeter of all project construction areas that are located within 50 feet of potential salt marsh harvest mouse, and checked weekly by the qualified biologist for any breaches, rips, or tears. This barrier, which shall be constructed under the guidance of a qualified biologist, shall consist of a 3-foot tall, tight cloth or smooth plastic silt fence toed into the soil at least three inches deep and supported with stakes. Documentation of this mitigation measure shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee 30 days prior to any disturbance, and made available to the Santa Clara Valley Habitat Agency upon request.

MM BIO-18: Pursuant to the 2012 Santa Clara Valley Habitat Plan (Santa Clara Valley Habitat Plan) (Chapter 6 and Section 9, Table 9-7b), prior to any ground disturbance, a one-time fee payment for new daily vehicle trips shall be paid for mobile emission sources, as based on the appropriate fees and worksheet (year current to construction) in the Habitat Agency Fee Schedule, or the most recent Nitrogen Deposition Fee Worksheet. Fees are paid to the Santa Clara Valley Habitat Agency.

Note: MM BIO-20 was updated in the Addendum to clarify that the payment of Santa Clara Valley Habitat Plan land cover impact fees shall be paid before the issuance of a grading permit or other applicable permits (i.e., Public Improvement Plan [PIP] and/or Structural Engineering & Code Inspection [SECI]). The text edits to Mitigation

Measure BIO-20 are shown below. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

MM BIO-20: The project owner shall pay, before or at the time that the grading permit or other applicable permit authorizing ground disturbing activities for the project is issued, the Santa Clara Valley Habitat Agency Land Cover Fee and Temporary Impact Fee. The project owner shall pay such fees according to the updated Santa Clara Valley Habitat Agency fee schedule at the time of payment.

Finding: With implementation of MM BIO-1, BIO-2, BIO-3, BIO-4, BIO-5, BIO-6, BIO-11, BIO-13, BIO-14, BIO-15, BIO-16, BIO-17, BIO-18, and BIO-20, the project would not have a substantial adverse effect, either directly or through habitat modifications, on a species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of the Finding: MM BIO-1 would reduce impacts to special-status animal species by implementing survey protocols and best site practices for avoidance and minimization of impacts to nesting birds. MM BIO-2 (which is based off Santa Clara Valley Habitat Plan Conditions 16 and 17 for the tricolored blackbird) would reduce impacts to special-status animal species by requiring a background assessment, a pre-construction survey, and establishment of buffers to avoid and minimize impacts to the tricolored blackbird. MM BIO-3 through BIO-6 (which are based off of Santa Clara Valley Habitat Plan Condition 15 for burrowing owls, and the California Department of Fish and Wildlife's Staff Report on Burrowing Owl Mitigation [2012]) would reduce impacts to special-status animal species by requiring payment of applicable Santa Clara Valley Habitat Plan burrowing owl impact fees, pre-construction surveys, establishment of buffer zones as necessary, and relocation as necessary for burrowing owls. MM BIO-11 would reduce impacts to special-status plant and animal species and riparian habitat by requiring compliance with and obtainment of any necessary permits from the California Department of Fish and Wildlife, United States Army Corps of Engineers, and Regional Water Quality Control Board prior to issuance of a grading permit and approval of the PIP or SECI. MM BIO-13 would reduce impacts to special-status species by requiring that a Worker Environmental Awareness Program (WEAP) biological resources module be conducted for on-site construction personnel prior to the start of construction activities that includes descriptions of relevant special-status species and explanations of all relevant protection measures that are required to be implemented for the entire construction duration. MM BIO-14 would reduce impacts to riparian

habitat to less than significant levels by requiring an aquatic resources delineation of the entire project site and avoidance of any jurisdictional areas during construction, or until necessary permits are obtained. MM BIO-15 would reduce impacts to special-status plant species by requiring protocol-level surveys for Congdon's tarplant 30 days prior to disturbance to ensure the plant species is protected if found. MM BIO-16 would reduce impacts to special-status wildlife species by implementing pre-construction surveys and buffers to avoid and minimize of impacts to the San Francisco dusky-footed woodrat and ringtail. MM BIO-17 would reduce impacts to special-status wildlife species by requiring fencing/barriers around salt marsh harvest mouse habitat and staging construction equipment away from this species' habitat. MM BIO-18 would reduce impacts to special-status species and ensure project compliance with the Santa Clara Valley Habitat Plan by requiring the one-time payment of a nitrogen deposition fee, which would reduce impacts from mobile emissions. Furthermore, the Modified Project would not meaningfully change the level of operational NO_x emissions resulting from the project as shown in Table 2 in Section 3.1 Air Quality of the Addendum. The operational criteria air pollutant emissions under the Modified Project would be lower than the operational NO_x shown in the 2022 FEIR. Therefore, the project would not result in a substantial increase in nitrogen deposition in sensitive habitats. MM BIO-20 would ensure project compliance with the Santa Clara Valley Habitat Plan by requiring payment of Santa Clara Valley Habitat Agency Land Cover and Temporary Impact fees. By paying impact fees, the project would fund measures to conserve land cover.

Impact: The Final EIR determined that the project could have a substantial adverse effect on a riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife or United States Fish and Wildlife Service.

The project would also include a new primary access roadway via the proposed McCarthy Lane Extension, additional widening of Zanker Road, relocated utility lines, and changes to the Valley Water visitor center (e.g., new parking lot, relocation of the visitor center, and a new storm drain line for the parking lot). These specific modifications are located in areas not previously surveyed or analyzed for biological resource impacts in the Final EIR.

Mitigation: **MM BIO-7:** Prior to the start of any grading or other soil disturbing activities, the project applicant shall be required to prepare a Stormwater Pollution Prevention Plan consistent with the City's National Pollutant Discharge Elimination System C3 provisions. The plan shall be submitted to the

Director of Planning, Building and Code Enforcement or Director's designee.

MM BIO-14: An aquatic resources delineation covering the entire project area shall be conducted. All features that are determined to be jurisdictional under the resource agencies shall either be avoided, or the relevant permits shall be obtained for project impacts. Work shall not occur within these jurisdictional features until the relevant permits have been obtained. A delineation report shall be produced and made available to the Santa Clara Valley Habitat Agency and the Director of Planning, Building and Code Enforcement or Director's designee.

MM BIO-11, BIO-13, and BIO-18 (as detailed above) would also be implemented to address this impact.

Finding: With implementation of MM BIO-7, BIO-11, BIO-13, BIO-14, and BIO-18, impacts to riparian habitat or other sensitive natural communities during construction would be reduced to less than significant. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of the Finding: MM BIO-7 would reduce impacts to riparian habitat and sensitive natural communities by requiring preparation of a Stormwater Pollution Prevention Plan, which would reduce erosion and sedimentation being carried by runoff into nearby water systems, such as Coyote Creek . MM BIO-11 would reduce impacts to riparian habitat and sensitive natural communities by requiring compliance with and obtainment of any necessary permits from the California Department of Fish and Wildlife, United States Army Corps of Engineers, and Regional Water Quality Control Board prior to issuance of a grading permit and approval of the PIP or SECI. MM BIO-13 would reduce impacts to riparian habitat and sensitive natural communities by requiring that a WEAP biological resources module be conducted for on-site construction personnel prior to the start of construction activities that includes descriptions of relevant sensitive habitats and explanations of all relevant protection measures that are required to be implemented. MM BIO-14 would reduce impacts to riparian habitat to less than significant levels by requiring an aquatic resources delineation of the entire project site and avoidance of any jurisdictional areas during construction, or until necessary permits are obtained. MM BIO-18 would reduce impacts to sensitive natural communities and ensure project compliance with the Santa Clara Valley Habitat Plan by requiring the one-time payment of a nitrogen deposition fee, which would reduce impacts from mobile emissions t. Furthermore, the Modified Project would not

meaningfully change the level of operational NO_x emissions resulting from the project as shown in Table 2 in Section 3.1 Air Quality of the Addendum. The operational criteria air pollutant emissions under the Modified Project would be lower than the operational NO_x shown in the 2022 FEIR. Therefore, the project would not result in a substantial increase in nitrogen deposition in sensitive habitats.

Impact: The Final EIR determined that the project could have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

The Modified Project would include a new primary access roadway via the proposed McCarthy Lane Extension, additional widening of Zanker Road, relocated utility lines, and changes to the Valley Water visitor center (e.g., new parking lot, relocation of the visitor center, and a new storm drain line for the parking lot). These specific modifications are located in areas not previously surveyed or analyzed for wetlands in the Final EIR.

Mitigation: **MM BIO-8:** A qualified biological monitor shall visit the project site daily during utility line construction in the vicinity of the wetland to verify that BIO-7 through BIO-11 are being fully implemented and are effective. Documentation shall be prepared by the biological monitor and made available to the Director of Planning, Building and Code Enforcement or Director's designee or the Santa Clara Valley Habitat Agency upon request.

MM BIO-9: Removal of wetland vegetation and/or trees for the installation of the utility line shall be limited to the minimum extent required. Documentation shall be prepared by the biological monitor and made available to the Director of Planning, Building and Code Enforcement or Director's designee or the Santa Clara Valley Habitat Agency upon request.

MM BIO-10: The project applicant shall verify that all seed mixtures used for revegetation of the impacted wetland area shall be locally native or sterile nonnative species only. No invasive non-native plant species shall be used for revegetation. Documentation shall be prepared by the biological monitor and made available to the Director of Planning, Building and Code Enforcement or Director's designee or the Santa Clara Valley Habitat Agency upon request.

MM BIO-19: Prior to (and only if) the onsite wetlands are developed or impacted; mitigation fees pursuant to the Santa Clara Valley Habitat Plan

Table 9-11 must be paid to the Director of Planning, Building and Code Enforcement or Director's designee.

Finding: With implementation of MM BIO-8 through BIO-10 and BIO-19, impacts to state or federally protected wetlands would be reduced to a less than significant level. Therefore, the impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of the Finding: MM BIO-8 through MM BIO-10 would reduce impacts to wetlands by requiring construction monitoring by a biologist, minimal removal of wetland vegetation, and revegetation with native plant species. The qualified biologist would also ensure regulatory requirements from the SWPP and applicable permits are being implemented. MM BIO-19 would reduce impacts to wetlands and ensure project compliance with the Santa Clara Valley Habitat Plan by requiring payment of the Santa Clara Valley Habitat Plan wetland impact fee. The Modified Project would be contributing its share of funding to support conservation of wetlands.

Impact: The Final EIR determined that the project could conflict with local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

The Modified Project would also require the removal of trees within the Data Center Site and the Supporting Infrastructure Improvement Areas. Therefore, the Modified Project could conflict with local policies or ordinances protecting biological resources.

Mitigation: **MM BIO-12:** Prior to ground disturbance, the project applicant shall ensure that the project site, including linear alignments and the bike path have been surveyed by a certified arborist or biologist and prepare a report. The report, a Tree Protection Plan (TPP), shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for trees to be preserved, or replaced, if preservation is not possible. The TPP shall include, but is not limited to, the following:

- Number of trees and location of trees to be protected
- Final landscaping proposal
- Tree Protection Zone (TPZ)
- Size and location of TPZ
- Specific recommendation and suggestions or recommendation for each TPZ if applicable

- Maintenance methodology for tree protection zones during the entire demolition and construction period
- Irrigated schedule
- Pruning schedule for preserved trees, if applicable
- Herbicides and other products recommended to be used on preserved trees
- Tree replacement strategy for removed trees

Finding: With implementation of MM BIO-12, the project would comply with local policies or ordinances protecting biological resources (i.e., the City's Tree Ordinance). Therefore, the impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of the Finding: MM BIO-12 would ensure consistency with local policies or ordinances for biological resources (i.e., Tree Ordinance) by requiring implementation of a TPP which would require tree protection, care, and replacement.

Impact: The Final EIR determined that the project could conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan.

The Modified Project would include a new primary access roadway via the proposed McCarthy Lane Extension, additional widening of Zanker Road, relocated utility lines, and changes to the Valley Water visitor center (e.g., new parking lot, relocation of the visitor center, and a new storm drain line for the parking lot). These specific new modifications are located in previously undisclosed locations within the Santa Clara Valley Habitat Plan area. Therefore, the project could conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan.

Mitigation: MM BIO-3 and MM BIO-18 (as detailed above) would be implemented to address this impact. In addition, MM BIO-19 and BIO-20 (as detailed above) would be applicable since these mitigation measures require the project applicant to comply with the Santa Clara Valley Habitat plan and pay appropriate biological resource impact fees.

Finding: With implementation of MM BIO-3 and MM BIO-18 through BIO-20, the project would comply with the provisions of an adopted habitat conservation plan (i.e., Santa Clara Valley Habitat Plan). Therefore, the impact is less

than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of the Finding: MM BIO-3 would reduce impacts to burrowing owls by requiring payment of applicable Santa Clara Valley Habitat Plan burrowing owl impact fees. MM BIO-18 would reduce impacts to special-status species and ensure project compliance with the Santa Clara Valley Habitat Plan by requiring the one-time payment of a nitrogen deposition fee, which would reduce impacts from non-point sources to below the level of significance. MM BIO-19 would reduce impacts to wetlands and ensure project compliance with the Santa Clara Valley Habitat Plan by requiring payment of the Santa Clara Valley Habitat Plan wetland impact fee. MM BIO-20 would ensure project compliance with the Santa Clara Valley Habitat Plan by requiring payment of Santa Clara Valley Habitat Agency Land Cover and Temporary Impact fees. By paying these impact fees, the Modified Project would be contributing its share of funding to support conservation strategies and measures to support burrowing owls, reduce nitrogen deposition, protect wetlands, and maintain land cover.

Cultural Resources

Impact: The Final EIR determined that the project could cause a substantial adverse change in the significance of a historical resource pursuant to California Code of Regulations Section 15064.5.

Certain Modified Project improvements (including the expanded area of Zanker Road widening, the McCarthy Lane Extension, the Valley Water visitor center modifications, and the utilities around the southern boundary of the Valley Water Purification Center) would be outside the areas analyzed in the Final EIR for cultural resources. The new project improvement area could include historical and cultural resources.

Note: MM CUL-1 has been updated to include ground disturbance monitoring from a Native American monitor and a qualified archaeologist for the entire duration of ground disturbance. The text edits to Mitigation Measure CUL-1 are shown below. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

Mitigation: **MM CUL-1:** Prior to the commencement of construction, the project applicant shall secure the services of qualified archaeological specialists and Native American monitors. These specialists and monitors shall prepare a WEAP [workforce environmental awareness program] to instruct construction workers of the obligation to protect and preserve valuable archaeological and Native American resources for review and approval by

the Director of Planning, Building and Code Enforcement or Director's designee. This program shall be provided to all construction workers via a recorded presentation and shall include a discussion of applicable laws and penalties under the laws; samples or visual aids of resources that could be encountered in the project vicinity; instructions regarding the need to halt work in the vicinity of any potential archaeological and Native American resources encountered; and measures to notify their supervisor, the project applicant, and the specialists. Submit the qualifications of archaeological specialists and Native American monitors, as well as an electronic copy of the WEAP to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval.

The project applicant shall secure the services of a qualified archaeologist and Native American monitor to observe grading of native soil once all pavement is removed from the project site all ground disturbing work involving native soils within the project site. The project applicant shall secure the services of a Native American monitor to observe grading of native soil once all pavement is removed from the project site. Preference in selecting Native American monitors shall be given to Native Americans with:

1. Traditional ties to the area being monitored.
2. Knowledge of local historic and prehistoric Native American village sites.
3. Knowledge and understanding of Health and Safety Code, section 7050.5, and Public Resources Code, section 5097.9 et seq.
4. Ability to effectively communicate the requirements of Health and Safety Code, section 7050.5, and Public Resources Code, section 5097.9 et seq.
5. Ability to work with law enforcement officials and the Native American Heritage Commission to ensure the return of all associated grave goods taken from a Native American grave during excavation.
6. Ability to travel to project sites within traditional tribal territory.
7. Knowledge and understanding of Title 14, California Code of Regulations, section 15064.5.
8. Ability to advocate for the preservation in place of Native American cultural features through knowledge and understanding CEQA mitigation provisions.
9. Ability to read a topographical map and be able to relocate site and reburial locations for future inclusions in the Native American Heritage Commission's Sacred Lands Inventory.
10. Knowledge and understanding of archaeological practices, including the phases of archaeological investigation.

MM CUL-2: Prior to the issuance of any grading permit, the project applicant shall be required to complete subsurface testing to determine the extent of possible resources onsite. Subsurface testing shall be completed by a qualified archaeologist. Methodologies and procedures for completing the subsurface testing will be developed through completion of a testing plan. The testing plan will identify locations where testing will occur, depth and extent of testing. The testing plan will be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for approval prior to the completion of any testing. If the findings of the subsurface testing confirm there are significant cultural resources on-site, an archaeological resources treatment plan shall be prepared by a qualified archaeologist and submitted to Director of Planning, Building and Code Enforcement or Director's designee for approval prior to the issuance of grading permits.

MM CUL-3: Prior to ground disturbance, the project applicant shall implement the approved treatment plan prior to the issuance of grading permits. The approved treatment plan will utilize data recovery methods to reduce impacts on subsurface resources.

MM CUL-4: All prehistoric and historic-era features identified during exploration will be evaluated by a qualified archaeologist based on the California Register of Historical Resources criteria consistent with the archaeological treatment plan. After completion of the field work, all artifacts will be cataloged, and the appropriate forms will be completed and filed with the Northwest Information Center of the California Archaeological Inventory at Sonoma State University by the qualified archaeologist in coordination with the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement prior to issuance of occupancy permits (temporary or final).

MM CUL-5: In the event that prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement shall be notified, and a qualified archaeologist will examine the find. The archaeologist will evaluate the find(s) to determine if they meet the definition of a historical, archaeological, or tribal cultural resource and make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits for any construction occurring within the above-referenced 50-foot radius. If the finds do not meet the definition of a historical, archaeological, or tribal cultural resources, no further study or protection is necessary prior to project implementation. If the find(s) does meet the definition of a historical, archaeological, or tribal

cultural resources, then it will be avoided by project activities. If avoidance is not feasible, adverse effects to such resources will be mitigated in accordance with the recommendations of the archaeologist. Recommendations will include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the designee Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement, Native American Heritage Commission (tribal cultural resources) and the Northwest Information Center.

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

Finding: Implementation of MM CUL-1 through CUL-5 would ensure the prompt identification and management of cultural resource discoveries by requiring worker awareness training, subsurface testing prior to construction, development of a treatment plan, and requiring a professional archaeologist and qualified Native American monitor observe ground-disturbing activities associated with the proposed project. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: By using the services of a qualified archaeologist and a Native American Monitor along with submittal of documentation to the Director of Planning, Building and Code Enforcement or Director's designee confirming the qualifications of the archaeologist and Native American Monitor, MM CUL-1 will ensure the identification and management of historic and cultural resource discoveries are conducted properly. Provision of the WEAP required by MM CUL-1 for construction workers will assist workers in identifying artifacts (if encountered) and will ensure that construction workers are aware of the procedures for notifying the archaeologist and Native American Monitor if artifacts are encountered during construction. The completion of subsurface testing, as required by MM CUL-2, will help to indicate the presence or absence of significant historical resources on-site prior to construction. The implementation of a treatment plan, as required by MM CUL-3, will reduce impacts to subsurface resources through the use of accepted data recovery methods. As required by MM CUL-4, the evaluation of any archaeological findings by a qualified archaeologist will ensure proper identification, handling, and cataloging of the finds. Stopping activity within a 50-foot radius of a historical resource discovery and coordinating with the City and a qualified archaeologist, as

required by MM CUL-5, will ensure historical resources are properly handled and preserved.

Impact: The Final EIR determined that the project could cause a substantial adverse change in the significance of a unique archaeological resource pursuant to California Code of Regulations Section 15064.5.

Certain Modified Project improvements (including the expanded area of Zanker Road widening, the McCarthy Lane Extension, the Valley Water visitor center modifications, and the utilities around the southern boundary of the Valley Water Purification Center) would be outside the areas analyzed in the Final EIR for cultural and historical resources.

Mitigation: MM CUL-1 through CUL-5 (as detailed above) would be implemented to address this impact.

Finding: Implementation of MM CUL-1 through CUL-5 would ensure the prompt identification and management of cultural resource discoveries by requiring worker awareness training, subsurface testing prior to construction, development of a treatment plan, and requiring a professional archaeologist and qualified Native American monitor to observe ground-disturbing activities associated with the proposed project. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: By using the services of a qualified archaeologist and a Native American Monitor along with submittal of documentation to the Director of Planning, Building and Code Enforcement or Director's designee confirming the qualifications of the archaeologist and Native American Monitor, as required by MM CUL-1, will ensure the identification and management of cultural resource discoveries are conducted properly. Provision of the WEAP required by MM CUL-1 for construction workers will assist workers in recognizing potential artifacts (if encountered) and will ensure that construction workers are aware of the procedures for notifying the archaeologist and Native American Monitor if artifacts are encountered during construction. The completion of subsurface testing, as required by MM CUL-2, will help to indicate the presence or absence of significant cultural resources on-site prior to construction. Implementation of a treatment plan, as required by MM CUL-3, will reduce impacts to subsurface resources through the use of accepted data recovery methods. As required by MM CUL-4, the evaluation of any archaeological finds by a qualified archaeologist will ensure proper identification, handling, and cataloging of the finds. Stopping activity within a 50-foot radius of an archaeological

resource discovery and coordinating with the City and a qualified archaeologist, as required by MM CUL-5, will ensure archaeological resources are properly handled and preserved.

Impact: The Final EIR determined that the project could disturb human remains, including those interred outside of dedicated cemeteries.

The Modified Project would include a new primary access roadway via the proposed McCarthy Lane Extension, additional widening of Zanker Road, relocated utility lines, and changes to the Valley Water visitor center (e.g., new parking lot, relocation of the visitor center, and a new storm drain line for the parking lot). These specific new modifications in previously undisclosed locations where disturbance to human remains, including those interred outside of dedicated cemeteries, could occur.

Mitigation: **MM CUL-6:** In the event that human remains are discovered during excavation and/or grading of the site, all activity within a 50-foot radius of the find will be stopped. The Santa Clara County Coroner shall be notified immediately and will make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. If the remains are determined to be Native American, the Coroner shall notify the Native American Heritage Commission within 24 hours of the identification. Once the Native American Heritage Commission identifies the most likely descendants (MLD), the descendants will make recommendations regarding proper burial (including the treatment of grave goods), which will be implemented in accordance with Section 15064.5(e) of the CEQA Guidelines. The archaeologist will recover scientifically-valuable information, as appropriate and in accordance with the recommendations of the MLD. A report of findings documenting any data recovery shall be submitted to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement and the Northwest Information Center.

Finding: Implementation of MM CUL-6 would occur when human remains are discovered during excavation or grading construction activities. All construction activity would stop within a 50-foot radius of the find and the Santa Clara County Coroner would be notified immediately to make a determination as to whether the remains are of Native American origin or whether an investigation into the cause of death is required. This process, as required by MM CUL-6, will ensure that the handling of human remains is conducted properly. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: Stopping activity within a 50-foot radius of a human remains discovery and coordinating with the Santa Clara County Coroner, as required by MM CUL-6, will ensure that the handling of human remains is conducted properly. Additionally, contacting the Native American Heritage Commission if the remains are Native American ensures that the proper protocols are followed for discovery of Native American remains.

Tribal Cultural Resources

Impact: The Final EIR determined that the project could cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Certain Modified Project improvements (including the expanded area of Zanker Road widening, the McCarthy Lane Extension, the Valley Water visitor center modifications, and the utilities around the southern boundary of the Valley Water Purification Center) would be outside the areas analyzed in the Final EIR for cultural resources, which includes tribal cultural resources.

Mitigation: MM CUL-1 through CUL-6 (as detailed above) would be implemented to address this impact.

Finding: Implementation of MM CUL-1 through CUL-6 would ensure the prompt identification and management of cultural and tribal cultural resource discoveries by requiring worker awareness training, subsurface testing prior to construction, development of a treatment plan, and requiring a professional archaeologist and qualified Native American monitor to observe ground-disturbing activities associated with the proposed project. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: By using the services of a qualified archaeologist and a Native American Monitor along with submittal of documentation to the

Director of Planning, Building and Code Enforcement or Director's designee confirming the qualifications of the archaeologist and Native American Monitor, as required by MM CUL-1, will ensure the identification and management of cultural and tribal cultural resource discoveries are conducted properly. Provision of the WEAP required by MM CUL-1 for construction workers will assist workers in identifying artifacts (if encountered) and will ensure that construction workers are aware of the procedures for notifying the archaeologist and Native American Monitor if artifacts are encountered during construction. The completion of subsurface testing, as required by MM CUL-2, will help to indicate the presence or absence of significant cultural resources on-site prior to construction. The implementation of a treatment plan, as required by MM CUL-3, will reduce impacts to subsurface resources through the use of accepted data recovery methods. As required by MM CUL-4, the evaluation of any archaeological findings by a qualified archaeologist will ensure proper identification, handling, and cataloging of the finds. Stopping activity within a 50-foot radius of an archaeological resource discovery and coordinating with the City and a qualified archaeologist, as required by MM CUL-5, will ensure archaeological resources are properly handled and preserved. Stopping activity within a 50-foot radius of a human remains discovery and coordinating with the Santa Clara County Coroner, as required by MM CUL-6, will ensure that the handling of human remains is conducted properly. Additionally, contacting the Native American Heritage Commission if the remains are Native American ensures that the proper protocols are followed for discovery of Native American remains.

Geology and Soils

Impact: The Final EIR determined that the project could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature. Certain Modified Project improvements (including the expanded area of Zanker Road widening, the McCarthy Lane Extension, the Valley Water visitor center modifications, and the utilities around the southern boundary of the Valley Water Purification Center) would be outside the areas analyzed in the Final EIR for paleontological and geological resources. Therefore, the Modified Project could directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.

Mitigation: MM GEO-1:

- The applicant will secure the services of a qualified professional paleontologist, as defined by the Society of Vertebrate Paleontology, to be on-call prior to the commencement of construction. The paleontologist will be experienced in teaching non-specialists to

recognize fossil materials and how to notify in the event of encountering a suspected fossil. If suspected fossils are encountered during construction, the construction workers will halt construction within 50 feet of any potential fossil find and notify the paleontologist, who will evaluate its significance.

- If a fossil is encountered and determined to be significant and avoidance is not feasible, the paleontologist will develop and implement an excavation and salvage plan in accordance with Society of Vertebrate Paleontology standards. Construction work in the immediate area will be halted or diverted to allow recovery of fossil remains in a timely manner. Fossil remains collected will be cleaned, repaired, sorted, and cataloged, along with copies of all pertinent field notes, photos, and maps.
- The paleontologist will prepare a paleontological resource monitoring report that outlines the results of the monitoring program and any encountered fossils. The report would be submitted to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement for review and approval. The report and any fossil remains collected will be submitted to a scientific institution with paleontological collections.
- Prior to the commencement of construction, the applicant will secure the services of a qualified paleontological specialist. The specialist will prepare a Worker Environmental Awareness Program to instruct site workers of the obligation to protect and preserve valuable paleontological resources for review by the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement. This program will be provided to all construction workers via a recorded presentation and will include a discussion of applicable laws and penalties under the laws; samples or visual aids of resources that could be encountered in the project vicinity; instructions regarding the need to halt work in the vicinity of any potential paleontological resources encountered; and measures to notify their supervisor, the applicant, and the specialists.

Finding: Implementation of MM GEO-1 would ensure impacts to unearthed paleontological resources are reduced to less than significant levels. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: Although unlikely, paleontological resources could be encountered during ground-disturbing construction activities.

Implementation of MM GEO-1 would provide training to construction personnel, prior to the start of construction work, regarding proper procedures (including recognizing resources and notification) in the event fossil materials are encountered during construction. MM GEO-1 requires a qualified professional paleontologist, as defined by the Society of Vertebrate Paleontology to handle the recovery and processing of significant paleontological finds.

Greenhouse Gas Emissions

Impact: The Final EIR determined that project could generate greenhouse gas (GHG) emissions, either directly or indirectly, that may have a significant impact on the environment.

The Modified Project would upgrade the 1.25 MW administrative diesel generator associated with the SJC02 building to a larger 1.5 MW model. The 0.5 MW administrative diesel generator associated with the SJC03 building would remain unchanged. The Modified Project would also include two fire pumps each powered by one diesel engine (each would be 0.164 MW with 220-horsepower engines) to support the proposed water storage tank during emergency power outages. Due to these specific modifications, the project could generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment.

Note: MM GHG-1 has been modified to include mention of the fire pump diesel engines (refer to the text below). Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

Mitigation: **MM GHG-1:** The project owner shall purchase renewable natural gas in an amount equivalent to the total energy use of the natural-gas fired generators, which may require securing renewable fuel from Pacific Gas & Electric Company and other suppliers. The project owner shall use renewable diesel fuel for the administrative diesel-fired generators and the fire pump diesel engines to the extent feasible. During an emergency where renewable diesel fuel supplies may be limited, the project owner will document their efforts to secure other vendors of renewable diesel fuel prior to refueling with non-renewable diesel. The project owner shall provide documentation to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement to verify the amount of renewable natural gas purchased and the amount renewable diesel fuel used by the administrative diesel-fired generators. The project owner shall submit annual reports demonstrating the use of renewable resources for 100 percent of total energy use by the generators following project commencement.

MM GHG-2: The project owner shall participate in the San José Clean Energy (SJCE) at the Total Green level (i.e., 100 percent carbon-free electricity) for electricity accounts associated with the project, or shall negotiate an electricity contract with SJCE or participate in a clean energy program that accomplishes the same goals as the Total Green level, to ensure compliance with the City's 2030 Greenhouse Gas Emissions Reduction Strategy.

During operation, the project owner shall provide documentation to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement of initial enrollment and shall submit annual reports to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement documenting either continued participation in SJCE at the Total Green level or documentation that alternative measures continue to provide 100% carbon-free electricity, as verified by an independent third-party auditor specializing in greenhouse gas emissions.

Finding: With the use of renewable natural gas and diesel for 100 percent of the total energy use by the emergency standby generators, as required by MM GHG-1, the GHG emissions from the facility's stationary sources would not exceed the 10,000 metric tons of carbon dioxide equivalent per year (MTCO₂e/yr) BAAQMD significance threshold for GHG emissions from stationary sources. Project participation in SJCE at the TotalGreen level, as required by MM GHG-2, would ensure compliance with applicable plans and policies adopted to reduce GHG emissions and compliance with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions impacts. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR

Facts in Support of Finding: The BAAQMD CEQA Guidelines that were in place at the time the EIR was prepared indicate that biogenic carbon dioxide (CO₂) emissions, such as those from renewable natural gas and diesel fuel, should not be included in the quantification of GHG emission for characterizing the significance of a project's impact under CEQA. Accordingly, with the requirement under MM GHG-1 to use 100 percent renewable natural gas and diesel, the project's GHG emissions from routine readiness testing and maintenance of the emergency backup generators would be exempt from the stationary source threshold of 10,000 metric tons of CO₂ equivalent identified in the Final EIR, and the project's impact would be less than significant. The City's 2030 Greenhouse Gas Reduction

Strategy (GHGRS) requires implementation and participation in SJCE in order to meet long-term carbon neutrality goals. MM GHG-2 would ensure project compliance with the City's GHGRS by requiring project participation in SJCE at the TotalGreen level (or similar clean energy program as negotiated with the SJCE). The Modified Project would then use 100 percent carbon free electricity from renewable energy source. Thus, implementation of MM GHG-2 would ensure compliance with applicable plans and policies adopted to reduce GHG emissions and compliance with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions impacts.

Hazards and Hazardous Materials

Impact: The Final EIR determined that, while the project is not located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5, the project may have unknown environmental contamination, and as a result, could create a significant hazard to the public or environment.

The Modified Project would increase the amount of contaminated earthwork volume handled from 290,000 to 506,000 cubic yards and construction in areas not previously surveyed (the McCarthy Lane Extension, Valley Water visitor center parking lot, and utilities around the southern boundary of the Valley Water Purification Center) for soil contamination in the CEC's Final EIR. Therefore, the Modified Project may have unknown environmental contamination, and as a result, could create a significant hazard to the public or environment.

Note: Mitigation Measure HAZ-1, as shown in Section 3.6.1.3 of the Addendum, was initially two mitigation measures in the 2022 FEIR (HAZ-1 and HAZ-2). After the CEC certified the 2022 FEIR, the CEC prepared an Addendum to the 2022 FEIR that included text revisions combining the two mitigation measures into one single measure under the heading of HAZ-1.¹ The record is not clear as to why these measures were combined. In doing so, inconsistencies in the application of regulatory authority were created. For example, the combining of the measures resulted in language obligating the project applicant to obtain approval of the Health and Safety Plan from the California Department of Toxic Substances Control (DTSC), although DTSC does not have any regulatory oversight in this regard. Accordingly, to facilitate effective enforcement and implementation, the project proposes to split the current HAZ-1 back into two mitigation measures, HAZ-1 and HAZ-2, to reflect the original language in the 2022 FEIR, as shown below. Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

¹ California Energy Commission. *Addendum to the Final Environmental Impact Report Part 1 for the San Jose Data Center SPPE Proceeding*. March 29, 2022.

Mitigation: MM HAZ-1: Site Management Plan (SMP) shall be prepared and implemented and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations or the contaminated portions of the site shall be capped beneath the planned development under the regulatory oversight of the Santa Clara County Hazardous Materials Compliance Division (HMCD) or the California Department of Toxic Substances Control (DTSC). The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site.

~~In addition, all contractors and subcontractors at the project site shall develop a Health and Safety Plan (HSP) specific to their scope of work and based upon the known environmental conditions for the site. The HSP shall be approved by the Director or Director's designee with the City of San José Department of Planning, Building and Code Enforcement (PBCE) and the~~

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

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

~~Components of the HSP shall include, but shall not be limited to, the following elements, as applicable:~~

- ~~Provisions for personal protection and monitoring exposure to construction workers;~~
- ~~Procedures to be undertaken in the event that contamination is identified above action levels or previously unknown contamination is discovered;~~

- ~~Procedures for the safe storage, stockpiling, and disposal of contaminated soils;~~
- ~~Provisions for the on-site management and/or treatment of contaminated groundwater during extraction or dewatering activities; and~~
- ~~Emergency procedures and responsible personnel.~~

The SMP and HSP shall be submitted to HMCD, DTSC, or equivalent regulatory agency for review and approval. Copies of the approved SMP and HSP shall be provided to the Planning, Building, and Code Enforcement Supervising Environmental Planner and Environmental Services prior to issuance of grading permits.

HAZ-2: All contractors at the project site shall develop a Health and Safety Plan (HSP) specific to their scope of work and based upon the known environmental conditions for the site. The HSP shall be approved by the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement and the City of San José Environmental Services Department and implemented under the direction of a Site Safety and Health Officer.

The HSP shall include, but shall not be limited to, the following elements, as applicable:

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

Finding: Implementation of MM HAZ-1 and MM HAZ-2 requires the applicant to prepare an SMP (to establish proper procedures to be taken when contaminated soil is found and how to dispose of the contaminated soil properly), as well as an HSP, to establish provisions for personal protection and procedure if contaminated soil is encountered, which would reduce

hazard risks to the public or environment to a less than significant level. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: The SMP and HSP would be prepared by qualified professionals and implemented under the oversight of regulatory agencies with the authority to determine the adequacy of the proposed measures. The SMP required under MM HAZ-1 would detail how to remove contaminated soil off-site and protocols to manage soil during the remediation. The HSP required by MM HAZ-2 would ensure that appropriate management practices for handling impacted soil or other materials that may be encountered during construction activities are conducted, reducing the risk of exposure to construction workers and the public to a less than significant level.

Noise

Impact: The Final EIR determined that the project could result in the generation of substantial temporary ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies. As noted in the Final EIR, the loudest construction activities can elevate the existing ambient noise levels at the nearest businesses by up to 10 dBA on average for the loudest construction noise levels, that is, causing the noise level to increase to 63 dBA compared to the existing ambient level of 53 dBA. An increase of 10 dBA or more during the day can be perceived as noisy (triggering a community reaction) and warrant additional measures to address noise levels.

The Modified Project would extend the overall construction schedule from approximately 17 months to 33 months compared to the CEC's Final EIR. As a result, construction activities would impact persons at nearby commercial (approximately 800 feet south of the Data Center Site) and residential land uses (approximately 1,650 feet south of the Data Center Site) for a longer period of time.

Mitigation: **MM NOI-1:** The project shall implement the following measures to reduce temporary construction noise to less than significant levels.

- Prior to the start of project construction, identify a noise control disturbance coordinator. The disturbance coordinator will be responsible for responding to any local complaints about construction noise. The disturbance coordinator will determine the

cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem to be implemented.

- Establish a telephone number for the disturbance coordinator and post it on the construction site.
- Prior to the start of construction, submit to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement, for review and approval, the schedule or "noisy" construction activities with the telephone number of the disturbance coordinator.
- Prior to the start of construction, and after the approval of the construction schedule by the City of San José Department of Planning, Building, and Code Enforcement, notify the businesses located south of the project site immediately across Highway 237 and the businesses located within 1,000 feet of the project's southeastern boundary of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses. include in the notice, the telephone number for the project's noise disturbance coordinator.

Finding: Implementation of MM NOI-1, which requires identification of a noise control disturbance coordinator and notification of the construction schedule, would reduce construction noise impacts on neighboring residents and other uses during noise-generating construction activities. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: As noted in the Final EIR, the loudest construction activities can elevate the existing ambient noise levels at the nearest residences by up to 4 dBA—average of the loudest construction noise levels, or 57 dBA compared to the existing ambient level of 53 dBA. This would not be significant. However, MM NOI-1 requires a complaint and redress process to be implemented to ensure construction noise impacts would not be significant, as perceived by the community. Designation of a noise control disturbance coordinator and posting contact information at the project site will provide neighboring properties with the ability to file a complaint and have it addressed in a timely fashion. Noise professionals concluded that the measures included in MM NOI-1 would be sufficient to reduce project construction noise to a less than significant level.

Transportation

Impact: The Final EIR determined that the project could conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b).

The Modified Project would result in the construction and operation of the McCarthy Lane Extension as the primary access roadway to the Data Center Site instead of the Nortech Parkway Extension, which was assumed in the CEC's Final EIR.

Note: Mitigation Measure TRA-1 requires revision to reflect the removal of Nortech Parkway extension from the Project as described in Section 3.9.2.2 of the Addendum. Hexagon Transportation Consultants, who prepared the Transportation Analysis for the 2022 Project, reviewed the Modified Project plans and determined the following revisions to Mitigation Measure TRA-1 are needed (refer to Appendix D of the Addendum). Revised or new language is underlined. All deletions are shown with a ~~strikeout~~.

Mitigation: **MM TRA-1:** Prior to the issuance of a City of San José Public Works occupancy permit, the project shall implement the following:

- ~~• Increase Roadway Network Connectivity — The project owner shall construct a new street (an extension of Nortech Parkway) that shall extend east from Zanker Road and provide access to the project site. The new intersection created at Zanker Road/Nortech Parkway shall be signalized and shall be located approximately 400 feet north of the Zanker Road/Thomas Foon Chew Way intersection.~~
- Traffic Calming Measures – The project owner shall construct a raised median island along Zanker Road between the new Nortech Parkway Extension McCarthy Lane and the State Route 237 westbound off-ramp.
- Pedestrian Network Improvements – Pedestrian improvements at the new signalized intersection of Zanker Road and Nortech Parkway McCarthy Lane shall include striped crosswalks and pedestrian signals and push buttons. Sidewalks shall be included along both sides of Nortech Parkway Zanker Road between State Route 237 and McCarthy Lane.
- Bike Access Improvements – The project owner shall construct a Class I Bikeway Trail extension along the east side of Zanker Road (within the City's right-of-way) and a Class 4 protected bike lane on the west side of Zanker Road, connecting the existing State Route 237 Bikeway trail segment with the new Nortech Parkway Extension McCarthy Lane. Bike lanes shall be included along both sides of Nortech Parkway.

- **Limit Parking Supply** – The project owner shall provide 122 vehicle parking spaces, which is 63 fewer spaces than what the City of San José Municipal Code requires. The project owner shall request a parking exception from the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement to qualify for the parking reduction.
- **End of Trip Bike Facilities** – The project shall provide and maintain bike facilities for active alternative transportation users of the project. End of trip bike facilities shall include bike parking, bike lockers, showers, and personal lockers.
- **Commute Trip Reduction Marketing and Education**- The project owner shall prepare and submit a Transportation Demand Management (TDM) plan for review and approval to the City of San José Public Works Department. As part of the TDM plan the project owner shall implement a marketing campaign targeting all employees that encourages the use of shared rides and active modes of transportation. Marketing strategies shall include new employee orientation on alternative commute options, event promotions, and publications. The project owner shall provide information and encourage the use of public transit, shared ride modes, and active modes to reduce drive-alone commute trips.

Finding: Implementation of MM TRA-1, which would require the project owner to implement multi-modal infrastructure improvements and TDM measures, would reduce the project VMT to a less than significant level. The impact is less than significant with mitigation and the project would not result in any new impacts or substantially increase the severity of impacts identified in the Final EIR.

Facts in Support of Finding: The City's threshold of significance for industrial employment is 14.37 VMT per employee. Without mitigation, the project would generate 17.28 VMT per employee. MM TRA-1 requires the installation of traffic calming measures, pedestrian and bike access improvements, bike facilities, a reduction in parking spaces, and implementation of a TDM plan that would encourage ridesharing or multi-modal commute options. As determined by transportation professionals utilizing the San José VMT Evaluation Tool per the methodology outlined in Council Policy 5-1, implementation of MM TRA-1 would reduce the project's VMT to 14.12 per employee, which is below the City's threshold of significance and is the same as determined in the Final EIR.

FINDINGS CONCERNING ALTERNATIVES

In order to comply with the purpose of CEQA, it is important to consider reasonable alternatives to the proposed project that would reduce significant impacts that are anticipated to occur if the project is implemented, while attaining as many of the project's objectives as possible. The CEQA Guidelines emphasize a commonsense approach in that the alternatives should be reasonable, should "foster informed decision making and public participation," and should focus on alternatives that avoid or substantially lessen the significant impacts of the proposed project.

The alternatives analyzed in the Final EIR were developed with the goal of being feasible, given project objectives and site constraints, while avoiding or reducing the project's identified environmental effects.

The following alternatives were considered but rejected and not evaluated further in the Final EIR:

- **Alternative Project Site:** The Final EIR evaluated whether an alternative site location should be identified as a feasible alternative to the proposed project to avoid or substantially lessen significant effects. Some of the project's impacts are the type that would not be avoided or lessened by proposing the project at another location as some of the impacts are an inherent part of the project (e.g., air quality, GHG, construction noise) or would be similar at another location in the San José region (e.g., cultural and tribal resources, geology and soils [paleontology]). Generally, a site with consistent zoning and adjacent uses is preferred. Availability to connect to two natural gas lines, sanitary sewer, potable and reclaimed water, storm water, and transmission lines and a substation with a high level of reliability, such as the Los Esteros Substation, is required for the project to be feasible. Having already acquired the project site, to then acquire an alternative site might be infeasible if a suitable site is not available for sale or lease within a reasonable timeframe. The project was proposed on property zoned for industrial uses and surrounded by compatible uses. For these reasons, an alternative project site was not considered further.
- **Fuel Cell Alternative:** Fuel cells were considered as a potential alternative to the natural gas engine technology proposed by the applicant for backup power. However, this alternative could not achieve the level of reliability required to ensure an uninterrupted power supply to the approved project. Data center customers demand the most reliable data storage service available with low probability of operational failure. There are limitations to fuel cells such as slow response to electricity demand, limited supply, and the need to store fuels like hydrogen on-site. These factors make this type of technology unstable compared to natural gas powered backup generators. Therefore, a fuel cell alternative was not considered further.

- o **Standalone Battery Energy Storage Alternative:** Standalone battery energy storage was considered as a potential alternative to the natural gas engine technology proposed by the applicant for backup power. However, this alternative could not achieve the level of reliability required to ensure an uninterrupted power supply to the approved project. There has been no real life demonstration that a battery energy storage system could power a data center of this scale without the inclusion of backup generators. Additionally, there is a risk of fires occurring due to the heat generated by batteries exceeding the heat dissipated in its surroundings. This risk of fire presents a safety issue and would result in a shutdown of the proposed data center until an investigation was completed. Data centers cannot risk having operational interruptions. Therefore, a standalone battery energy storage alternative was not considered further.

The following were evaluated as alternatives to the approved project:

1. No Project Alternative
2. Tandem Battery Energy Storage Alternative

1. No Project Alternative

- A. **No Project Alternative:** This alternative would retain the existing conditions on the site. However, because the project would not be constructed under this No Project alternative, this alternative would not meet any of the project objectives.
- B. **Comparison of Environmental Impacts:** The No Project Alternative would avoid all of the environmental impacts associated with the proposed Project. No mitigation would be required.
- C. **Finding:** The No Project Alternative would not meet any of the Project's objectives. Because the No Project Alternative would not result in any changes to the project site, this Alternative would avoid all the environmental impacts from the approved project. However, the No Project Alternative would not further the General Plan goals and policies related to economic development.

2. Tandem Battery Energy Storage Alternative

- A. **Tandem Battery Energy Storage Alternative:** Under this alternative, a battery energy storage system in tandem with natural gas generators would be utilized for backup power, allowing the batteries to act as primary backup power for short outage durations, with the natural gas generators providing backup power when outages are longer in duration and the batteries are discharged.

- B. Comparison of Environmental Impacts:** Under this alternative, impacts to biological resources, cultural and tribal cultural resources, geology and soils, noise, and transportation would be similar to the approved project. Impacts related to air quality and GHG emissions would be less than the approved project due to the use of batteries to reduce the amount of fuel consumed for backup power. Impacts related to hazardous materials would be greater than the approved project due to an increased risk of fires in the battery systems. Overall, this alternative would potentially lessen the impacts identified in the Final EIR, none of which were found to be significant and unavoidable. Impacts could be mitigated to a less than significant level in the same manner as the approved project.
- C. Finding:** The use of a tandem system combining natural gas generators as backup to a battery energy storage system would reduce the potential hours of emergency operations of the backup generators. The batteries would help respond to an emergency, but it is not known whether the batteries could operate for load shedding, demand response and behind-the-meter resource adequacy ancillary services, as the project proposes. Without the behind the meter services, this alternative may not be fiscally viable. Two of the applicant's objectives are to meet the continuing need for a data center to support the San José region's growing business and work force population and ensure the data center achieves reduced access latency. The redesign necessary for this alternative would delay the proposed online date and thus delay the applicant's ability to meet the continuing need for data centers. Additionally, the selected backup electric generation technology must be extremely reliable in responding to the loss of power from the utility line the data center is connected to. Reliability would be measured by the technology's exposure to the risk of loss of data and rendering of critical services. Whether the batteries are single stacked, double stacked in containers, or stored in a building, the risk of fires, typically caused by thermal runaway, is apparent and currently trending in large-scale applications. Thermal runaway begins when the heat generated within a battery exceeds the amount of heat dissipated to its surroundings. If the cause of the excessive heat generated is not remedied (through heat transfer), the condition will worsen. The internal battery temperature will continue to rise, causing the battery current to rise, thereby creating a domino effect. The rise in temperature in a single battery will begin to affect other batteries in its proximity, and the pattern will continue, thus the term "runaway." There are extensive mitigations, codes and standards, and a comprehensive regulatory framework in place that apply to battery storage to ensure the risk is less than significant. However, even a less than significant risk such as thermal runaway could affect the overall reliability of the data center and the assurance that data would not be lost. Loss of data would be very significant for an operation whose topmost goal is protecting the data against loss, and guaranteeing continuous and uninterruptable access to the data. Furthermore, if a single cell or cluster of the battery system fails the entire project may be shut down for investigation. Once discharged, the batteries would require power to recharge; further design

considerations would be needed to make this happen. Batteries have a lifetime of about 10 years. If the project's lifespan is 20 years, the batteries would have to be replaced at least once, adding to the project cost. For these reasons, the Tandem Battery Energy Storage Alternative would not meet the project's objective of incorporating the most reliable commercially available, and feasible backup generators to ensure uninterrupted power during utility outages, interruptions, or failures, with back-up generation deployed in redundant configurations to achieve a 99.999 percent reliability factor.

Environmentally Superior Alternative

The No Project Alternative would be the environmentally superior alternative; however, per the CEQA Guidelines Section 15126.6(e)(2), if the environmentally superior alternative is the No Project Alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives. Therefore, the Tandem Battery Energy Storage Alternative would be the environmentally superior alternative as it would reduce air quality and GHG emissions impacts as compared to the proposed project. This alternative would achieve the most project objectives with the least amount of impacts and, therefore, is the environmentally superior alternative. However, it would not meet the project objective of incorporating the most reliable commercially available, and feasible backup generators to ensure uninterrupted power during utility outages, interruptions, or failures, with back-up generation deployed in redundant configurations to achieve a 99.999 percent reliability factor.

MITIGATION MONITORING AND REPORTING PROGRAM

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

LOCATION AND CUSTODIAN OF RECORDS

The documents and other materials that constitute the record of proceedings on which the Planning Commission based the foregoing findings and approval of the Project are located at the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, Third Floor Tower, San José, CA 95113.

BE IT FURTHER RESOLVED that the Director of Planning, Building and Code Enforcement is hereby directed to prepare a Notice of Determination under CEQA and

cause the same to be filed with the County Clerk of the County of Santa Clara promptly following the City's approval of any discretionary action related to the project.

APPROVED this ____9th____ day of ____April____, 2025, by the following vote:

AYES: TORDILLOS, CANTRELL, BAROCIO, BHANDAL, BICKFORD,
LARDINOIS, OLIVERIO, ROSARIO, YOUNG

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

Anthony Tordillos
Anthony Tordillos ID: 2632-13-12-5921
ANTHONY TORDILLOS
Chairperson

ATTEST:

Manira Sandhir
MANIRA SANDHIR
Deputy Director for
CHRISTOPHER BURTON
Director of Planning, Building & Code Enforcement
Planning Commission Secretary

EXHIBIT C COVERSHEET

VALLEY WATER DRAFT NOTICE OF DETERMINATION

No. of Pages: 2

Exhibit Attachments: None



NOTICE OF DETERMINATION

Public Agency:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
(408) 265-2600

Lead Agency:

California Energy Commission
715 P Street, MS 40
Sacramento, CA 95814
Lisa Worrell, (916) 661-8367

☒ Office of Land Use and Climate Innovation
1400 Tenth Street, Room 121
Sacramento, CA 95818

☒ County of Santa Clara
Clerk-Recorder's Office
110 West Tasman Drive, First Floor
San Jose, CA 95134

Subject: *Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resource Code.*

Contact Person: Elise Latedjou-Durand	Telephone No: (408) 630-3205	State Clearinghouse No: 2021020002
Project Title: San Jose Data Center Project		
Project Location: The approximate 64.5-acre data center project site is located at 1657 Alviso-Milpitas Road in San Jose (Santa Clara County). The data center site is bounded by the San Jose-Santa Clara Regional Wastewater Facility dewatering facility to the north, Alviso-Milpitas Road to the south, Coyote Creek to the east, and the Pacific Gas & Electric Los Esteros Substation, the Los Esteros Critical Energy Facility, the Silicon Valley Advanced Water Purification Center, and undeveloped grassland to the west. The supporting infrastructure improvement areas for the proposed utilities and roadway infrastructure consist of approximately 6.7 linear miles of improvements located on undeveloped land west of the data center site along Zanker Road and McCarthy Lane.		
Project Background On July 13, 2022, the California Energy Commission (CEC), as the lead agency, considered and certified the San Jose Data Center (SJDC) Final Environmental Impact Report (EIR), filed a Notice of Determination and approved the SJDC Project. The SJDC Project is proposed by Microsoft Corporation (Microsoft) and involves the construction of a data center facility and related supporting infrastructure improvement areas located on approximately 64.5 acres of land at 1657 Alviso-Milpitas Road in the City of San Jose. Since the Final EIR was certified, the City of San Jose (City), as the responsible agency and local land use agency, has requested modifications to the supporting roadway improvements and utility infrastructure (City Modified Project) included in the SJDC Project. Given the location of the proposed modifications in relation to Santa Clara Valley Water District (Valley Water) facilities and the data center facility, certain changes would be required to the Silicon Valley Advanced Water Purification Center (Valley Water Purification Center), including relocating the parking lot facilities and the modular visitor center. The City analyzed these modifications to Valley Water facilities in an Addendum and determined that the modifications to the City Modified Project would not result in any new significant environmental impacts or a substantial increase in the severity of the impacts analyzed in the EIR. The City adopted a resolution approving the Modified Project and filed a Notice of Determination (NOD) to the Final EIR on April 9, 2025. Valley Water is entering into an agreement, referred to herein as Site Works Agreement (Agreement), with Microsoft and the City. Entering into the Agreement would authorize the modifications to Valley Water Purification Center's parking lot and modular visitor center. These project modifications were analyzed in the City's Addendum. Project Description: The CEC Project would involve the construction and operation of an approximately 396,914 gross square foot data center facility with a maximum electrical load of 99 MW on a 64.5-acre undeveloped site at 1657 Alviso-Milpitas Road in San Jose. In addition, the Modified project would include the following supporting infrastructure improvements west of the data center site: • Extension of McCarthy Lane by approximately 1,150 feet to act as the primary access roadway to the data center site; • Construction of a new Santa Clara Valley Water Purification Visitor Center parking lot; • Relocation of the Santa Clara Valley Water Purification Visitor Center onto the new proposed		

parking lot;

- Widening of Zanker Road and construction of new multimodal facilities (e.g., sidewalks and bike lanes) along Zanker Road; and
- Construction of new utility connections (potable water, fire water, recycled water, sanitary sewer, and storm drain) to support the proposed data center site.

The approval of the Agreement would authorize the above modifications to the Valley Water Purification Center's parking lot and modular visitor center.

The lead agency, CEC, certified the SJDC Project Final EIR in July 2022, made the CEQA required findings, and adopted a Mitigation Monitoring Reporting Program per Resolution No. 472 on December 8, 2015. The City, as responsible agency, approved the Addendum to the Final EIR on April 9, 2025, and adopted the CEC's mitigation measures.

This is to advise that Valley Water, as a responsible agency, has considered the Final EIR and addendum as prepared respectively by CEC and the City, concurs with the findings by the CEC and City as it relates to the environmental review of the SJDC and the City Modified Project and finds the EIR and Addendum and the mitigation measures adopted therein adequate to address the potential environmental effects of the SJDC and the City Modified project. As a result, no additional alternatives or mitigation measures are necessary.

Valley Water approved the Agreement on _____, 2026 and has made the following determinations regarding the Project:

1. The Agreement ☐ will, ☒ will not, have a significant effect on the environment.
2. ☒ Environmental Impact Report and Addendum were prepared for the SJDC Project pursuant to the provisions of CEQA.
☐ A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures ☒ were, ☐ were not [made a condition of the approval of the project.]
4. A mitigation reporting or monitoring program ☒ was ☐ was not [adopted for this project.]
5. A Statement of Overriding Considerations ☐ was, ☒ was not adopted for this project.
6. Findings ☒ were, ☐ were not [made pursuant to the provision of CEQA.]

This is to certify that the records of the CEC Final EIR and the City Addendum are available at:

San Jose Addendum

<https://url.us.m.mimecastprotect.com/s/tRMACVOKxRs5qMWAHyiBUE3kKe?domain=sanjoseca.gov>

Final EIR Part 1

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=241977-1&DocumentContentId=75659>

Final EIR Part 2

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=241977-2&DocumentContentId=75660>

Copies of additional information regarding Valley Water's responsible agency environmental documentation and record of approval for the project may be examined at:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

Melanie Richardson, P.E. - Interim Chief Executive Officer

Date:

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