3464 Ambum Avenue Residential Subdivision Project

File Numbers: File No. PDC22-008, PD22-021, T22-034, ER22-237

Initial Study/Mitigated Negative Declaration

RESPONSES TO PUBLIC COMMENTS

August 2024

CEQA Lead Agency:



In Consultation with:



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Section 1.0 Introduction

The Initial Study/Mitigated Negative Declaration (IS/MND) for the 3464 Ambum Avenue Residential Subdivision project was prepared in compliance with the requirements of the California Environmental Quality Act (CEQA). The 20-day public circulation period for the IS/MND started June 3, 2024, and ended June 24, 2024. This document contains responses to comments submitted by agencies, organizations, and individuals during the IS/MND public review period. Copies of the comment letters are attached to this document in Appendix A.

Pursuant to CEQA Guidelines Section 5073.5, the recirculation of the MND is required when the document must be "substantially revised" after public notice of its availability. A "substantial revision" is defined as:

- (1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance; or
- (2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

CEQA does not require formal responses to comments on an IS/MND and the decision-making body shall adopt the proposed ND only if it finds on the basis of the whole record before it, that there is no substantial evidence that the project will have a significant effect on the environment and the MND reflects the lead agency's independent judgment and analysis [CEQA Guidelines Section 15074(b)].

Section 2.0 Responses to Comments Received on Draft IS/MND

Comments received on the Draft IS/MND are listed below by commenter. The specific comments from each of the letters and/or emails are presented, with each response to that specific comment directly following. Copies of these letters and emails received by the City of San José are included in their entirety in Appendix A of this document.

Comment Letter and Commenter

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A. Harry Neil (dated June 3, 2024)

<u>Comment A.1</u>: My name is Harry, I'm a civil engineering student and transit advocate from San Jose. I'm deeply concerned with the fact that the city is seemingly allowing additional single family homes to be constructed, further entrenching us in car dependency. This is frankly unacceptable and I hope the city will impose conditions upon the developer to reduce VMT however possible and build narrower, more pedestrian and cycle friendly streets.

Response A.1: The commenter stated concerns regarding the construction of new single-family homes increasing Vehicle Miles Traveled (VMT) in the city. The project site has a General Plan land use designation of Residential Neighborhood, which limits new development to infill projects that conform to the prevailing neighborhood character. The project applicant proposes to demolish an existing single-family residence on-site to construct four new single-family residences. The infill project would result in a net increase of three residences and is consistent with the existing General Plan land use designation for the site. In general, infill development is beneficial to reducing VMT as compared to development on the urban edge. As described in Section 14.7.2 on page 140 of the IS/MND, City Council Policy 5-1 has project screening criteria which exempts certain projects from undergoing detailed VMT analysis. Under this policy, small infill projects with 15 or less single family detached residential units are exempt from detailed VMT analysis and are assumed to result in a significant VMT impact. Since the project includes four single-family detached residences, it is exempt from a detailed VMT analysis and would result in a less than significant VMT impact. This comment does not identify any inadequacies of the IS/MND or require any revisions to the IS/MND.

B. Janet Holt (dated June 6, 2024)

Comment B.1: I am a neighbor at 2943 Mitton Drive abutting the property referenced to the east. I am happy to see housing is being considered for the property, though I have questions. Was there a postcard mailing to neighbors within 500 ft of the proposed development? At this date I have not received one. Thankfully I sign up to receive notifications when new permits/developments applications are applied for. It is imperative neighbors are informed of the proposed development. There are several homes whose fence lines join this property; all homes on the southside of Americus Drive, homes on Myersly Court, most homes on the south side of Ambum Dr and a few on Mitton Drive.

Response B.1: The commenter inquired about the noticing process for the proposed development. Noticing for the proposed project conforms to the Public Outreach Policy for Pending Land Use and Development Proposals (Council Policy 6-30). A required notice of development proposal sign was posted on-site since November 2, 2022 to inform the neighborhood of the project. No community meeting was required or held for this project because the project includes less than 50 dwelling units and is considered a Standard Development Proposal according to Council

Policy 6-30. Pursuant to CEQA Guideline Section 15072(b)(1), the City published the Notice of Intent (NOI) to adopt a MND for the project to the public via the San José Post Record (a newspaper of general circulation in the project area). A postcard mailing notifying the project's Planning Commission hearing date was sent out to properties within a 500 feet radius of the project site on August 27, 2024. The notification will be mailed to 2943 Mitton Drive. This comment does not identify any inadequacies of the IS/MND or require any revisions to the IS/MND.

<u>Comment B.2</u>: I would like to see an overlay drawing of the proposed project on top of the current property to have a better idea of where the buildings will be. It appears they will be much closer to lot lines.

Response B.2: The existing building closest to the western property line is an accessory structure with a setback of approximately 125 feet. The existing building closest to the northern property line is the single-family residence with a setback of approximately 225 feet. The existing building closest to the eastern property line is the pool house structure with a setback of approximately 22 feet. The existing building closest to the southern property line is the single-family residence with a setback of approximately 22 feet. The existing building closest to the southern property line is the single-family residence with a setback of approximately 60 feet. As described in Section 3.2.1 and shown on Figure 3.2-1 of the IS/MND, the new residences would have a minimum side setback of 18 feet, a minimum rear setback of 38 feet, and a minimum front setback of 48 feet, from the existing adjacent residential property lines surrounding the site. As discussed in Section 4.1.2 on page 21 of the IS/MND, the project conforms to the City's setback requirements for the site. This comment does not identify any inadequacies of the IS/MND or require any revisions to the IS/MND.

<u>Comment B.3</u>: Would you also comment on the height of the proposed four residences? It appears they will be around two and a half stories, towering above and obscuring skyline for most homes. My residence sits in a slot behind the property and we already have limited sky/sun due to the hill.

Response B.3: As described in Section 3.2.1 on page 8 of the IS/MND, the proposed residences would be two-stories tall with a maximum building height of approximately 34 feet. Refer to Figures 2.1-2 and 2.1-3 (see pages 10 and 11 of the Initial Study) for the building elevations. In addition, as discussed in Section 4.1 Aesthetics of the IS/MND, the project's aesthetic impacts are concluded to be less than significant. This comment does not identify any inadequacies of the IS/MND or require any revisions to the IS/MND.

<u>Comment B.4</u>: Our backyard view from 2943 Mitton Drive will be of the projects private driveway, garbage enclosure, and the two and a half story home. The orientation of home on lot 1 would view into all of our back windows and our backyard including the swimming pool. If the proposed building on lot 1 would sit west of the current residential building and be limited to one to two stories that could be more acceptable.

Response B.4: The commenter is concerned that the proposed development on Lot 1 of the site would facilitate viewing access on the adjacent private property to the rear. The building on lot 1 would be set back approximately 106 feet from the eastern property line abutting the adjacent property line at 2943 Mitton Drive. As discussed above in Response B.2, the project conforms to the City's setback requirements for the site. In addition, new trees would be planted along the perimeter of the proposed building on lot 1 and along the proposed private street, providing screening between the residences. This comment does not identify any inadequacies of the IS/MND or require any revisions to the IS/MND.

Comment B.5: There are several mature trees on the Ambum property, many of ordinance size that are to be taken down. Replacement tree sizes do not appear to provide the needed shade, wildlife preservation and privacy needed. The original home has been there for decades and the trees provide a home for several bird species, including raptors. For a few seasons we had white tailed kites (raptors). They have a long nesting season. We saw them scout the area again this year. There have also been great horned owls, ducks with their ducklings, and a variety of songbirds. The tree canopy east of the driveway abutting our yard has provided privacy that we do not wish to lose, especially the oaks. The poison oak should have been safely removed years ago, but is huge and remains there.

Response B.5: The commenter stated that the replacement trees would not provide needed shade, wildlife preservation, and privacy. The project will comply with the San José Tree Ordinance by implementing the Standard Permit Condition for tree removal, as identified on pages 45 to 47 of the IS/MND. The project proposes to comply with the Tree Ordinance by planting 47, 24-gallon trees and paying off-site tree replacement fees for 21, 12-gallon trees. Compliance of the San José Tree Ordinance would reduce tree removal impacts to a less than significant level. As discussed in checklist question b in Section 4.4.2 on page 45 of the IS/MND, the project site is identified as Urban-Suburban land in the Habitat Plan and does not contain sensitive natural communities which would be impacted by the proposed project. The project would not result in significant impacts to birds and nesting birds with the implementation of mitigation measure MM BIO-1.1 identified on page 44 of the IS/MND by completing a pre-construction survey for nesting birds if construction is scheduled during bird nesting season, and if an active nest is found, hire an ornithologist to designate a construction-free buffer zone around the nest and ensure nesting birds would not be disturbed during construction. This comment does not identify any inadequacies of the IS/MND or require any revisions to the IS/MND.

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<u>Comment B.6</u>: Please also comment on why a PD designation is needed for this development vs R1-5 and what policies are bypassed by utilizing a PD designation. Will this project go through the Planning Commission and City Council for approvals?

Response B.6: A R-1-5(PD) Planned Development rezoning is required for the project site because it does not meet the minimum street frontage requirement of Title 19, Subdivision Ordinance for R-1-5. Additionally, the Planned Development zoning would allow flexibility in the building location and the site design since the development is a hillside development. In comparison to the conventional R-1-5 Residential Zoning District, the customized development standards under the R-1-5(PD) Planned Development Zoning District are better suited to regulate this project. The project does not bypass any development review processes by applying the PD zoning, but rather is subject to site-specific development standards required by the City. The project will be required to go to the Planning Commission and City Council for project approval. This comment does not identify any inadequacies of the IS/MND or require any revisions to the IS/MND.

C. The Amah Mutsun Tribal Band of San Juan Bautista & A.M.T.B. Inc. (dated June 4, 2024)

<u>Comment C.1</u>: It is our pride and privilege to be of service for any Native American Cultural Resource Monitoring, Consulting and/ or Sensitivity Training you may need or require. We take our Heritage and History seriously and are diligent about preserving as much of it as we can. Construction is a constant in the Bay Area and with that new discoveries are bound to happen. If you choose our services, we will gladly guide all personnel through proper procedures to safely protect and preserve: Culture, Heritage, and History.

It is highly recommended, if not previously done, to search through Sacred Lands Files (SLF) and California Historical Resource Information Systems (CHRIS) as well as reaching out to the Native American Heritage Commission (NAHC) In order to determine whether you are working in a Cultural and/ or Historic sensitivity.

If you have received any positive cultural or historic sensitivity within 1 mile of the project area here are A.M.T.B Inc's and Amah Mutsun Tribal Band of San Juan Bautista's recommendations:

- All Crews, Individuals and Personnel who will be moving any earth be Cultural Sensitivity Trained.
- A Qualified California Trained Archaeological Monitor is present during any earth movement.
- A Qualified Native American Monitor is present during any earth movement.

If further Consultation, Monitoring or Sensitivity Training is needed please feel free to contact A.M.T.B. Inc. or Myself Directly. A.M.T.B. Inc. 650 851 7747

Response C.1: The commenter recommended to search through the Sacred Lands Files (SLF) and the California Historical Resource Information Systems (CHRIS) as well as contacting the Native American Heritage Commission (NAHC) to determine the cultural and/or historic sensitivity of the site. The commenter also provided recommended measures and a contact in the case that any positive cultural or historical sensitivity was received within 1 mile of the project area. An Archaeological Sensitivity Assessment was prepared for the project. The assessment included a search of the NAHC SLF and a record search at the Northwest Information Center of the California Historical Resources Information System for known cultural resources within a 0.25-mile radius of the project site. As discussed in Section 4.18.1.2 on page 143 of the IS/MND, the result of the SLF search was negative and there are no known archaeological resources within 0.25-mile of the project site. Therefore, the site has low sensitivity for cultural resources. The NAHC provided a Native American Contact List with tribes that are traditionally and culturally affiliated with the geographic area, including the project site. The City reached out to the appropriate tribal contacts on November 16, 2023, and December 4, 2023. A response was received from one tribe, the Indian Canyon Mutsun Band of Costanoan-Ohlone People, who requested consultation regarding the project. A consultation meeting between tribal representatives and the City occurred on February 23, 2024. As discussed in Section 4.18.2 under checklist question a, as a result of the consultation meeting, it was determined that because the site has a low sensitivity for Tribal Cultural Resources (TCRs), cultural sensitivity training by an affiliated Native American monitor would be a sufficient measure to further reduce the risk of potential impacts to TCRs, which is listed as a project condition of approval (refer to Page 144 of the IS/MND). This comment does not identify any inadequacies of the IS/MND or require any revisions to the IS/MND.

D. Pacific Gas and Electric Company (dated June 11, 2024)

Comment D.1: Thank you for providing PG&E the opportunity to review the proposed plans for 3464 Ambum Avenue Residential Project dated 6/3/2024. Our review indicates the proposed improvements do not appear to directly interfere with existing PG&E facilities or impact our easement rights. Please note this is our preliminary review and PG&E reserves the right for additional future review as needed. This letter shall not in any way alter, modify, or terminate any provision of any existing easement rights. If there are subsequent modifications made to the design, we ask that you resubmit the plans to the email address listed below.

Response D.1: The commenter stated that the proposed project does not appear to directly interfere with existing PG&E facilities or impact its easement rights. The applicant will coordinate with PG&E as needed prior to construction to avoid conflicts with (or impacts to) PG&E facilities. This comment does not address the adequacy of the IS/MND. No revisions to the IS/MND are required. This comment does not identify any specific CEQA issues or inadequacies of the IS/MND, nor does it require any revisions to the IS/MND.

<u>Comment D.2</u>: If the project requires PG&E gas or electrical service in the future, please continue to work with PG&E's Service Planning department: <u>https://www.pge.com/cco/</u>. As a reminder, before any digging or excavation occurs, please contact Underground Service Alert (USA) by dialing 811 a minimum of 2 working days prior to commencing any work. This free and independent service will ensure that all existing underground utilities are identified and marked on-site. If you have any questions regarding our response, please contact the PG&E Plan Review Team at <u>pgeplanreview@pge.com</u>.

Response D.2: As stated in Response C.1, the applicant will coordinate with PG&E as needed. This comment does not identify any specific CEQA issues or inadequacy of the IS/MND, nor does it require any revisions to the IS/MND.

Section 3.0 Conclusion

The comments received on the IS/MND did not identify any inadequacies of the IS/MND; nor did they provide any new information that: 1) indicates the project would result in new, avoidable significant effects not identified that would require mitigation measures or project revisions to reduce the effect to insignificance, or 2) results in a determination that the proposed mitigation measures or project revisions will not reduce potential effects to a less than significant level and new measures or revisions must be required. Therefore, the standard for recirculation of a negative declaration pursuant to CEQA Guidelines 15073.5 has not been met.

Appendix A: IS/MND Comment Letters

From:	Harry Neil
To:	Nguyen, Nhu
Subject:	Ambum Ave Residential Project Comment
Date:	Monday, June 3, 2024 5:55:48 PM

[External Email]

You don't often get email from Learn why this is important

Hello Nhu,

A.1 My name is Harry, I'm a civil engineering student and transit advocate from San Jose.

I'm deeply concerned with the fact that the city is seemingly allowing additional single family homes to be constructed, further entrenching us in car dependency. This is frankly unacceptable and I hope the city will impose conditions upon the developer to reduce VMT however possible and build narrower, more pedestrian and cycle friendly streets.

Sincerely, Harry

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Nguyen, Nhu

From:	Janet Holt
Sent:	Thursday, June 6, 2024 4:31 PM
To:	Nguyen, Nhu
Cc:	Robert Reese; Adera, Teddy; Candelas, Domingo; Janet Holt
Subject:	MND: 3464 Ambum Ave. Res Project

[External Email]

ref: PDC22-008, PD22-021, T22-035, and ER22-237

Good afternoon Nhu,

B.1 I am a neighbor aat 2943 Mitton Drive abutting the property referenced to the east. I am happy to see housing is being considered for the property, though I have questions.

Was there a postcard mailing to neighbors within 500 ft of the proposed development? At this date I have not received one. Thankfully I sign up to receive notifications when new permits/developments applications are applied for. It is imperative neighbors are informed of the proposed development. There are several homes whose fence lines join this property; all homes on the southside of Americus Drive, homes on Myserly Court, most homes on the south side of Ambum Dr and a few on Mitton Drive.

B.2 I would like to see an overlay drawing of the proposed project on top of the current property to have a better idea of where the buildings will be. It appears they will be much closer to lot lines. Would you also comment on the height of the proposed four residences? It appears they will be around two and a half stories, towering above and

- B.3 obscuring skyline for most homes. My residence sits in a slot behind the property and we already have limited sky/sun due to the hill.
- B.4 Our backyard view from 2943 Mtton Drive will be of the projects private driveway, garbage enclosure, and the two and a half story home. The orientation of home on lot 1 would view into all of our back windows and our backyard including the swimming pool. If the proposed building on lot 1 would sit west of the current residential building and be limited to one two two stories that could be more acceptable.
- B.5 There are several mature trees on the Ambum property, many of ordinance size that are to be taken down. Replacement tree sizes do not appear to provide the needed shade, wildlife preservation and privacy needed. The original home has been there for decades and the trees provide a home for several bird species, including raptors. For a few seasons we had white tailed kites (raptors). They have a long nesting season. We saw them scout the area again this year. There have also been great horned owls, ducks with their ducklings, and a variety of songbirds. The tree canopy east of the driveway abutting our yard has provided privacy that we do not wish to lose, especially the oaks. The poison oak should have been safely removed years ago, but is huge and remains there.
- B.6 Please also comment on why a PD designation is needed for this development vs R1-5 and what policies are bypassed by utilizing a PD designation. Will this project go through the Planning Commission and City Council for approvals?

Thank you, Janet Holt The Amah Mutsun Tribal Band of San Juan Bautista &

A.M.T.B. Inc.

Letter of Response

To whom it may concern:

C.1 It is our pride and privilege to be of service for any Native American Cultural Resource Monitoring, Consulting and/or Sensitivity Training you may need or require. We take our Heritage and History seriously and are diligent about preserving as much of it as we can. Construction is a constant in the Bay Area and with that new discoveries are bound to happen. If you choose our services, we will gladly guide all personnel through proper procedures to safely protect and preserve: Culture, Heritage, and History.

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If you have received any positive cultural or historic sensitivity within 1 mile of the project area here are A.M.T.B Inc's and Amah Mutsun Tribal Band of San Juan Bautista's recommendations:

- All Crews, Individuals and Personnel who will be moving any earth be Cultural Sensitivity Trained.
- A Qualified California Trained Archaeological Monitor is present during any earth movement.
- A Qualified Native American Monitor is present during any earth movement.

If further Consultation, <u>Monitoring or Sensitivity Training is needed please feel free to contact A.M.T.B. Inc. or Myself</u> Directly. A.M.T.B. Inc.

Arenne Zwierlein

Irenne Zwierlein

Amah Mutsun Tribal Band of San Juan Bautista & AMTB Inc.

3030 Soda Bay Road Lakeport, CA 95453

Our rates for 2024 are

4 hours minimum

Cancellations not 48 hours (about 2 days) prior will be charged as a 4-hour minimum. There is a round trip mileage charge if canceled after they have traveled to site.

Anything over 8 hours a day is charged as time and a half.

Weekends are charged at time and a half.

Holidays are charged at double the time.

For fiscal year (FY) 2024, standard per diem rate of \$ M&IE Breakdown FY 2023

10007	I&IE	Continental Breakfast/ Breakfast²	Lunch²	l hnner ²	Incidental Expenses	First & L	ast Day of Travel ³
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Beginning 2024, the standard mileage rates for the use of a car round trip (also vans, pickups or panel trucks) will be: \$.67 cents per mile driven for business use or what the current federal standard is at the time.

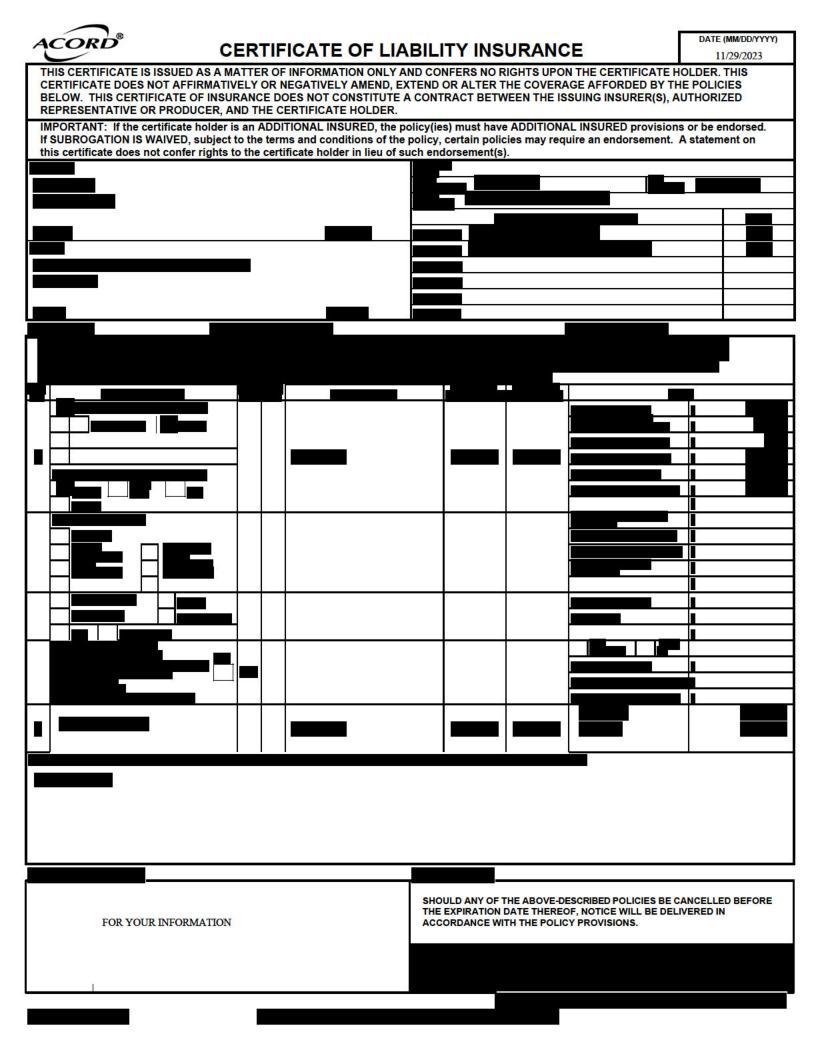
Our Payment terms are 5 days from date on invoice.

Our Monitors are Members of the Amah Mutsun Tribal Band of Mission San Juan Bautista.

If you have any questions, please feel free to contact the A.M.T.B. Inc. at the below contact information.

Sincerely, Irenne Zwierlein

Irenne Zwierlein





June 11, 2024

Nhu Nguyen City of San Jose 200 E Santa Clara St, Tower 3 San Jose, CA 95135

Re: PDC22-008, PD22-021, T22-034, ER22-237 3464 Ambum Avenue Residential Project

Dear Nhu Nguyen,

D.1 Thank you for providing PG&E the opportunity to review the proposed plans for 3464 Ambum Avenue Residential Project dated 6/3/2024. Our review indicates the proposed improvements do not appear to directly interfere with existing PG&E facilities or impact our easement rights.

Please note this is our preliminary review and PG&E reserves the right for additional future review as needed. This letter shall not in any way alter, modify, or terminate any provision of any existing easement rights. If there are subsequent modifications made to the design, we ask that you resubmit the plans to the email address listed below.

D.2 If the project requires PG&E gas or electrical service in the future, please continue to work with PG&E's Service Planning department: <u>https://www.pge.com/cco/.</u>

As a reminder, before any digging or excavation occurs, please contact Underground Service Alert (USA) by dialing 811 a minimum of 2 working days prior to commencing any work. This free and independent service will ensure that all existing underground utilities are identified and marked on-site.

If you have any questions regarding our response, please contact the PG&E Plan Review Team at <u>pgeplanreview@pge.com</u>.

Sincerely,

PG&E Plan Review Team Land Management