

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: Moorpark Avenue Multi-Family Residential Project

PROJECT FILE NUMBER: C20-001, H20-035 and ER20-232

PROJECT DESCRIPTION: Site Annexation, Pre-zoning, and Site Development Permit to demolition all existing residential structures to construct five three-story buildings containing 41 residential units on a 2.01-acre site. Access to the project site will be provided from a private looped drive connecting to the Central Way cul-de-sac. The project will include 82 garage parking spaces and 25 guest parking spaces.

PROJECT LOCATION: The project site is located at 2323, 2369, 2389, and 2391 Moorpark Avenue in unincorporated Santa Clara County.

ASSESSORS PARCEL NO.: 282-01-014, -015, -016, -022, -023, -024, -025

COUNCIL DISTRICT: N/A

APPLICANT CONTACT INFORMATION: The True Life Companies - Moorpark LLC (Attn: Kelley Rutchena); 12647 Alcosta Boulevard, Suite 470 San Ramon, CA 94583; (925) 380-1210; krutchena@thetruelifecompanies.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.

Impact AIR-1: PM2.5 exhaust emissions generated during unmitigated project construction would result in an incremental cancer risk of approximately 13.5 in one million at the MIR, which would exceed the 10 in one million threshold set by the BAAQMD. Therefore, the project could conflict with the applicable air quality plan and could expose sensitive receptors to substantial pollutant concentrations prior to incorporation of mitigation.

MM AIR-1: Prior to issuance of any demolition, grading permits, and/or building permits (whichever occurs earliest), the project applicant shall prepare and submit a construction operations plan that includes specifications of the equipment to be used during construction to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's Designee. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.

- For all construction equipment larger than 25 horsepower operating on the site for more than two days continuously or 20 total hours, shall, at a minimum meet United States Environmental Protection Agency (EPA) Tier 4 Final emission standards.
- If Tier 4 Final equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to ARB Level 3 verifiable diesel emission control devices that altogether achieve an 85 percent reduction in particulate matter exhaust and 40 percent reduction in NOX in comparison to uncontrolled equipment.

The project applicant shall submit a construction operations plan prepared by the construction contractor that outlines how the contractor will achieve the measures outlined in this mitigation measure. The plan shall be submitted to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for review and approval prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest). The plan shall include, but not be limited to the following:

- List of activities and estimated timing.
- Equipment that would be used for each activity.
- Manufacturer's specifications for each equipment that provides the emissions level; or the manufacturer's specifications for devices that would be added to each piece of equipment to ensure the emissions level meet the thresholds in the mitigation measure.
- How the construction contractor will ensure that the measures listed are monitored.
- How the construction contractor will remedy any exceedance of the thresholds.
- How often and the method the construction contractor will use to report compliance with this mitigation measure.

D. BIOLOGICAL RESOURCES.

Impact BIO-1: The development of the proposed project has the potential to impact protected bird nests due to the removal of vegetation or indirectly harm birds through the generation of noise, lights, and other man-made disturbances that could result in the abandonment of eggs or young. The removal of trees that may provide nesting habitats would be a significant impact that requires mitigation.

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 1 through August 31 (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 1 and January 31 (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 1 through April 30 inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1 through August 31 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 (PBCE) or the Director's designee.

Impact BIO-2: There is potential for abandoned buildings found on-site to be inhabited by roosting bats, including special-status bat species, which requires mitigation.

MM BIO-2: Prior to the issuance of any tree removal, grading, building, or demolition permits (whichever comes first), a qualified Biologist shall conduct a pre-construction survey for special-status bats to characterize potential bat habitat and identify active roost sites within 100 feet of the project site. The survey shall be conducted within two (2) calendar days prior to any ground-disturbing activity. The results of the surveys and the locations of any designated buffer zones shall be submitted to the Director of Planning, Building and Code Enforcement (PBCE), or the Director's designee. Should potential roosting habitat or active bat roosts be found in trees and/or structures to be removed or renovated under the project or within a 100-foot buffer zone from these areas, the following measures shall be implemented:

- Removal of trees and structures with active roosts shall occur when bats are active, approximately between March 1 and April 15 inclusive and between September 1 and October 15 inclusive. To the extent feasible, removal shall occur outside of bat maternity roosting season (approximately April 15 to August 31 inclusive) and outside of the months of winter torpor (approximately October 16 to February 28 inclusive).
- If removing trees and structures during the periods when bats are active is not feasible and active bat roosts being used for maternity or hibernation purposes are found on or in the immediate vicinity of the project area where tree and structure removal is planned, a no-

disturbance buffer shall be established around these roost sites, typically 100 feet, or an area determined to be adequate by the qualified biologist based on-site conditions, construction activity, species, number of roosting individuals, and/or noise attenuation and frequency, along with coordination with the California Department of Fish and Wildlife (CDFW), if necessary, until the qualified Biologist has determined that they are no longer active.

The qualified Biologist shall be present during removal of trees and structures when active bat roosts not being used for maternity or hibernation purposes are present. Trees and structures with active roosts shall be removed only when no rain is occurring and rain is not forecast to occur for 3 days following removal of the roost, and when daytime temperatures are at least 50°F (degrees Fahrenheit).

- Removal of trees with active or potentially active roost sites shall follow a two-step removal process:
 - (1) On the first day of tree removal and under the supervision of the qualified biologist, branches and limbs that do not contain cavities or fissures in which bats could roost shall be cut only using chain saws. Removal of the canopy makes the tree unappealing for bats to return that evening to roost.
 - (2) On the following day and under the supervision of the qualified Biologist, after confirmation that bats have not returned, the remainder of the tree may be removed, using either chain saws or other equipment (e.g., excavator or backhoe).

Structures that contain or are suspected to contain active bat roosts, but that are not being used for maternity or hibernation purposes, shall be dismantled under the supervision of the qualified biologist in the evening, after bats have emerged from the roost to forage. The structures shall be partially dismantled to substantially change roost conditions, causing the bats to abandon and not return to the roost.

E. CULTURAL RESOURCES.

Impact CUL-1: The location of the project site and the existence of a recorded prehistoric resource in the vicinity results in the project site to be moderately sensitive for archaeological resources. Archaeological resources can include but are not limited to stone, bone, wood, or shell artifacts or features, including hearths and structural elements. Damage or destruction of these resources would have a potentially significant impact.

MM CUL-1: Monitoring. The project applicant shall implement the following construction practices and protocols proposed as part of the project to avoid and minimize potential impacts to unknown archaeological resources:

- All construction crews and their supervisors shall receive cultural resources training by a qualified archaeologist before construction begins.
- A qualified archaeologist shall monitor archaeologically sensitive areas during initial ground disturbance to determine whether potentially significant archaeological resources are present in the project area.
- If no resources are discovered, the consulting archaeologist shall submit a report to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer prior to issuance of any grading permit verifying that the required monitoring occurred and that no further mitigation is necessary.

MM CUL-2: Treatment Plan. If cultural resources are encountered during ground-disturbing activities, the project applicant shall prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of the City of San José Department of Planning, Building, and Code Enforcement (PBCE) or the Director’s designee prior to issuance of grading permit. The treatment plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.
- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
- Monitoring schedules and individuals.
- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).
- Detailed field strategy to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Security approaches or protocols for finds.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc. Implementation of the plan, by a qualified Archaeologist, shall be required prior to any grading activities. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.

MM CUL-3: Evaluation. The project applicant shall notify the Director of the City of San José Department of Planning, Building, and Code Enforcement (PBCE) or the Director’s designee of any finds during grading or other construction activities. Any historic or prehistoric material identified in the project area during the preliminary field investigation and during excavation activities shall be evaluated for eligibility for listing in the California Register of Historical Resources (CRHR) as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Information Center and Native American Heritage Commission (NAHC) Sacred Land Files, and/or equivalent prior to occupancy. A copy of the evaluation shall be submitted to the Director of Department of Planning, Building, and Code Enforcement or the Director’s designee.

- 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: Elevated concentrations of mercury (one sample), arsenic (four samples), chlordane (two samples), and dieldrin (two samples) likely resulted from past applications of pesticides/termiticides. The chlordane concentration in one of these samples exceeded the California hazardous waste threshold, indicating that some of the soil may be considered a hazardous waste if transferred off-site for disposal. The presence of elevated concentrations of arsenic and chlordane in the surface soil samples is considered a REC.

MM HAZ-1: Prior to issuance of any grading or demolition permits, the project applicant must obtain regulatory oversight from the Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified environmental consultant under regulatory oversight and approval that identifies remedial measures and/or soil management practices to ensure construction worker safety and the health of future site occupants. The plan and evidence of regulatory oversight shall be provided to the Director of Planning, Building, and Code Enforcement (PBCE) 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.**

Impact NOI-1: The project would result in substantial noise generating activities continuing for more than 12 months, which is considered a significant impact pursuant to General Plan Policy EC-1.7.

MM NOI-1: Prior to the issuance of any demolition, grading or building permits, the project applicant shall prepare and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction (i.e., prior to grading permits) and implemented during construction to reduce noise impacts on neighboring residents and other uses.

As part of the noise logistics plan, the project applicant shall include, but is not limited to, the following best management practices:

- Construction activities shall be limited to daytime hours between 7:00 a.m. and 7:00 p.m. on weekdays.
- Construction operations shall be required to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. Because project construction would occur within 500 feet of residential uses and would last longer than 12-months, the following noise reduction measures shall be included:

- Equipment staging and laydown areas shall be located at the furthest practical distance from nearby residential land uses. To the extent possible, staging and laydown areas should be located at least 500 feet of existing residential dwellings.
- All equipment shall be fitted with factory equipped mufflers and be in good working condition. Construction contracts shall specify that all construction equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers and other State required noise attenuation devices.
- Haul trucks shall not be allowed to idle for periods greater than five minutes, except as needed to perform a specified function (e.g., concrete mixing).
- On-site vehicle speeds shall be limited to 15 miles per hour, or less (except in cases of emergency).
- Backup beepers for all construction equipment and vehicles shall be broadband sound alarms or adjusted to the lowest noise levels possible, provided that the Occupational Safety and Health Administration and California Division of Occupational Safety and Health's safety requirements are not violated. On vehicles where backup beepers are not available, alternative safety measures such as escorts and spotters shall be employed.
- During construction, stationary construction equipment shall be placed such that emitted noise is directed away from sensitive noise receivers.

The construction noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for review prior to issuance of any demolition, grading, or building permits.

- 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 **Tuesday, May 16, 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.

CHRISTOPHER BURTON, Director
Planning, Building and Code Enforcement

April 17, 2023

Date

Tina Garg

Deputy

Bethlehem Telahun
Environmental Project Manager

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