

## 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:** 1953 Concourse Drive Project

**PROJECT FILE NUMBER:** H21-003 and ER21-012

**PROJECT DESCRIPTION:** Site Development permit to demolish all existing on-site development and construct an approximately 126,700 square feet industrial warehouse building. The proposed new building would include one-story approximately 118,700 square feet of warehouse space and a two-story office space on the west end with approximately 8,000 square feet. The height of the building would vary between approximately 36 feet up to 43 feet and 8 inches, depending on ground surface elevation adjacent to the building. The new parking area would include 79 parking spaces and 27 stalls for trailer parking. The project would remove 20 trees and plant 78 new trees on site.

**PROJECT LOCATION:** The 7.016-acre project site is located at 1953 Concourse Drive, on the northwest corner of the intersection of Concourse Drive and Lundy Avenue, in the City of San José.

**ASSESSORS PARCEL NO.:** 244-18-035 and 244-18-045

**COUNCIL DISTRICT:** 4

**APPLICANT CONTACT INFORMATION:** 1953 Concourse Drive LLC (Atten: Timur Tecimer); 19700 S. Vermont Avenue, Suite 101, Torrance, California 90502; (310) 354-2460; [tecimer@omprop.com](mailto:tecimer@omprop.com)

## FINDING

The Director of Planning, Building and Code Enforcement finds the project described above would not have a significant effect on the environment if certain mitigation measures are incorporated into the project. The attached Initial Study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this Mitigated Negative Declaration (MND), has made or agrees to make project revisions that will clearly mitigate the potentially significant effects to a less than significant level.

## 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:** The proposed project would require removal of trees and existing vegetation, which could disrupt, damage, or otherwise destroy active nests of migratory bird species.

**MM BIO-1:** Prior to the issuance of any tree removal, grading, building or demolition permits (whichever comes first), the project applicant shall schedule all 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). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching. If construction activities cannot be scheduled between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist or biologist to ensure that no active nests shall be disturbed during construction activities. 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/biologist shall inspect all trees and other possible nesting habitats on-site and within 250 feet of the site for nests.

If an active nest is found within 250 feet of the project area to be disturbed by construction, the ornithologist/biologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, (typically 250 feet for raptors and 100 feet for other birds), to ensure that raptor or migratory bird nests shall not be disturbed during project construction.

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

E. **CULTURAL RESOURCES.**

**Impact CUL-1:** The proposed project has the potential to encounter and damage buried or subsurface pre-historic resources, as well as human remains during the construction phase.

**MM CUL-1:** Prior to the issuance of any demolition or grading permit, a qualified archaeologist shall prepare an Archaeological Monitoring Work Plan (AMWP) to ensure the proper treatment and long-term protection of unanticipated discoveries during project construction. The AMWP shall be submitted to the City of San José Director of Planning, Building and Code Enforcement or Director's designee. The AMWP shall provide a description of the methods to be undertaken during monitoring and the steps to be taken in the event of an archaeological discovery during construction, including, at minimum: detailed field strategy used to record, recover, or avoid the finds; analytical methods to be employed for identified resources; requirements for reporting; and disposition of the artifacts. Other details may include but are not limited to information about monitor personnel and project timeframes regarding monitoring efforts.

**MM CUL-2:** During construction activities, a qualified archaeologist and Native American consultant shall conduct archaeological and Native American monitoring of all project-related ground disturbing activities. Archaeological monitoring shall be performed under the direction of an archaeologist meeting the Secretary of the Interior's Professional Qualification Standards for archaeology (National Park Service 1983). Native American monitoring shall be provided by a locally affiliated tribal member(s). Monitors shall have the authority to halt and redirect work should any archaeological resources be identified during monitoring. If archaeological resources are encountered during ground-disturbing activities, work within 50 feet of the find must halt and the find evaluated for listing in the CRHR and NRHP. If the discovery proves to be eligible for the CRHR and cannot be avoided by the proposed project, additional work, such as data recovery excavation, may be warranted to mitigate any significant impacts to historical resources, as described in the City of San José's Standard Permit Conditions. Work within the area of the find shall resume once the find has been evaluated and disposition of the find determined. Archaeological or Native American monitoring or both may be reduced or halted at the discretion of the monitors, in consultation with the City of San José, as warranted by conditions such as encountering bedrock, sediments being excavated are fill, or negative findings during the first 50 percent of ground-disturbance. If monitoring is reduced to spot-checking, spot-checking shall occur when ground-disturbance moves to a new location within the project site and when ground disturbance extends to depths not previously reached, unless those depths are within bedrock. Upon completion of the monitoring efforts for the project, the monitoring report shall be submitted to the City of San José Director of Planning, Building and Code Enforcement or Director's designee, the City's Historic Preservation Officer, and the Northwest Information Center, as required by the City's Standard Permit Conditions.

- 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:** The proposed project has the potential to expose construction workers to on-site hazardous materials in soils and groundwater due to past agricultural and industrial use.

**MM HAZ-1:** Prior to issuance of any grading permits, a qualified environmental consultant shall take shallow soil samples in the near surface soil within the proposed project area and tested for organochlorine pesticides and pesticide-based metals arsenic and lead, to determine if contaminants from previous agricultural operations occur at concentrations above established construction worker safety and commercial/industrial standard environmental screening levels. The results of soil sampling and testing shall be provided to the City's Supervising Planner of the Department of Planning, Building and Code Enforcement and the City of San José Municipal Environmental Compliance Officer. Sampling shall be conducted in accordance to a Soil Sampling Plan, which shall be prepared and submitted to the City for approval prior to conducting sampling. The Soil Sampling Plan shall identify the number of samples to be collected, sampling locations, and depth of sampling.

If pesticide contaminated soils are found in concentrations above the appropriate regulatory

environmental screening levels for the proposed project the applicant shall obtain regulatory oversight from the Santa Clara County Department of Environmental Health (or Department of Toxic Substances Control) under their Site Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified hazardous materials consultant, as described further in MM HAZ-2. The plan shall establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors. The Plan and evidence of regulatory oversight shall be provided to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

**MM HAZ-2:** If required by MM HAZ-1, a Site Management Plan shall be developed to establish management practices for identifying, handling, and disposal of contaminated soil and/or groundwater encountered during construction activities. At a minimum, the SMP shall include the following:

- Stockpile management including dust control, sampling, stormwater pollution prevention and the installation of BMPs
- Proper disposal procedures of contaminated materials
- Monitoring, reporting, and regulatory oversight notifications
- A health and safety plan for each contractor working at the site that addresses the safety and health hazards of each phase of site operations with the requirements and procedures for employee protection
- The health and safety plan shall also outline proper soil/ and or groundwater handling procedures and health and safety requirements to minimize worker and public exposure to contaminated soil/and or groundwater during construction.

A copy of the Site Management Plan shall be provided to the City's Supervising Planner and Municipal Environmental Compliance Officer prior to issuance of site grading permits.

- 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** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- 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**

**Impact TRA-1:** The proposed project would generate 14.70 VMT per employee generated by the project would exceed the regional average significance threshold of 14.37 VMT per employee.

**MM TRA-1:** The project applicant shall implement one of the following mitigation measures to reduce VMT impacts:

- **Rideshare:** The program would be required to implement a rideshare/carpool program to coordinate carpools amongst employees to reduce SOV trips and VMT generated with the project. The rideshare program should have a target goal of 5 percent participation of employees. And;
- **Commute Trip Reduction Marketing/Education:** Implement marketing/educational campaigns that promote the use of transit, shared rides, and travel through active modes for 100 percent of the project employees. Strategies may include incorporation of alternative commute options into new employee orientations, event promotions, and publications.

**MM TRA-2:** The project applicant shall provide a draft TDM plan prior to issuance of Planning Permit for review and approval. Prior to issuance of any building permit, a first draft of the Plan shall be resubmitted and shall include an annual monitoring requirement establishing an average daily trip (ADT) cap of 20 AM peak-hour trips and 22 PM peak-hour trips. The annual monitoring shall be prepared by a traffic engineer and the report must demonstrate the project is within 10% of the ADT cap. 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 shall be required within six months of the last approved TDM. If the project is still out of conformance, penalties will be assessed.

**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.**

Cumulative impacts would be less than significant. The proposed Project would implement the identified mitigation measures and would have either have no impacts or less-than-significant impacts on riparian habitat or other sensitive natural communities, migration of species, or applicable biological resources protection ordinances. Therefore, the proposed Project would not contribute to any cumulative impact for these resources. The Project would not cause changes in the environment that have any potential to cause substantial adverse direct or indirect effects on human beings.

**PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **Thursday, March 17, 2022** any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
2. Submit written comments regarding the information and analysis in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft 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.

CHRISTOPHER BURTON, Director  
Planning, Building and Code Enforcement

02/22/2022

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Date

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Deputy

Bethlehem Telahun  
Environmental Project Manager

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