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: 125 Kirk Avenue Subdivision Project

PROJECT FILE NUMBERS: PD22-013, PDC22-006, T21-045 & ER21-301

PROJECT DESCRIPTION: The applicant proposes project a Planned Development Permit, Tentative Map, Prezoning and Annexation to prezone the property to the R-1(PD) Planned Development Zoning District, annex the property, subdivide the property into 18 lots, and develop 18 attached single-family dwellings. The project includes demolition of an existing 1,088 SF single-family residence and accessory structures, and removal of 26 trees, on an approximately 1.49-gross acre site located at 125 Kirk Avenue. Solar panels would be installed as part of the proposed project.

PROJECT LOCATION: The project site is located within the City's Urban Service Area but just outside of the City limits of San José, in unincorporated Santa Clara County, in a predominantly residential area between Kirk Avenue to the north, Hyland Avenue to the East, El Campo Drive to the South, and Madeline Drive to the west. The project site consists of a single lot that is approximately 1.49 acres in size, and the project requires approval of a prezoning and annexation agreement by the Local Agency Formation Commission of Santa Clara County (LAFCO).

ASSESSORS PARCEL NO.: 601-07-066 **COUNCIL DISTRICT:** 2

APPLICANT CONTACT INFORMATION: Hestia Development, Inc. (Attn: Melanie Griswold), 97 Boston Avenue, San José, CA 95126, (415) 265-1086

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 AQ-1: Project construction would result in an infant cancer risk of 20.8 cases per one million at the residential cancer risk MEI and 14.9 cases per one million at the Home Away from Home Childcare Facility MEI, which exceed the BAAQMD's cancer risk significance threshold of 10 cases per one million.

MM AQ-1: Prior to the issuance of any demolition, grading, or building permits (whichever occurs first), the project applicant shall prepare a construction operations plan with equipment verified by a qualified air quality specialist that demonstrates off-road equipment used on-site to construct the project would achieve a fleet-wide average of a 60 percent reduction or more in diesel particulate matter (DPM) exhaust emissions. Specifically, this plan shall include, but is not limited to, the measures identified below:

- All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for particulate matter (PM10 and PM2.5), if feasible, otherwise:
    - If use of Tier 4 equipment is not available, alternatively use equipment that meets U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve a 60 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination).
- Alternatively, the applicant may develop another construction operations plan demonstrating that the construction equipment used on-site would achieve a reduction in construction diesel particulate matter emissions by 60 percent or greater. Elements of the plan could include a combination of some of the following measures:
    - Use of Tier 4 or alternatively fueled equipment,
    - Installation of electric power lines during early construction phases to avoid use of diesel generators and compressors,
    - Use of electrically-powered equipment,
    - Restriction of forklifts and aerial lifts to electric or propane/natural gas powered for exterior and interior building construction,
    - Change in construction build-out plans to lengthen phases, and
    - Implementation of different building techniques that result in less diesel equipment usage.

The construction operations plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

D. BIOLOGICAL RESOURCES.

Impact BIO-1: Construction activities associated with the project could result in the loss of fertile eggs of nesting raptors or other migratory birds, or nest abandonment.

MM BIO-1: 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 1st through August 31st (inclusive).

If demolition and construction cannot be scheduled to occur between September 1st and January 31st (inclusive and as amended), 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 sufficiently close to work areas to be disturbed by construction, the qualified 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, 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 qualified ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of the Planning, Building, and Code Enforcement or the Director's designee.

E. CULTURAL RESOURCES – The project would not have a significant impact on this resource, therefore no mitigation is required.

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: Due to the agricultural history, there is a potential that the shallow soil contains residual organochlorine pesticides and/or pesticide-based metals such as arsenic and lead from historic pesticide application. If pesticides are present and not mitigated, construction of the project could result in exposure of construction workers, adjacent properties and future site occupants to pesticide contamination.

MM HAZ-1: Prior to issuance of a grading permit, the project applicant shall retain a qualified environmental professional to complete a Phase II soil contamination investigation to evaluate past agricultural use. The Phase II shall include soil sampling and analysis for organochlorine pesticides and pesticide-based metals, arsenic and lead to determine if these chemicals are present above the regulatory environmental screening levels for construction worker safety and residential uses. The results of the soil sampling and testing must be provided to the Supervising Environmental Planner of the City of San José Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

If the Phase II results indicate soil concentrations of pesticides or metals above the environmental

screening levels, the 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 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 – Construction of the project would generate vibration levels exceeding the General Plan threshold 0.2 in/sec PPV or more at buildings of normal conventional construction adjoining or located within 25 feet of the project site.

MM NSE-1: Construction Vibration Monitoring, Treatment, and Reporting Plan

Prior to the issuance of any grading permits, the project applicant shall implement a construction vibration monitoring plan to document conditions prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The construction vibration monitoring plan shall include, but not be limited to, the following measures:

- The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.
- A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building, and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.
- Prohibit the use of heavy vibration-generating construction equipment within 30 feet of adjacent buildings.
- Use a smaller vibratory roller, such as the Caterpillar model CP433E vibratory compactor, when compacting materials within 30 feet of adjacent buildings. Only use the static compaction mode when compacting materials within 15 feet of buildings.
- Document conditions at all structures located within 30 feet of construction prior to,

during, and after vibration generating construction activities with the agreement of property owners. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. Specifically:

  - Vibration limits shall be applied to vibration-sensitive structures located within 30 feet of all construction activities identified as sources of high vibration levels.
  - Performance of a photo survey, elevation survey, and crack monitoring survey for each structure of normal construction within 30 feet of all construction activities identified as sources of high vibration levels. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion of vibration generating construction activities, and shall include internal and external crack monitoring in the structures, settlement, and distress, and shall document the condition of the foundations, walls and other structural elements in the interior and exterior of said structures.

- Avoid dropping heavy equipment and use alternative methods for breaking up existing pavement, such as a pavement grinder, instead of dropping heavy objects, within 30 feet of adjacent buildings.
- The contractor shall alert heavy equipment operators to the close proximity of the adjacent structures so they can exercise extra care.
- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.
- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.
- Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.

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** – Subsurface work associated with the proposed project has the potential to disturb tribal cultural resources associated with Tamien Nation.

MM TCR-1: Prior to the issuance of any grading permits, the applicant shall provide a tribal cultural resources sensitivity training to all construction personnel. The training shall be

facilitated by a Native American representative familiar with the local area and registered with the Native American Heritage Commission for the City of San José. Documentation verifying that tribal cultural resources sensitivity 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 TCR-2: If any tribal cultural resources are discovered during construction, the applicant shall notify representatives of Tamien Nation and the NAHC regarding the find. Copies of notifications shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee to verify compliance with this mitigation measure.

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 air quality, biological resources, hazards and hazardous materials, noise and tribal cultural resources. 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 **Monday, October 23rd, 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

9/27/23
Date

Deputy

Cort Hitchens
Environmental Project Manager

Circulation period: October 3, 2023 to October 23, 2023