

## 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.

**NAME OF PROJECT:** Chinmaya Mission

**PROJECT FILE NO.:** PDC09-027

**PROJECT DESCRIPTION:** Planned Development Rezoning from the R-1-5 Residential Zoning District to the A(PD) Residential Zoning District to allow future construction of an approximately 26,000 square foot assembly use on a 1.66 gross acre site.

**PROJECT LOCATION AND ASSESSOR'S PARCEL NUMBER(s):** Northerly corner of Clayton Road and Hickerson Drive (10160 Clayton Road, APN 612-53-046)

**COUNCIL DISTRICT:** 5

**PROJECT APPLICANT'S NAME AND ADDRESS:**

Phalguni Shah  
ARCHEVON INC. for Chinmaya Mission  
991 Montague Expressway, Suite 208  
San Jose, CA 95035

### FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

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

- I. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**II. AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**III. AIR QUALITY – MITIGATION MEASURES:** The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site.

- Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
- Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily (or more often if necessary) to prevent visible dust from leaving the site (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality; and
- Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.

**IV. BIOLOGICAL RESOURCES – MITIGATION MEASURES:** All trees that are to be removed shall be replaced at the following ratios:

Diameter of Tree to be Removed	Type of Tree to be Removed		Minimum Size of Each Replacement Tree
	Native	Non-Native	
18 inches or greater	5:1	4:1	24-inch box
12 - 18 inches	3:1	2:1	24-inch box
less than 12 inches	1:1	1:1	15-gallon container

x:x = tree replacement to tree loss ratio

**Note:** Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

The species and exact number of trees to be planted on the site will be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building, and Code Enforcement.

In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees.
- An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement. Contact Jaime Ruiz, PRNS Landscape Maintenance Manager, at 975-7214 or [Jaime.Ruiz@sanjoseca.gov](mailto:Jaime.Ruiz@sanjoseca.gov) for specific park locations in need of trees.

- A donation of \$300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. Contact Rhonda Berry, Our City Forest, at (408) 998-7337 x106 to make a donation. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to issuance of a development permit.

**Tree Protection:** The following tree protection measures will also be included in the project in order to protect trees to be retained during construction:

- Pre-construction treatments
  1. The applicant shall retain a consulting arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
  2. Fence all trees to be retained to completely enclose the TREE PROTECTION ZONE prior to demolition, grubbing or grading. Fences shall be 6 ft. chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction is completed.
  3. Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.
  4. The existing concrete slab and wall/ footing adjacent to the Oak tree shall remain to the greatest extent possible, so as to protect it from root damage.
- During construction
  1. No grading, construction, demolition or other work shall occur within the TREE PROTECTION ZONE. Any modifications must be approved and monitored by the consulting arborist.
  2. Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist.
  3. Supplemental irrigation shall be applied as determined by the consulting arborist.
  4. If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
  5. No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the TREE PROTECTION ZONE.
  6. Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel.
  7. As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees shall be designed to withstand differential displacement.

**Raptors.** If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the

City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.

- V. CULTURAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VI. GEOLOGY AND SOILS – MITIGATION MEASURES:**
- The project shall be constructed in conformance with the City's Certificate of Geologic Hazard Clearance and shall incorporate all recommendations set forth in the geotechnical investigation prepared for the development by Advance Soil Technology, Inc, dated March 4, 2010.
- VII. GREENHOUSE GAS EMISSIONS**– The project will not have a significant impact on this resource, therefore no mitigation is required.
- VIII. HAZARDS AND HAZARDOUS MATERIALS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- IX. HYDROLOGY AND WATER QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- X. LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XI. MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XII. NOISE** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIII. POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIV. PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XV. RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVI. TRANSPORTATION / TRAFFIC** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVII. UTILITIES AND SERVICE SYSTEMS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVIII. MANDATORY FINDINGS OF SIGNIFICANCE** – The project will not substantially reduce the habitat of a fish or 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 October 27, 2010, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;  
or
2. Submit written comments regarding the information, analysis, and mitigation measures 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.

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

Circulation period, from \_\_\_\_\_, 2010 to \_\_\_\_\_, 2010

\_\_\_\_\_  
Deputy

Revised 6-4-10 jam

Attachment A

**California Department of Fish and Game  
No Effect Determination Request Form**

This form may be used to request a no effect determination from the California Department of Fish and Game pursuant to Title 14 Section 753.5(c)(1)(A) of the California Code of Regulations (CCR). The use of this form is optional. Any written request containing the information specified in Title 14 Section 753.5(c)(1)(A) CCR may be used to request a no effect determination.

**Date Submitted:** \_\_\_\_\_

**Applicant Name and Address:** \_\_\_\_\_

**Project Title/File No.:** \_\_\_\_\_

**California Environmental Quality Act (CEQA) Lead Agency:** City of San Jose, 200 E. Santa Clara Street, Tower, 3<sup>rd</sup> Floor, San Jose, CA 95113

- CEQA Document Type:**
- Negative Declaration**
  - Mitigated Negative Declaration**
  - Environmental Impact Report**
  - Document for Certified Regulatory Program**

**State Clearinghouse Number and/or local agency project/case number:** \_\_\_\_\_

**Web link to CEQA document:** For NDs: <http://www.sanjoseca.gov/planning/eir/MND.asp>  
For EIRs: <http://www.sanjoseca.gov/planning/eir/EIR.asp>

**Project Location** (Include the street address, lat/long, range/township/section, or other description that clearly indicates the location of the project site. Include an aerial or topographic map of the project site): \_\_\_\_\_

**Brief Project Description:** \_\_\_\_\_

**Describe clearly why the project has no effect on fish and wildlife:** \_\_\_\_\_

To qualify for a fee exemption, the "Brief Project Description" (which should come directly from the project's CEQA document), must clearly indicate why the project has no effect on fish and wildlife. The fee is required even if the effect on fish and wildlife is minimal or de minimis. DFG's determination will be final. If it is determined that Fish & Game fee is required, check AMANDA to see that the current NOD fees have been added to the project and paid (\$2,010.25 for Fish & Game and \$50 for County Clerk Recorder).

If you think this Project should be exempt from the Fish & Game Fee, fill out this form and send it to the Department of Fish and Game, Region 3, P.O. Box 47, Yountville, CA 94599. If they agree, they will send you an exemption letter. Or email it to: [djohnston@dfg.ca.gov](mailto:djohnston@dfg.ca.gov)