

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: Senter Road Residential Project

PROJECT FILE NUMBERS: H21-014, T21-013, and ER21-050

PROJECT DESCRIPTION: The proposed project would involve subdividing the existing approximately 2.23-acre project site into 44 residential lots and three open space parcels. Forty-two of the lots would be developed with a three-story duplex on each lot. The remaining two lots would be developed with a three-story single-family residence on each lot. The lots developed with a single-family residence would be interspersed with the lots developed with duplex units. The lots would range in size between approximately 1,838 square feet and 2,015 square feet. Eleven of the 44 dwelling units are planned to be affordable housing units.

PROJECT LOCATION: The project site is located on Senter Road between Keyes Street and East Alma Avenue in San José.

ASSESSORS PARCEL NO.: 477-05-005

COUNCIL DISTRICTS: 3 and 7

APPLICANT CONTACT INFORMATION: AMG & Associates, LLC, 16633 Ventura Boulevard, Encino, CA 91436.

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:

Impact AQ-1: Project construction activities would have the potential to expose sensitive receptors to substantial pollutant concentrations of PM_{2.5}.

MM AQ-1: Prior to the issuance of any grading, demolition, or other ground disturbance permits, the project applicant shall submit a construction management plan to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval. The construction management plan shall demonstrate that the off-road equipment used on site to construct the project would include the following:

- The project applicant shall select equipment during construction to minimize PM_{2.5} emissions by at least approximately 44 percent and excess cancer risk by at least approximately 79 percent at the Maximally Exposed Individual Receptor.
- All mobile diesel-powered off-road equipment larger than 50 horsepower and operating on the site for more than two days shall meet USEPA particulate matter emissions standards for Tier 4 engines or equivalent, or else be alternatively fueled (i.e., electric, natural gas, propane, gasoline).

D. BIOLOGICAL RESOURCES:

Impact BIO-1: Tree removal during the nesting season could impact migratory birds, in violation of the federal Migratory Bird Treaty Act.

MM BIO-1(a): Avoidance. Prior to the issuance of 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 includes site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching.

MM BIO-1(b): Nesting Bird Surveys. 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.

MM BIO-1(c): Buffer Zones. 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.

MM BIO-1(d): Reporting. Prior to tree removal, or issuance of any grading or demolition permits (whichever occurs first), the ornithologist/biologist shall submit a report indicating the results of the survey and designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or the Director's designee.

E. CULTURAL RESOURCES:

Impact CUL-1: Construction activities would have the potential to encounter buried or subsurface pre-historic resources, or human remains.

MM CUL-1(a): Prior to the issuance of any demolition or grading permits, the project applicant shall submit to the Director of Planning, Building and Code Enforcement or the Director's designee a contract for Contractor Awareness Training which would be held prior to ground disturbance, and archaeological monitoring during ground disturbance activities. The training shall be facilitated by the project archaeologist in coordination with a Native American representative from a California Native American tribe that has consulted on the project, and the Tribe is registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.

MM CUL-1(b): Prior to the issuance of any demolition or grading permits, the project applicant shall retain a qualified archaeologist in collaboration with the consulting tribe to prepare a research design treatment and monitoring plan to address how any inadvertent discovery of resources shall be treated. The research design and treatment plan shall be approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to issuance of any ground disturbing permits.

MM CUL-1(c): Prior to the issuance of any grading permits, the project applicant shall retain an archaeological monitor and a Native American Tribe registered with the NAHC and that has consulted on the project to be present at the project site during all demolition and ground disturbance activities. Submit a copy of the agreement to the Director of Planning, Building and Code Enforcement or the Director's designee.

MM CUL-1(d): If 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 of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a consulting Native American Tribe registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee, the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

MM CUL-1(e): If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site, or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be

Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- i. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- ii. The MLD identified fails to make a recommendation; or
- iii. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

- 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: Construction activities would have potential to release or expose people to hazardous materials from historic industrial and agricultural uses in potentially contaminated soils.

MM HAZ-1-Soil Remediation

Prior to issuance of any grading permits, the project applicant shall obtain regulatory oversight from the Regional Water Quality Control Board, Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program. The project applicant shall meet with the appropriate regulating agency and perform additional soil, soil gas and/or groundwater sampling and testing to adequately define the known and suspected contamination from past use as a railroad spur and any other past uses of concern. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared under regulatory oversight and approval by a qualified environmental consultant that identifies remedial measures and/or soil management practices to ensure construction worker safety and protect the health of future occupants. The plan and evidence of regulatory oversight shall be provided to the Director of Planning, Building, and Code Enforcement or Director's designee and the Environmental Compliance Officer in the City of San José Environmental Services Department.

- 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** – 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.**

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 Friday, March 30, 2023**, 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

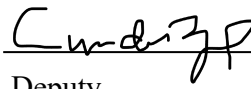
comments will be included as part of the Final MND. Written comments and questions should be referred to Reema Mahamood via e-mail: reema.mahamood@sanjoseca.gov, or by regular mail:

City of San José
Attn: Reema Mahamood, Planner III
Planning, Building & Code Enforcement
200 East Santa Clara Street
San José, CA 95113

CHRISTOPHER BURTON, Director
Planning, Building and Code Enforcement

February 28, 2023

Date



Deputy

Environmental Project Manager: Reema Mahamood

Circulation period: Friday, March 10, 2023 through Friday, March 30, 2023