

**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:** Tamien Station Transit-Oriented Development

**PROJECT FILE NUMBER:** PDC18-025

**PROJECT DESCRIPTION:** The project is a Planned Development Rezoning from the A(PD) Planned Development Zoning District to the R-M(PD) Planned Development Zoning District to allow up to 569 multi-family residential dwelling units (434 Market Rate and 135 Affordable units) and commercial or childcare facility up to 3,000 square feet on an approximately 6.96-gross acre site.

**LOCATION:** 1197 Lick Avenue, between the Tamien Transit Station and Lick Avenue, in central San José

**ASSESSORS PARCEL NO.:** 434-13-040

**COUNCIL DISTRICT:** 3

**APPLICANT CONTACT INFORMATION:** Urbanco-Tamien LLC, Attention: Susan Mineta, 84 W. Santa Clara Street, Suite 600, San José, CA 95113, (408) 292-1601

**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 have no impact on this resource, therefore no mitigation is required.
- C. **AIR QUALITY:**

**Impact AIR-1:** The project would result in maximum residential cancer risks and PM<sub>2.5</sub> concentrations during construction activities that would exceed the BAAQMD significance thresholds, exposing sensitive receptors to substantial pollutant concentrations.

**Mitigation Measure:** The project would implement the following measure to reduce construction-related TACs at nearby sensitive receptors to a less than significant level:

**MM AIR-1.1:** Prior to obtaining a grading permit, the project applicant shall provide to the City's Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee the construction contractor's plan to ensure that the off-road equipment used on-site to construct the project would achieve a fleet-wide average 85-percent reduction in DPM exhaust emissions or greater. The plan should include, but not be limited to, the proposed schedule for the use of heavy construction equipment, the type and number of heavy construction equipment, the estimated frequency of use of the equipment, and the measures that would be used to achieve the necessary reduction in DPM exhaust emissions. One feasible method to achieve this reduction may include the following:

- All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet U.S. EPA particulate matter emissions standards for Tier 2 engines that include CARB-certified Level 3 Diesel Particulate Filters or equivalent. The following equipment adjustments will also meet this requirement: Diesel-powered equipment with Tier 3 engines and CARB-certified Level 3 Diesel Particulate filters, or equipment that meets U.S. EPA particulate matter emissions standards for Tier 4 engines.

**D. BIOLOGICAL RESOURCES:**

**Impact BIO-1: Demolition, grading, and construction activities and tree removal during nesting season could impact nearby migratory birds.**

**Mitigation Measures:** The project would implement the following measures to avoid impacts to nesting migratory birds. Within incorporation of these measures, the project would result in a less than significant impact on nesting migratory birds.

**MM BIO-1.1:** Avoidance: 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 1<sup>st</sup> through August 31<sup>st</sup> (inclusive), as amended.

**MM BIO-1.2:** Nesting Bird Surveys: If it is not possible to schedule demolition and construction between September 1<sup>st</sup> and January 31<sup>st</sup> (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 1<sup>st</sup> through April 30<sup>th</sup> inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1<sup>st</sup> through August 31<sup>st</sup> inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

**MM BIO-1.3:** Buffer Zones: 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, 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.

**MM BIO-1.4:** Reporting: Prior to any tree removal, or approval 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 satisfaction of the City's Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee.

**E. CULTURAL RESOURCES:**

**Impact CUL-1: Excavation and grading for the proposed project could impact known and unknown subsurface Native American human remains and prehistoric resources.**

**Mitigation Measures:** General Plan Policy ER-10.1 states that for proposed development sites that have been identified as archaeologically or paleontologically sensitive, the City will require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information may be affected by the project. The City would then require, if needed, that appropriate mitigation measures be incorporated into the project design.

The project site is currently occupied by a child care center and a heavily-used LRT/Caltrain parking lot. Based on the project design and proposed construction activities, including soil excavation for the subgrade garage, the project would require a full subsurface investigation and implementation of a treatment plan to reduce potential impacts to subsurface pre-historic resources and Native American human remains prior to issuance of a grading permit.

A Cultural Resources Treatment Plan was prepared for the approved 2015 TOD project to detail requirements for a subsurface investigation program and measures that would be implemented prior to and during any ground disturbance activities at the project site. The Treatment Plan is currently being implemented on the site. The proposed project footprint and depths of impact are similar to that addressed in the 2015 Treatment Plan and, for this reason, the 2015 Treatment Plan is applicable to the proposed project. The Treatment Plan would be required to continue during construction activities of the proposed project. The key elements of the Treatment Plan are summarized in these mitigation measures and are detailed in full in the Cultural Resources Treatment Plan and Addendum, prepared by *Far Western Anthropological Research Group* in July 2015 and September 2018, respectively. <sup>1</sup>

**MM CUL-1.1:** Native American Consultation and Coordination: All earthwork completed on the site, including any for the mitigation program detailed below, shall be conducted in consultation with Muwekma Ohlone Tribe representatives.

**MM CUL-1.2:** Treatment Plan: The applicant shall continue to observe the requirements of the Cultural Resources Treatment Plan which was prepared by Far Western, a qualified archaeologist, in 2015 and approved by the Director of Planning, Building and Code Enforcement as part of that project. The Plan reflects permit-level detail pertaining to depths and locations of all ground disturbing activities and is currently being implemented at the project site. The Treatment Plan contains:

- Identification of the scope of work and range of subsurface effects (including location map and development plan).
- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).

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<sup>1</sup> Far Western reviewed the current plans, including proposed excavation depths, and concluded that the protocols and procedures outlined in the 2015 Treatment Plan are still applicable for the current project.

- Detailed field strategy used to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Appendices: all site records, correspondence, consultation with Native Americans, etc.

**MM CUL-1.3:** Investigation: Prior to project grading and excavation, the project applicant shall complete a field investigation program in conformance with the Cultural Resources Treatment Plan prepared for the project. The locations of subsurface testing and exploratory trenching shall be based on the Cultural Resources Treatment Plan recommendations. The investigation program shall be submitted to the Director of Planning, Building and Code Enforcement of the Director's designee for review and approval prior to issuance of a grading permit. The investigation program shall include, but not be limited to, the following:

- North-south trench across the area of the positive trenches identified in the San José Unified School District Investigation in 1998.
- Exploratory trenching at locations of proposed ground disturbance in excess of five (5) feet below ground surface.

Results of the investigation shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee prior to issuance of grading permits.

**MM CUL-1.4:** Evaluation and Data Recovery: Any prehistoric material identified in the project area during the field investigation in mitigation MM CUL-1.3 shall be evaluated for eligibility for listing in the National and California Register of Historic Resources. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation.

If a deposit is identified and determined to be a contributing portion of the National Register site SCL-690 and project impacts to the deposit cannot be avoided, then data recovery shall be undertaken immediately. A comprehensive data recovery program may include salvaging artifacts, comprehensive research, and laboratory analyses. If human remains are identified, the Most Likely Descendent (identified in consultation with the Native American Heritage Commission) will determine the disposition of the remains if they cannot be avoided.

The techniques used for data recovery shall follow the protocols identified in the project-specific Cultural Resources Treatment Plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation.

**MM CUL-1.5:** Human Remains: Native American coordination shall follow the protocols established under Assembly Bill 52, State of California Code, and applicable City of San José procedures. In addition, the following measures shall be implemented with regard to human remains:

- a) If any human remains are found during any field investigations, grading, or other construction activities, the activity must stop immediately and 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. The City of San José Director of Planning, Building and Code Enforcement or the Director's designee shall be notified along with the project's lead archaeologist. City personnel or the archaeologist shall contact the Santa Clara County Coroner immediately.

b) If the remains are believed to be Native American, the Coroner must contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC must then designate a Most Likely Descendant (MLD). The MLD will contact the City of San José Director of Planning, Building and Code Enforcement or the Director's designee within 24 hours of being notified, to inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. In the event human remains need to be left uncovered overnight, a guard shall be put on duty until the next working day, unless the designated Most Likely Descendant requests otherwise (e.g., that they be left unmarked or collected).

c) The project applicant shall explore all feasible options to redesign the project to avoid human remains. If this is not possible, alternative treatment scenarios should be considered, such as reburial of human remains in a secure place, as close as possible to the site. Initially, no photographs shall be taken of any human remains. They will be recorded, along with any grave-associated artifacts, and left in place until the designated Most Likely Descendant can make a decision on their reburial. Upon reburial, a GPS point shall be recorded at that location and identified on a Sacred Lands Form, which shall be submitted to the Native American Heritage Commission.

**MM CUL-1.6:** Safety and Site Security: Historic industrial uses on the site used hazardous materials, including metals and petroleum products. Based on the initial evaluation of hazardous contamination conducted in 2015, there is no health threat to construction workers from exposure to on-site soils. Results of any additional site characterization conducted under a Voluntary Cleanup Program required under MM HAZ-1.2 shall be reviewed by the project archaeologist for safety implications prior to archaeological ground investigations.

At the discretion of the qualified archaeologist responsible for the data recovery (i.e., the Field Director), site fencing shall be installed on-site during the investigation to avoid destruction and/or theft of archaeological material. A security guard shall also be hired during non-excavation hours to provide additional site security if any human remains are left exposed overnight. The responsible qualified archaeologist shall advise the City's Director of Planning, Building and Code Enforcement or the Director's designee as to the necessity for a guard. Final authority to determine the need for a guard rests with the Director of Planning, Building and Code Enforcement or the Director's designee.

**MM CUL-1.7:** Technical Reporting: Once all analyses and studies required by the project-specific Cultural Resources Treatment Plan have been completed, a technical report summarizing the results of the field investigation and data recovery shall be prepared. The report shall document the results of field and laboratory investigations and shall meet the Secretary of the Interior's *Standards for Archaeological Documentation*. The contents of the report shall be consistent with the protocol included in the project-specific Cultural Resources Treatment Plan. The report shall be submitted to the City of San José Director of Planning,

Building and Code Enforcement or the Director's designee for review and approval prior to issuance of Certificates of Occupancy. Once approved by the City, the final documentation shall be submitted to the Northwest Information Center at Sonoma State University.

**MM CUL-1.8:** Curation: Upon completion of the final technical report required by the project-specific Cultural Resources Treatment Plan, all recovered archaeological materials shall be transferred by the qualified archaeologist to a long-term curation facility, such as the David A. Frederickson Archaeological Collections Facility at the Anthropological Studies Center, Sonoma State University. Any curation facility used shall meet the standards outlined in the National Park Services' *Curation of Federally Owned and Administered Archaeological Collections* (36 CFR 79).

Treatment of materials to be curated shall be consistent with the protocols included in the project-specific Cultural Resources Treatment Plan.

**MM CUL-1.9:** Construction Monitoring and Protection Measures: Although the data recovery and treatment program is expected to recover all potentially significant materials and information from the areas impacted by the project, it is possible that additional resources could remain on-site. Therefore, all ground-disturbing activities (e.g. grading and excavation) shall be completed under the observation of an archaeological monitor. In addition to monitoring uncovered soils for indications of archaeological materials, the monitor shall also ensure that no equipment use or earthwork occurs on top of the reburial area.

Protective fencing shall be placed around the reburial area for the duration of construction. Heavy diesel equipment shall not be used on the reburial area. Any work required over the reburial area must be conducted manually or with handheld equipment to the extent feasible. If ground disturbance above the reburial is necessary, it shall be conducted only in consultation with appropriate Native American representatives and a qualified archaeologist.

The archaeological monitor shall have authority to halt construction activities temporarily in the immediate vicinity of an unanticipated find or within the vicinity of the reburial area. If a monitor is not present but construction crews encounter a cultural resource, all work shall stop temporarily within 50 feet of the find until a qualified professional archaeologist has been contacted to determine the proper course of action. Any human remains encountered during construction shall be treated according to the protocol identified in MM CUL-1.5.

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

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

**H. HAZARDS AND HAZARDOUS MATERIALS:**

**Impact HAZ-1: Project implementation (e.g., excavation) could release known and as yet undetected residual hazardous waste which could expose construction workers, future residents, and/or the environment to a significant health risk during earthwork activities.**

**Mitigation Measures:**

**MM HAZ-1.1:** A Site Management Plan (SMP) and Health and Safety Plan (HSP) shall be developed to establish management practices for handling contaminated soil or other materials encountered during construction activities. The sampling results shall be compared to appropriate risk-based screening levels in the SMP. The SMP and HSP shall identify potential health, safety, and environmental exposure considerations associated with redevelopment activities and shall identify appropriate mitigation measures. The SMP shall include the following:

- Proper mitigation as needed for demolition of existing structures;
- Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program;
- Management of underground structures encountered, including utilities and/or underground storage tanks;
- Procedures to follow if evidence of an unknown historic release of hazardous materials (e.g., underground storage tanks, PCBs, other contamination, etc.) is discovered during excavation or demolition activities;
- Traffic control during site improvements;
- Noise, work hours, and other relevant City regulations;
- Mitigation of soil vapors (if required);
- Procedures for proper disposal of contaminated materials (if required); and
- Monitoring, reporting, and regulatory oversight arrangements.

The SMP shall be submitted to the Santa Clara County Department of Environmental Health (SCCDEH) (or equivalent agency) for review and approval. A copy of the approved SMP shall be submitted to the City of San José Director of Department of Planning, Building and Code Enforcement or the Director's designee and the Municipal Compliance Officer of the City of San José Environmental Services Department prior to the issuance of any grading permits.

**MM HAZ-1.2:** The project applicant shall enter into a Voluntary Cleanup Program with the California Department of Toxic Substances Control, Santa Clara County Department of Environmental Health, or other appropriate oversight agency, to address residual metals contamination and naphthalene vapors prior to issuance of a Planned Development permit. The SCCDEH will determine the next appropriate steps in determining if more investigation is needed, remediation is required, or if the development of a SMP/HSP is sufficient to address contamination during site redevelopment. Documentation of the SCCDEH determination shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Municipal Compliance Officer of the City of San José Environmental Services Department prior to the issuance of any grading permits.

**I. HYDROLOGY AND WATER QUALITY** – The project would not have a significant impact on this resource.

**J. LAND USE AND PLANNING** – The project would have no impact on this resource, therefore no mitigation is required.

K. **MINERAL RESOURCES** – The project would have no impact on this resource, therefore no mitigation is required.

L. **NOISE:**

**Impact NOI-1: Mechanical equipment noise generated by the proposed project could impact nearby sensitive receptors.**

**Mitigation Measure:** The project would implement the following measure to minimize the impacts of mechanical equipment noise.

**MM NOI-1.1:** Mechanical equipment selection: The project applicant shall select and design mechanical equipment that will reduce impacts on surrounding uses to comply with the City's 55 dBA DNL noise level requirement at the property boundary of the nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained to review mechanical equipment noise levels prior to their installation to determine specific noise reduction measures necessary to comply with the City's noise level requirements. The results of the review shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee along with the building plans and approved design, prior to issuance of any building permits. Noise reduction measures may include, but are not limited to, selection of equipment that emits low noise levels and/or installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Alternate measures may include locating equipment in less noise-sensitive areas, such as the rooftop of the buildings away from the building's edge nearest the noise-sensitive receptors, where feasible. Alternate measures shall be reviewed by the Director of Planning, Building and Code Enforcement or the Director's designee prior to issuance of any building permits.

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

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

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

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

Q. **TRIBAL CULTURAL RESOURCES**

**Impact TRC-1: Implementation of the Project could cause a substantial adverse change in the significance of a tribal cultural resource pursuant to §21074.**

**Mitigation Measures:** The project applicant would implement MM CUL-1.1 through mm CUL-1.9 as outlined in Cultural Resources above, which would ensure that the project would not cause a substantial adverse change in the significance of a tribal cultural resource.

- R. **UTILITIES AND SERVICE SYSTEMS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- S. **ENERGY** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- T. **WILDFIRE** – The project would have no impact on this resource, therefore no mitigation is required.
- U. **MANDATORY FINDINGS OF SIGNIFICANCE**

The project would not substantially reduce the habitat of a fish and wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

**PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **Thursday April 7<sup>th</sup>, 2020** 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.

Rosalynn Hughey, Director  
Planning, Building and Code Enforcement

3/2/2020

Date

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Deputy

**Circulation period:** March 9, 2020 through April 7, 2020

**Environmental Project Manager:** Reema Mahamood