

MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

PROJECT NAME: 1103 Curtner Avenue Project

PROJECT FILE NUMBER: CP11-041

PROJECT DESCRIPTION: Conditional Use Permit to allow the demolition of an existing fueling canopy and inactive fuel dispensers, construction of a 1,708 square foot fueling canopy over 3 multi-product dispensers, and an addition of one 20,000-gallon underground storage tank on a 0.75 gross acre site. The project also includes interior renovations to the existing convenience store.

PROJECT LOCATION: Northwest corner of Curtner Avenue and Lincoln Avenue, located at 1103 Curtner Avenue.

ASSESSORS PARCEL NO.: 439-08-068

COUNCIL DISTRICT: 6

APPLICANT CONTACT INFORMATION: Franges Michael Trustee & Et Al, 1671 Juanita, San Jose, CA 95125, (408) 242-2242.

FINDING: This Proposed Mitigated Negative Declaration (MND) is included to give notice to interested agencies and the public that the City of San José (City) intends to adopt an MND for this project. This does not mean that the City's decision regarding the project is final. This Proposed MND is subject to modification based on comments received by interested agencies and the public.

An initial study has been prepared by City. On the basis of this study it is determined, pending public review, that the proposed action with the incorporation of the identified mitigation measures will not have a significant effect on the environment.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- A. **AESTHETICS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- B. **AGRICULTURE AND FORESTRY RESOURCES** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- C. **AIR QUALITY** - The project would not have a significant impact on this resource; therefore, no mitigation is required.
- D. **BIOLOGICAL RESOURCES.**

Impact BIO-1: Construction activities associated with the proposed project could disturb nesting raptors or other migratory birds which could result in the loss of fertile eggs or nest abandonment.

MM BIO-1:

The project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive). If demolition and construction cannot be scheduled between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction.

Prior to any tree removal, or issuance of any grading or demolition permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the Director of the Department of Planning, Building, and Code Enforcement or Director's designee.

Impact BIO-2: Construction activities associated with the proposed project could disturb roosting bats.

MM BIO-2:

Prior to any grading permit, a qualified biologist shall inspect the site facilities to determine if any holes or hollows are present in the existing fueling canopy that could provide roosting habitat for bats. If potential roosting habitat is found, such holes and hollows shall be filled after a biologist has determined the bats have left during evening hours to ensure no animals are trapped in the fueling canopy prior to modification or demolition. The project applicant shall submit a letter from a qualified biologist indicating if any potential roosting habitat holes were found and addressed to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement or Director's designee.

- E. CULTURAL RESOURCES** - The project would not have a significant impact on this resource; therefore, no mitigation is required.
- F. ENERGY** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- G. GEOLOGY AND SOILS** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- H. GREENHOUSE GAS EMISSIONS** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- I. HAZARDS AND HAZARDOUS MATERIALS.**

Impact HAZ-1: Project implementation may encounter residual concentrations of contaminants in soil and groundwater that exceed environmental screening levels during construction activities that could expose construction workers, neighboring uses, and the environment to hazardous materials.

MM HAZ-1: Per the Site Management Requirements on the Case Closure Letter from 2007, a notification must be provided to the Santa Clara County Department of Environmental Health (SCCDEH) and City's Planning Department prior to grading, demolition, and construction activities. The notification must include a statement that residual contamination exists on the property and list all mitigation actions, if any, necessary to ensure compliance with the site management requirements. The project applicant must contact the SCCDEH to determine if the proposed project will impact the areas of contaminated soil and if further investigation and/or a Site Management Plan (SMP) is required prior to demolition and/or grading. Evidence of the meeting such as email or letter shall be provided to the Director of the Department of Planning, Building and Code Enforcement, or Director's designee and the City's Environmental Compliance Officer.

- J. HYDROLOGY AND WATER QUALITY** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- K. LAND USE AND PLANNING** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- L. MINERAL RESOURCES**
- M. NOISE.** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- N. POPULATION AND HOUSING** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- O. PUBLIC SERVICES** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- P. RECREATION** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- Q. TRANSPORTATION** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- R. TRIBAL CULTURAL RESOURCES** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- S. UTILITIES AND SERVICE SYSTEMS** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- T. WILDFIRE** – The project would not have a significant impact on this resource; therefore, no mitigation is required.
- U. MANDATORY FINDINGS OF SIGNIFICANCE** – The project would not have a significant impact on this resource; therefore, no mitigation is required.

PUBLIC REVIEW PERIOD

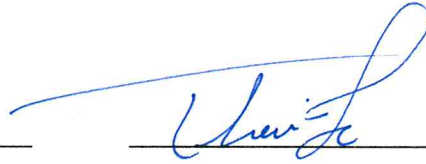
Before 5:00 p.m. on **Thursday, August 20th, 2020** any person may:

1. Review the Proposed Mitigated Negative Declaration (MND) as an informational document only; or
2. Submit written comments regarding the information and analysis in the Proposed MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Proposed MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Rosalynn Hughey, Director
Planning, Building and Code Enforcement

7/28/2020

Date



Deputy

Kara Hawkins
Environmental Project Manager

Circulation period: **July 31st, 2020 to August 20th, 2020**