



# Community Development Department

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## MITIGATED NEGATIVE DECLARATION

### I. DESCRIPTION OF PROJECT

**Date:** August 2, 2024

**Application #s:** TM 22-02, Z 22-03

**Project Title:** Ren Fu Villa Residential Project

**Project Applicant:** Amanda Musy-Verdel (on behalf of Susan Wang)

**Project Location:** South of Santa Teresa Boulevard, adjacent to Miller Avenue, Gilroy, CA  
**Assessor Parcel No.:** 810-23-005

**Project Description:** The project proposes a Zoning Map amendment (Z 22-03) to rezone the property to RH (Residential Hillside), consistent with the 2040 General Plan Hillside Residential land use designation, and a Tentative Map (TM 22-02) to subdivide the site into 54 lots. Future applications would be submitted to construct a single-family residence on each lot. The project would also include a private club house that would be located on the western side of the site. The project would construct new streets, utility lines, and parking for the proposed residences. The existing creek and pond located in the central portion of the site would be preserved in place. The project site is not on any of the lists enumerated under Section 65962.5 of the Government Code.

### II. DETERMINATION

In accordance with the City of Gilroy procedures for compliance with the California Environmental Quality Act (CEQA), the City has completed an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, the City makes the following determination:

- As proposed, the project would contribute to significant and unavoidable impacts that were previously disclosed in the Gilroy 2040 General Plan Final Environmental Impact Report (State Clearinghouse [SCH] #2015082014), which was certified by the City of Gilroy City Council on November 2, 2020. The City of Gilroy City Council adopted a resolution with the findings of fact and a statement of overriding considerations for the environmental impacts related to implementation of the Gilroy 2040 General Plan.
- In addition to contributing to the previously disclosed significant and unavoidable impacts in the Gilroy 2040 General Plan Final Environmental Impact Report, the project could result in additional significant effects on the environment; however, there will not be any significant effect in this case because mitigation measures are included in the project, and therefore, this MITIGATED NEGATIVE DECLARATION (MND) has been prepared.

### III. CONDITIONS (Mitigation Measures)

#### A. Biological Resources

**MM BIO-1:** **Burrowing Owls.** To minimize impacts on burrowing owls, the following measures will be implemented:

- **Preconstruction Surveys for Burrowing Owls.**

Preconstruction surveys for burrowing owls shall be conducted by a qualified biologist/ornithologist (funded by the project applicant) prior to the initiation of construction activities. The first preconstruction survey for burrowing owls shall be conducted up to 14 days prior to the start of construction activities in any given area, and the second survey (if determined to be necessary based on the proximity of suitable burrows) shall be conducted within two days prior to the start of construction activities. The preconstruction surveys shall be conducted within suitable burrowing owl roosting habitat (i.e., grassland or scrub habitats with burrows of California ground squirrels), or within 250 feet of this habitat, regardless of the time of year in which construction commences. During the initial site visit, a qualified biologist/ornithologist shall survey the entire project site and (to the extent that access allows) areas within 250 feet by walking transects with centerlines no more than 50 feet apart and ensure complete visual coverage and looking for suitable burrows that could be used by burrowing owls. If no suitable burrows are present, no additional surveys are required. If suitable burrows are determined to be present within 250 feet of the project impact areas, a qualified biologist/ornithologist shall conduct a second survey to determine whether owls are present in areas where they could be affected by proposed activities. The surveys shall last a minimum of three hours, beginning one hour before sunrise and continuing until two hours after sunrise or beginning two hours before sunset and continuing until one hour after sunset.

- **Implement Buffer Zones for Burrowing Owls.** If burrowing owls are detected during the pre-activity survey, a 250-foot buffer, within which no construction-related activities shall be permissible, shall be maintained between construction activities and occupied burrows. Though highly unlikely, owls present between February 1 and August 31 shall be assumed to be nesting, and the 250-foot protected area buffer shall remain in effect until August 31, or until the burrow is no longer occupied as determined by a qualified biologist/ornithologist, whichever occurs first.
- **Monitor Owls during Construction.** If maintaining a 250-foot buffer around active owl burrows is not feasible, the buffer may be reduced if (1) the individual or nest is not disturbed, and (2) a qualified biologist/ornithologist

develops an avoidance, minimization, and monitoring plan that is reviewed and approved by the CDFW and USFWS prior to the initiation of construction activities in the identified 250-foot buffer areas. The plan shall include the following measures:

- A qualified biologist shall monitor the owls for at least three days prior to construction as well as during construction.
- If the biologist observes no change in the owls' nesting or foraging behavior, construction activities may proceed.
- If changes in the owls' behaviors as a result of work activities are observed by a qualified biologist/ornithologist, activities shall cease within 250 feet of the active burrow location(s). Work activities may resume when by a qualified biologist/ornithologist confirms the burrows are no longer occupied.
- If monitoring by a qualified biologist/ornithologist indicates that the burrow is no longer in use by owls, the disturbance-free buffer may be removed.
- Because passive relocation of burrowing owls is not allowed under the Habitat Plan at this time, if an owl persists on the site within an area where construction cannot be delayed despite implementation of the measures included in the approved avoidance, minimization, and monitoring plan, the applicant shall coordinate with the Santa Clara Valley Habitat Agency to determine alternative protection measures that would reduce or avoid impacts to the owl.

The qualified biologist/ornithologist shall submit a summary report, to the City of Gilroy, that includes the findings of preconstruction surveys, identification of any required buffers, documentation of justification for any reduced buffers and a copy of the avoidance, minimization, and monitoring plan approved by CDFW and USFWS (if applicable) prior to issuance of grading or construction permits.

**MM BIO-2:**

**Compensate for Direct, Permanent Encroachment into the Riparian Setback.** Direct, permanent impacts within the 35-foot riparian setback shall be mitigated on-site at a minimum 2:1 ratio (mitigation area to impact area) through enhancement of the existing riparian corridor elsewhere on the project site. This enhancement, which shall be directed by a qualified restoration or plant ecologist (funded by the project applicant), would consist of planting or restoration of native vegetation appropriate to the site, and management of any particularly noxious occurrences of invasive plants, in a way that will enhance the structure and function of the riparian habitat. The qualified restoration or plant

ecologist shall prepare a mitigation plan outlining the enhancement activities which shall be submitted to and approved by the City prior to the issuance of any construction or grading permits. The plan shall include at least three years of monitoring, following implementation of mitigation, to ensure mitigation success. Among the performance criteria required by this mitigation plan shall be survival of enough planted/restored vegetation three years after implementation to ensure that enhancement has occurred at a minimum ratio of 2:1, as discussed above.

## B. Cultural Resources

**MM CUL-1:** Prior to the commencement of construction, the applicant shall secure the services of a qualified archaeologist. The qualified archaeologist shall prepare a workforce environmental awareness program (WEAP) to instruct construction workers of the obligation to protect and preserve valuable resources. The WEAP shall be reviewed and approved by the City's Community Development Director, or his or her designee, prior to the issuance of construction and grading permits. This program shall be provided to all construction workers as a field training prior to the beginning of ground-disturbing activities, 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 applicant, and the specialist(s).

**MM CUL-2:** Ground-disturbing activities (including, but not limited to, demolition / excavation, grading, and utility trenching) shall be monitored by a qualified archaeologist to be retained by the project applicant. The qualified archaeologist shall have authority to halt construction activities temporarily in the immediate vicinity of an unanticipated find until its significance can be assessed by the qualified archaeologist.

After observing a representative sample of ground-disturbing activity with no cultural resources encountered, the archaeologist may recommend that monitoring move to a part-time or intermittent schedule by mutual agreement with the City.

A summary report of the monitoring results, including any protective measures implemented (see the Cultural Resources conditions of approval at the end of this MMRP), shall be submitted to the City prior to the issuance of building permits.

## C. Greenhouse Gas

### MM GHG-1:

**Reduce GHG Emissions.** The applicant is responsible for retaining a qualified air quality/GHG specialist to develop a GHG reduction plan to reduce GHG emissions such that the project's GHG emissions are reduced by the emissions equivalent to those produced by the rate of VMT exceeded over the threshold. These reductions shall be kept in place by the project until the City adopts a GHG reduction plan that contains goals and associated strategy to decrease emissions in a manner consistent with meeting the State's interim 2030 GHG emissions and long-term goals.

- **Threshold:** GHG emissions would need to be reduced by an amount equivalent to the Project VMT that exceeds the VMT threshold. Without any traffic mitigation (i.e., TDM plan), the project per capita VMT would exceed the threshold by about 41 percent. Assuming a total of 176 residents, this would be 1,156 miles per day. Based on the additional VMT, the CalEEMod and EMFAC models were used to calculate the amount of GHG emissions to be reduced annually in order to meet the VMT significant threshold over the next 30 years. The applicant shall mitigate the project's operational GHG emissions for the life of the project<sup>1</sup> to achieve the applicable year-specific quantitative threshold<sup>2</sup> over the next 30 years by purchasing and retiring carbon offset credits.<sup>3</sup>
- **Demonstration of Reduction:** The GHG reduction plan shall quantify the GHG emissions from the project while accounting for any reductions that can be achieved

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<sup>1</sup> The life of the project is assumed to be 30 years since building systems are generally substantially upgraded by year 30 (<https://www.rdh.com/blog/long-buildings-last/>; <https://abgrealty.com/blog/life-span-commercial-building-components/>; [https://www.carbonleadershipforum.org/wp-content/uploads/2018/07/CLF\\_Recommendations\\_BuildingComponentLifespans\\_07-06-2018.pdf](https://www.carbonleadershipforum.org/wp-content/uploads/2018/07/CLF_Recommendations_BuildingComponentLifespans_07-06-2018.pdf)). California anticipates a significant increase in electric vehicles within the next 14 years (Executive Order N-79-20; <https://www.experian.com/blogs/insights/2020/11/new-california-mandate-rekindles-electric-vehicle-buzz/>).

Treating a building and its associated automobile GHG lifespan as 30 years appears conservative and is consistent with the methodology employed by the South Coast Air Quality Management District.

<sup>2</sup> The total number of MT/CO<sub>2</sub>e that would need to be offset is 1,922. The year-specific quantitative thresholds in MT/CO<sub>2</sub>e/year are as follows: 2028: 129, 2029: 123, 2030: 117, 2031: 113, 2032: 109, 2033: 106, 2034: 102, 2035: 98, 2036: 92, 2037: 87, 2038: 81, 2039: 76, 2040: 70, 2041: 64, 2042: 59, 2043: 53, 2044: 48, 2045: 42, 2046: 36, 2047: 31, 2048: 25, 2049: 20, 2050: 14, 2051: 14, 2052: 14, 2053: 14, 2054: 14, 2055: 14, 2056: 14, 2057: 14.

<sup>3</sup> If natural gas connections are included in the final project design, the emissions associated with natural gas use during project operation shall be calculated and 100 percent offset through implementation of the appropriate measures identified in the GHG reduction plan.

through design features (e.g., implementation of a TDM program, installation of solar power systems, inclusion of electric vehicle charging, installation of high-efficiency water fixtures, etc.). Any remaining emissions, that must be offset, shall be offset through the purchase of verifiable carbon emission offsets. The reduction of project GHG emissions through the retirement of carbon offset credits shall satisfy the following conditions:

- Registry Performance Standards: The applicant shall provide proof to the City’s Community Development Director, or his or her designee that the carbon offset credits were issued by a registry meeting the following requirements:
  - The registry shall account for and quantify emission reductions using clear and defined standards and incorporating recognized principles of GHG emissions reduction accounting, including those set forth in the ISO 14064 and the WRI/WBCSD Greenhouse Gas Protocol for Project Accounting;
  - The registry shall use clear information sufficient for reviewers to assess credibility of GHG emission reductions underlying the carbon offset credits. Upon request by the City’s Community Development Director, or his or her designee, any governmental entity, or any stakeholder, the registry shall provide the following information within a reasonable time period in connection with any carbon offset credit retired by the applicant: (i) the applicable quantification protocol; and (ii) all third-party confirmation or verification reports issued in connection with the carbon offset credits. Such information shall be sufficient to monitor compliance by the project applicant with this mitigation measure.
- Carbon Offset Credit Performance Standards: The carbon offset credits retired by the applicant for the purpose of mitigating GHG emissions shall represent GHG emission reductions that are real, permanent, additional, quantifiable, verifiable and enforceable.<sup>4</sup>

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<sup>4</sup> The following terms in this mitigation are defined as follows: “Additional” means GHG emission reductions or removals underlying the carbon offset credits that exceed any GHG reduction or removals otherwise required by law, regulation or legally binding mandate, and that exceed any GHG reductions or removals that would otherwise occur in a business-as-usual scenario. To be additional, the credit shall have reduced GHG emissions below the applicable common industry practice for GHG reductions as in

To demonstrate compliance with such requirements, the applicant shall provide the following to the City's Community Development Director, or his or her designee: (i) the protocol used to quantify and issue such carbon offset credits, (ii) the third-party verification report(s) pursuant to which such carbon offset credits were issued, and (iii) the unique serial numbers of the carbon offset credits to be retired to ensure that the offset cannot be further used in any manner. The Community Development Director, or his or her designee, shall reject any carbon offset credits that do not comply with these requirements, and where reductions are not direct reductions within a confined project boundary or provide opportunities for reversal of the avoided emissions. The Community Development Director, or his or her designee, shall reject any credits for a project that includes technology or GHG abatement practices that are already widely used.

- Geographic Limitations: The carbon offset credits shall be from credit projects developed in the United States. Carbon offset credits resulting from international credit projects shall not be acceptable to satisfy this mitigation measure.
- Timing: The applicant shall mitigate GHG emissions resulting from project operations by purchasing and retiring the required offset credits prior to final issuance of the building permit. The applicant shall provide proof in the form of a compliance report to the City that carbon offset credits equal to the amount of project operational

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effect at the time the credit project was initiated. "Real" means that GHG reductions or GHG enhancements underlying the carbon offset credits result from a demonstrable action or set of actions, and are quantified using appropriate, accurate, and conservative methodologies that account for all GHG emissions sources, GHG sinks, and GHG reservoirs within the boundary of the applicable credit project and account for uncertainty and the potential for activity-shifting leakage and market-shifting leakage. "Verifiable" means that the GHG reductions or GHG enhancements underlying the carbon offset credits are well documented, transparent and set forth in a document subject to objective review by an accredited verification body. "Permanent" means that GHG reductions and GHG removal enhancements underlying the carbon offset credits are not reversible, or when GHG reductions and GHG removal enhancements may be reversible, that mechanisms are in place to replace any reversed GHG emission reductions and GHG removal enhancements to ensure that all credited reductions endure for at least 100 years. To ensure permanence, reductions from purchased credits must have already occurred. "Quantifiable" means the ability to accurately measure and calculate GHG reductions or GHG removal enhancements relative to a project baseline in a reliable and replicable manner for all GHG emission sources, GHG sinks, or GHG reservoirs included within the boundary of the credit project generating the carbon offset credits, while accounting for uncertainty and activity shifting leakage and market-shifting leakage. "Enforceable" means the authority for the City to hold the project accountable and to take appropriate action if the City determines that any carbon offset credits do not comply with the requirements set forth above.

GHG emissions in excess of the threshold have been purchased and retired. A conservative estimate of the offset credits that need to be purchased by the project applicant for the lifetime of the project is 1,922 MT.<sup>5</sup>

- Adjustment: The required amount of carbon offset credits may be adjusted to account for conformance with a qualified GHG reduction plan adopted by the City, or changes in climate science, GHG regulation, technology, and updated/refined project emissions, as follows:
  - The applicant may recalculate the project emissions in this Initial Study to update/refine the amount of carbon credits required to be purchased and/or demonstrate emissions achieve the year-specific threshold or an applicable quantitative threshold that may be adopted by the City or BAAQMD in the future. If the project applicant chooses to refine or recalculate project GHG emissions, the project applicant shall retain a qualified air quality/GHG professional to calculate the project's GHG emissions, in accordance with the BAAQMD CEQA Air Quality Guidelines, as they may be updated from time to time. Re-evaluation of project GHG emissions could reflect additional on-site measures incorporated into the project (such as installing solar panels, high-efficiency water fixtures, electric vehicle charging stations, etc.) or increased operational efficiencies (e.g., the state's increased vehicle fuel efficiency standards and renewable energy portfolio requirement). The calculation shall be summarized in a report and submitted as part of the documentation submitted to the City's Community Development Director, or his or her designee for review and approval.

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<sup>5</sup> This was estimated by adding the annual project GHG emissions to be reduced between 2028 and 2057. This estimate can be adjusted, updated, and refined as appropriate per the Adjustment portion described in mitigation measure MM GHG-1



OR

- If the City has adopted a qualified GHG reduction strategy that covers the project, the project applicant can demonstrate that the project is consistent with the applicable mandatory measures in the GHG reduction strategy by submitting written proof documenting the project's consistency to the City's Community Development Director, or his or her designee for review and approval. If the project is consistent with the applicable mandatory measures in the GHG reduction strategy, it is concluded that it would result in a less than significant GHG impact and no further mitigation is required.

D. Hazards and Hazardous Materials

**MM HAZ-1:**

Preparation of a Risk Management Plan and Health and Safety Plan. Prior to issuance of a grading permit and excavation of the undocumented fill on-site, an Environmental Professional retained by the project applicant shall prepare an appropriate risk management plan (e.g., Site Management Plan) to establish appropriate management practices for handling the undocumented fill, including guidelines for the reuse and disposal of these materials. The plan shall also include protocols to segregate the lead-impacted fill encountered near TP-8 (see Appendix E for location information) and ensure that appropriate off-site disposal is completed. This plan shall be submitted to the City for review and approval prior to issuance of grading and construction permits. Following completion of the excavation, a report documenting compliance with the risk management plan and summarizing the work completed on-site shall be prepared by the Environmental Professional and provided to the City for review and approval.

The project applicant shall also require the construction General Contractor to prepare a Health and Safety Plan (HSP) establishing appropriate protocols for working at the property and submit the HSP to the City prior to issuance of construction and grading permits. Workers conducting property earthwork activities in contaminated areas shall complete 40-hour HAZWOPER training course (29 CFR 1910.120). The General Contractor shall be responsible for the health and safety of their employees as well as for compliance with all applicable federal, state, and local laws and guidelines.

## E. Transportation

### MM TRN-1:

**Reduce Project VMT.** The project applicant shall hire a qualified transportation consultant to develop and implement TDM strategies for the project to reduce the project's VMT per capita to the extent feasible. These TDM strategies shall be implemented concurrently with the occupation of the completed residences on-site. These strategies could include, but are not limited to, the following:

- TP01 – School Pool Programs: Organize a program that matches families in carpools for school pick-up and drop-off. Organizing a School Pool Program helps match parents who transport students to schools without a bussing program, including private schools, charter schools, and neighborhood schools where students cannot walk or bike. The school pool program would be open to all families in the development. School pools reduce the total number of vehicle trips traveling to and from schools, thereby reducing VMT.
- TP02 – Bike Share Programs: Dedicate space on-site for or provide subsidies to a bike sharing system, ideally one with high penetration in a larger area, such as Bay Wheels. Bike share substitutes for some driving trips and provides a first/last-mile connection for transit users, reducing auto trips and thereby reducing VMT. This reduction only applies if a bike share station is built on site.
- TP03 – Car Share Programs: Provide subsidies and promotions, as well as dedicated parking spaces, for car sharing services such as ZipCar, Car2Go, and GetAround for 100 percent of residents from the project. Supporting a car sharing program allows for people to have on-demand access to a shared fleet of vehicles on an as-needed basis. Car sharing helps support the use of walking, biking, carpooling, and transit by providing another means for business/day trips or a guaranteed ride home option, allowing for overall reductions in auto use which results in reduced VMT.
- TP18 – Voluntary Travel Behavior Change Program: Provide a program that targets individual attitudes and behaviors towards travel and providing tools for individuals to analyze and alter their travel behavior. Voluntary Travel Behavior Change programs include mass communication campaigns and travel feedback programs, such as travel diaries or feedback on calories burned from activities and travel. This strategy encourages the use of shared ride modes, transit, walking, and biking, thereby reducing VMT.

A report summarizing the feasible TDM strategies and the plan for implementation shall be submitted to the City for review and approval prior to issuance of building permits.

#### **IV. FINDING**

The City of Gilroy hereby finds that the project would contribute to significant and unavoidable impacts that were previously disclosed in the Gilroy 2040 General Plan Final Environmental Impact Report, which was certified by the City of Gilroy City Council on November 2, 2020. The project could result in additional significant effects on the environment; however, there would not be any additional significant effects in this case because mitigation measures summarized above and described in the Initial Study are included in the project.

#### **V. LEAD AGENCY REPRESENTATIVE**

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Sharon Goei  
Community Development Director

Date

#### **VI. CONTACT INFORMATION**

For additional information, please contact Cindy McCormick, Planning Manager at the City of Gilroy Planning Division at (408) 846-0440. Written comments may be sent to Cindy McCormick via email at [Cindy.McCormick@cityofgilroy.org](mailto:Cindy.McCormick@cityofgilroy.org) or via mail at City of Gilroy Planning Division, 7351 Rosanna Street, Gilroy, CA 95020.