

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: 550 Piercy Road Industrial Development Project

PROJECT FILE NUMBER: H22-015, ER22-089, and T22-015

PROJECT DESCRIPTION: The project application is for a Site Development Permit and Vesting Tentative Map to allow the construction of two industrial buildings on a 28.9-acre single vacant parcel located at 550 Piercy Road in San José, California. The total square footage of the proposed industrial buildings would be 430,000 square feet, with 257,149 square feet for Building 1 and 172,851 square feet for Building 2. Additional improvements for site circulation, site access, drainage, and infrastructure are included in the proposed project.

PROJECT LOCATION: 550 Piercy Road, in the City of San José.

ASSESSORS PARCEL NO.: 678-08-043

COUNCIL DISTRICT: 2

APPLICANT CONTACT INFORMATION: HUSPRF INVESTOR SPV I LP, 2800 Post Oak Blvd, Suite 4800, Houston, TX 77056

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 Initial Study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this Mitigated Negative Declaration (MND), has made or agrees to make project revisions that will clearly mitigate the potentially significant effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- A. **AESTHETICS** – The project would not have a significant impact on this resource. Therefore, no mitigation is required.
- B. **AGRICULTURE AND FORESTRY RESOURCES** – The project would not have a significant impact on this resource. Therefore, no mitigation is required.
- C. **AIR QUALITY** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- D. **BIOLOGICAL RESOURCES.**

Impact BIO-1: American badger has the potential occur within the project site. Construction activities may result in direct mortality of individual and/or loss of habitat for this species if present within the project site during construction.

MM BIO-1a: building permits, a qualified biologist shall conduct an Employee Education Program for the construction crew. The qualified biologist shall meet with the construction crew at the onset of construction at the project site to educate the construction crew on the following: 1) the appropriate access route(s) in and out of the construction area and review project boundaries; 2) how a biological monitor shall examine the area and agree upon a method which shall ensure the safety of the monitor during such activities, 3) the identification of special-status species that may be present; 4) the specific mitigation measures that shall be incorporated into the construction effort; 5) the general provisions and protections afforded; and 6) the proper procedures if a special-status species is encountered within the project site to avoid impacts.

Documentation of the completed Employee Education Program shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee within 14 days of program completion.

MM BIO-1b: A qualified biologist shall conduct focused pre-construction surveys for badger dens no more than two weeks prior to the start of any construction activity in all suitable habitat proposed for construction, ground disturbance, or staging. If no potential badger dens are present, no further mitigation is required. If potential dens are observed, the following measures are required to avoid potential significant impacts to the American badger:

- If the qualified biologist determines that potential dens are inactive, the biologist shall excavate these dens by hand with a shovel to prevent badgers from re-using them during construction.
- If the qualified biologist determines that potential dens may be active, the entrances of the dens shall be blocked with soil, sticks, and debris for three to five days to discourage the use of these dens prior to project disturbance. The den entrances shall be blocked to an incrementally greater degree over the three- to five-day period. After the qualified biologist determines that badgers have stopped using active dens within the project boundary, the dens shall be hand-excavated with a shovel to prevent re-use during construction.

- If the qualified biologist determines that the potential den is an active natal den the qualified biologist shall establish a no-construction buffer around the den. The buffer will be delineated by fencing or flagging. No construction shall be allowed inside the buffer until the qualified biologist determines the young are no longer reliant upon the den for survival.

Documentation and recommendations of the completed focused badger survey shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee within 14 days of program completion.

Impact BIO-2: Construction activities associated with the project could result in the loss of active nests of nesting raptors or other migratory birds (including grasshopper sparrows), or nest abandonment. Raptors and other protected avian species have the potential to nest within and adjacent to the project site.

MM BIO-2: Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), 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 through August 31 (inclusive).

If demolition and construction cannot be scheduled to occur 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 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 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 qualified ornithologist/biologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

If an active nest is found in an area that would be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife (only if needed), 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. The buffer would ensure that raptor or migratory bird nests would not be disturbed during project construction or until the biologist determines the nest is no longer active or the nesting season ends. If construction ceases for two days or more then resumes again during the nesting season, an additional survey shall be necessary to avoid impacts to active bird nests that may be present.

Impact BIO-3: Western burrowing owls have the potential to occur within the project site. Construction activities may result in direct mortality of individuals and/or loss of habitat for these species if present within the project site during construction.

MM BIO-3a: : Prior to the issuance of any demolition, grading or building permits, a qualified biologist shall conduct preconstruction surveys in all suitable habitat areas. The purpose of the preconstruction surveys is to document the presence or absence of burrowing owls on the project site, particularly in areas within 250 feet of construction activity. To maximize the likelihood of detecting owls, the preconstruction survey shall last a minimum of three hours.

The survey shall begin 1 hour before sunrise and continue until 2 hours after sunrise (3 hours total) or begin 2 hours before sunset and continue until 1 hour after sunset. A minimum of two surveys shall be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed shall be counted and their location shall be mapped. Surveys shall conclude no more than 2 calendar days prior to construction. Therefore, the project applicant must begin surveys no more than 4 days prior to construction (2 days of surveying plus up to 2 days between surveys and construction). To avoid last minute changes in schedule or contracting that may occur if burrowing owls are found, the project applicant may also conduct a preliminary survey up to 14 days before construction. This preliminary survey may count as the first of the two required surveys as long as the second survey concludes no more than 2 calendar days in advance of construction. If no burrowing owls are observed during the preconstruction survey no further mitigation is required.

Documentation summarizing results of preconstruction surveys shall be provided to the Director of Planning, Building and Code Enforcement or Director's designee, prior to the issuance of any demolition, grading or building permits.

MM BIO-3b: If evidence of western burrowing owls is found during the breeding season (February 1–August 31, inclusive), prior to the issuance of any demolition, grading or building permits (whichever occurs first), the project applicant shall prepare an avoidance and minimization plan. The plan shall include measures to avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging). The plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval prior to the issuance of any demolition, grading or building permits (whichever occurs first).

Avoidance shall include establishment of a 250-foot non-disturbance buffer zone around nests. Construction may occur outside of the 250-foot non-disturbance buffer zone. Construction may occur inside the 250-foot non-disturbance buffer during the breeding season if:

- the nest is not disturbed, and
- the project applicant develops an avoidance, minimization, and monitoring plan that will be reviewed by the Implementing Entity and CDFW prior to project construction based on the following criteria.
 - The Implementing Entity and the Wildlife Agencies approves of the avoidance and minimization plan provided by the project applicant.
 - A qualified biologist monitors the owls for at least 3 days prior to construction to determine baseline nesting and foraging behavior (i.e., behavior without construction).
 - A qualified biologist monitors the owls during construction and finds no change in owl nesting and foraging behavior in response to construction activities.

If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities shall cease within the 250-foot buffer. Construction cannot resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site.

If monitoring indicates that the nest is abandoned prior to the end of nesting season and the

burrow is no longer in use by owls, the non-disturbance buffer zone can be removed. The qualified biologist shall excavate the burrow to prevent reoccupation after receiving approval from the Wildlife Agencies.

During the non-breeding season (September 1–January 31, inclusive), the project applicant shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of this 250-foot buffer are allowed. Construction activities within the non-disturbance buffer are allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites.

- The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.
- If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities shall cease within the 250-foot buffer.
- If the owls are gone for at least one week, the project applicant may request approval from the Implementing Entity that a qualified biologist excavate usable burrows to prevent owls from re-occupying the site. After all usable burrows are excavated, the buffer zone shall be removed and construction may continue.

Monitoring must continue as described above for the non-breeding season as long as the burrow remains active.

MM BIO-3c: Based on the avoidance, minimization, and monitoring plan developed (as required above), during construction, the project applicant shall establish and maintain the non-disturbance buffer zones throughout the construction period, if applicable. A qualified biologist shall monitor the site consistent with the requirements described above to ensure that buffers are enforced and owls are not disturbed. The qualified biologist shall also conduct training with construction personnel on the avoidance procedures, buffer zones, and protocols in the event that a burrowing owl flies into an active construction zone.

E. CULTURAL AND TRIBAL CULTURAL RESOURCES.

Impact CR-1: The project may impact pre-historic resources or historic-era archaeological deposits during excavation and construction activities.

MM CR-1.1: Cultural Sensitivity Training. Prior to issuance of any grading permits, the project applicant shall conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified project archaeologist in collaboration with a Native American representative 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. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee within 7 days of completion of training.

MM CR-1.2: Monitoring Plan. Prior to issuance of any demolition, grading, or building permits (whichever occurs first), a qualified archeologist, in consultation with a Native American representative 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 prepare a monitoring plan for all earthmoving activities. The Plan shall be submitted to the Director of the Planning, Building, and Code Enforcement or the Director's designee for review and approval. The plan shall include, but is not limited to, the following:

- Monitoring schedules
- Contact information
- Recommendation for monitoring methods
- Timing of reporting finds

MM CR-1.3: Sub-Surface Monitoring. A qualified archeologist in collaboration with a Native American monitor, 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 also be present during applicable earthmoving activities in accordance with in the Monitoring Plan in MM CR-1.2. These could include but not are not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping.

MM CR-1.4 Evaluation. The project applicant shall notify the Director of Planning, Building, and Code Enforcement or Director's designee of any finds during the grading or other construction activities. Any historic or prehistoric material identified in the project area during the during excavation activities shall be evaluated for eligibility for listing in the California Register of Historic Resources 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 the issuance of an occupancy permit. A copy of the evaluation shall be submitted to the Director of Planning, Building, and Code Enforcement or the Director's designee.

With implementation of the mitigation measures and standard permit conditions discussed above, the proposed project would have a less than significant impact with respect to causing a substantial adverse change on archaeological resource

- 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: Soils at the project site were determined to show trace elements of chrysotile

fibers that are indicative of the presence of asbestos. In addition, the project site contains evidence of serpentine and ultramafic rock. Release of asbestos dust during ground disturbing activities could result in the exposure of hazardous materials to the public or the environment.

MM HAZ-1: Prior to issuance of any demolition or grading permits, the project applicant shall prepare an Asbestos Dust Mitigation Plan (ADMP) for submittal to the Bay Area Air Quality Management District (BAAQMD) for approval. The ADMP must describe dust control measures during grading as well as long term dust control measures. The ADMP shall include, at a minimum, the following measures consistent with the California Air Resources Board (CARB) Asbestos Airborne Toxic Control Measure (ATCM) for Construction, Grading, Quarrying, and Surface Mining Operations:

- Track-out prevention and control measures;
- Active stockpiles shall be adequately wetted or covered with tarps;
- Control for disturbed surface areas and storage piles that remain inactive for more than seven days;
- Control for traffic on unpaved roads, parking lots, and staging areas;
- Control for earthmoving activities; and,
- Control for off-site transport.

A copy of the BAAQMD-approved ADMP shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer in the City of San José Environmental Services Department before issuance of the grading permit.

With implementation of this mitigation measure, the project would have a less than significant impact to the public or the environment related to reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment..

- J. HYDROLOGY AND WATER QUALITY** – The project would not have a significant impact on this resource. Therefore, no mitigation is required.
- K. LAND USE AND PLANNING** – The project would not have a significant impact on this resource. Therefore, no mitigation is required.
- L. MINERAL RESOURCES** – The project would not have a significant impact on this resource. Therefore, no mitigation is required.
- M. NOISE** – The project would not have a significant impact on this resource. Therefore, no mitigation is required.
- N. POPULATION AND HOUSING** – The project would not have a significant impact on this resource. Therefore, no mitigation is required.
- O. PUBLIC SERVICES** – The project would not have a significant impact on this resource. Therefore, no mitigation is required.
- P. RECREATION** – The project would not have a significant impact on this resource. Therefore, no mitigation is required.

Q. TRANSPORTATION –

Impact TR-1: The project daily Vehicle Miles Travelled (VMT) generated by the project would be 14.69 per worker, which exceeds the City of San José VMT Evaluation Tool's industrial threshold of 14.37 daily VMT per worker.

MM TR-1.1: Prior to the issuance of any grading or building permits, the project applicant shall prepare plans that illustrate the design of the site enhancements, and shall coordinate with the City's Department of Parks, Recreation, & Neighborhood Services, Department of Transportation, and the Department of Public Works to incorporate the following:

- Traffic Calming Measures and Bike Access Improvements. The project development shall include narrowing of the existing roadway lane widths along Silicon Valley Boulevard to implement Class IV protected bikeways in both directions between Hellyer Avenue and Eden Park Place. The project also includes the installation of the on-street Class IV bikeway per City standards along the project's frontage along Hellyer Avenue. The bike lanes would connect the existing Coyote Creek Trailheads and encourage the use of bicycles (see Appendix H, Figure 6 for conceptual designs of the planned improvements).
- Pedestrian Network Improvements. The pork-chop island on the southwest corner at the Hellyer Avenue and Silicon Valley Boulevard intersection shall be removed (see Appendix H, Figure 6). The improvement shall require tightening the corner radius at the southeast corner and modifying the signal to accommodate pork chop island removals. This shall improve the multi-modal environment by eliminating unsignalized pedestrian/vehicle conflict points, increasing visibility of pedestrians at the intersection corner, and providing a safer refuge for pedestrians waiting to use the crosswalks.

Final plans shall be submitted and reviewed as part of the Public Improvement Plan submitted to the City of San Jose Public Works prior to the issuance of development permits for the proposed project. Per City specifications, the Public Improvement Plan shall describe all public improvements in the public right-of-way included under the proposed project. All identified improvements shall be constructed prior to the issuance of the final occupancy permit.

Based on the City's VMT Evaluation Tool, the project applicant shall ensure that implementation of the multimodal infrastructure improvements described above shall lower the project VMT to 14.11 per worker (a reduction of about 4.8 percent), which would reduce the project's VMT to below the City's threshold of 14.37 VMT per worker.

Prior to the issuance of any grading or building permits, the project applicant shall submit the project design plans showing enhancements to the City's Department of Parks, Recreation, & Neighborhood Services, Department of Transportation, and the Department of Public Works for review and approval.

R. TRIBAL CULTURAL RESOURCES – Refer to item E. Cultural and Tribal Cultural Resources above.

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

The public review period starts on **June 8, 2023**, and end on **June 28, 2023**. Before **June 28, 2023, 5:00pm**, 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

June 6, 2023

Date

Tina Garg

Deputy

Tina Garg
Environmental Project Manager

Circulation Period: June 8, 2023, to June 28, 2023