

**DETERMINATION OF CONSISTENCY WITH THE MITIGATED NEGATIVE DECLARATION**

Pursuant to Sections 15064 and 15162 of the CEQA Guidelines, the City of San José has determined that the project described below does not involve significant effects, and the project is consistent with the project description analyzed in the Mitigated Negative Declaration (MND) for the Emergency Interim Housing (EIH) Programs (File No. ER22-198) and adopted by City Council Resolution No. RES2023-380 on October 24, 2023. Therefore, the City of San José can act on this project as being within the scope of the EIH Programs MND.

**File Number and Project Name:** File. ER24-015, Via del Oro Site

This EIH project would accommodate up to 150 sleeping units. Communal spaces would include restrooms and showers, dining areas, laundry facilities, and outdoor community space with a pet run and a smoking area. Storage facilities for residents would also be provided. Case management and 24-hour security would be provided. In addition to the sleeping units, structures on the site would include one or more communal buildings, storage units, a single guard shack, and an insect eradicator shed. All structures would be temporary. This EIH site is expected to be in operation for a maximum of 10 years or less depending upon need. After operations cease, all structures would be removed, and the project site would be returned as much as possible to existing conditions.

**Location:** San Ignacio Street and Via del Oro, San José, CA 95134, APN: 706-09-038 **Council District:** 10

The environmental impacts of this project were addressed in the MND and supporting Initial Study entitled “Emergency Interim Housing Programs Project” that was adopted by City Council Resolution No. RES2023-380 on October 24, 2024. Specifically, the following impacts were reviewed and found to be adequately considered by the MND:

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Aesthetics                         | <input checked="" type="checkbox"/> Mineral Resources                  |
| <input checked="" type="checkbox"/> Agriculture and Forestry Resources | <input checked="" type="checkbox"/> Noise and Vibration                |
| <input checked="" type="checkbox"/> Air Quality                        | <input checked="" type="checkbox"/> Population and Housing             |
| <input checked="" type="checkbox"/> Biological Resources               | <input checked="" type="checkbox"/> Public Services                    |
| <input checked="" type="checkbox"/> Cultural Resources                 | <input checked="" type="checkbox"/> Recreation                         |
| <input checked="" type="checkbox"/> Energy                             | <input checked="" type="checkbox"/> Transportation                     |
| <input checked="" type="checkbox"/> Geology and Soils                  | <input checked="" type="checkbox"/> Utilities and Service Systems      |
| <input checked="" type="checkbox"/> Hazards and Hazardous Materials    | <input checked="" type="checkbox"/> Wildfire                           |
| <input checked="" type="checkbox"/> Hydrology and Water Quality        | <input checked="" type="checkbox"/> Mandatory Findings of Significance |
| <input checked="" type="checkbox"/> Land Use and Planning              |  |

**ANALYSIS:**

There are many designs and structures that are used for transitional housing units and the market is rapidly developing to provide various forms of the actual units. The EIH Programs MND analyzed the option with the greatest massing for a conservative analysis of project impacts. For this project the sleeping cabin units would be single-story modular singles, doubles, and Americans with Disabilities Act (ADA) units. These units are smaller than the two-story modular units analyzed in the EIH Programs MND. All other aspects of the project in terms of services and safety features are comparable to what was analyzed in the EIH Programs MND.

Because this EIH project will have a smaller massing and less intensive development than that analyzed in the EIH Programs MND, this project is consistent with the analysis in that document.

A Mitigation Monitoring and Report Program (MMRP) was adopted for the EIH Programs MND. That MMRP identified Mitigation Measures for potential air quality, hydrology and water quality, and tribal cultural resources impacts based on the location of the project site. The potential impacts on these resources for this Via del Oro EIH site are discussed below:

Impact Air-1: Future projects located within 1,000 feet of existing sensitive receptors could result in a significant health risk impact from toxic air contaminants during construction: This EIH site is not within 1,000 feet of sensitive receptors (see Figure 1). Therefore, Mitigation Measures AIR-1.1 and 1.2 do not apply to this project.

Impact HYD-1: Construction of EIH projects within Special Flood Hazard Areas or in proximity to waterways could increase the risk of project inundation: This project site is in Zone D of the FEMA Flood Insurance Rate Map Panel 06085C0406H (see Figure 2). Zone D is not a Special Flood Hazard Area. Therefore, Mitigation Measure HYD-1.1 does not apply to this project.

Impact TCR-1: Construction of EIH projects within one mile of a creek, or 1,000 feet of a known Tribal Cultural Resource, could result in significant impacts to unknown Tribal Cultural Resources from ground disturbing activities: The project site is not located within one mile of a creek, or 1,000 feet of a known Tribal Cultural Resource. A small portion in the southwestern portion of the project site is located within an archaeologically sensitive area (see Figure 3). This site has been previously disturbed and there will be minimal grading on the project site to accommodate the temporary project structures. No excavation would occur on the project site. Therefore, Mitigation Measure TCR-1.1 does not apply to this project.

Based on the above analysis, no mitigation measures are required for this project. The project will be subject to the Standard Permit Conditions identified in the EIH Program MND (see attached, below).

There would be no new significant environmental impacts that would result from this project pursuant to CEQA Guidelines 15162. No further analysis under CEQA is required.

Christopher Burton, Director  
Planning, Building and Code Enforcement



Deputy

1/31/24

Date

Environmental Project Manager: Reema Mahamood

Attachments:

Figures

Standard Permit Conditions



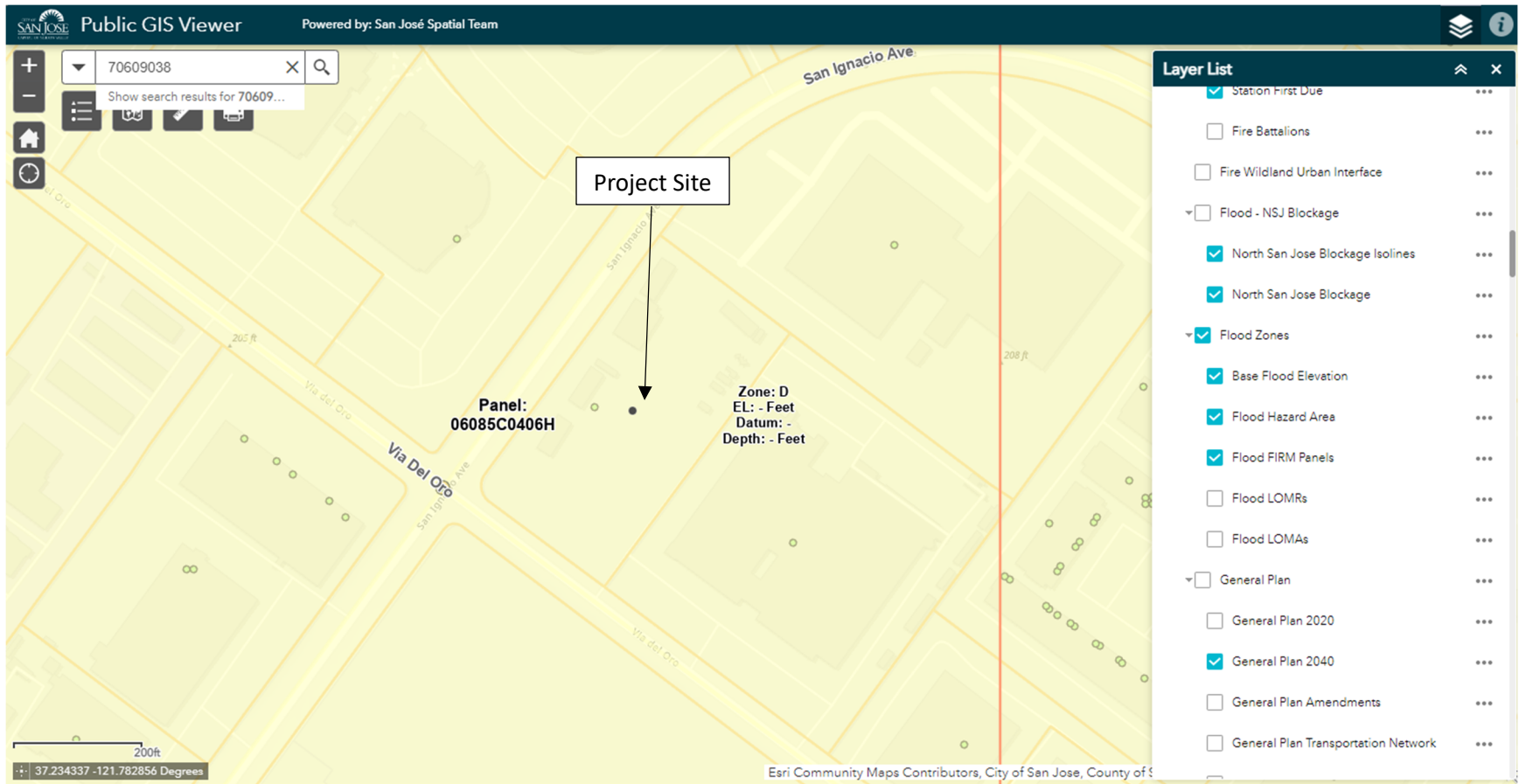


Figure 2 - Flood Zone

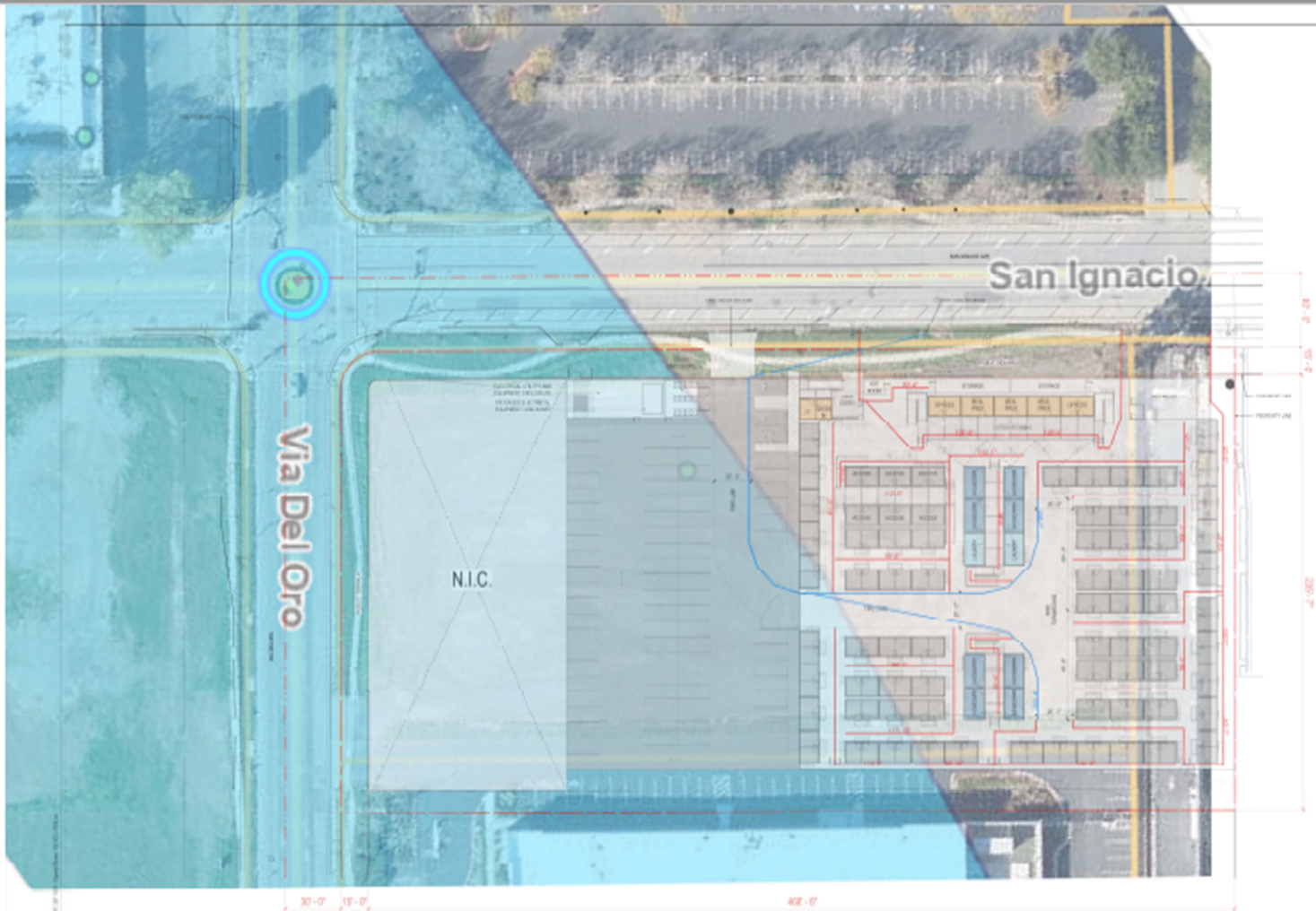


Figure 3 - Archaeological Sensitivity Zone overlay on the Proposed Project Site Plan

**EMERGENCY INTERIM HOUSING PROGRAMS MITIGATED NEGATIVE DECLARATION**  
**(PLANNING FILE NO. ER22-198)**

**STANDARD PERMIT CONDITIONS FOR ALL EIH PROGRAMS**

**Standard Permit Conditions:**

**Construction Emissions:**

The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

- Water active construction areas at least twice daily or as often as needed to control dust emissions.
- Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- Remove visible mud or dirt track-out onto adjacent public roads using wet-power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- Limit all vehicle speeds on unpaved roads to 15 mph.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and properly tune construction equipment in accordance with manufacturer's specifications. A certified mechanic shall check all equipment prior to operation to determine that equipment is in proper operating condition.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

following Standard Permit Conditions required for CEQA compliance.

### **Standard Permit Conditions:**

- **Nesting Birds:**

- Construction shall be scheduled to avoid the nesting season (February 1 to August 31). If it is not feasible to schedule construction between September 1 and January 31, pre-construction nesting bird surveys shall be completed prior to tree removal or construction activities in order to avoid impacts to nesting birds. Surveys shall be completed by a qualified biologist no more than 14 days before demolition or construction activities begin. During this survey, the biologist or ornithologist shall inspect all trees and other nesting habitats in and 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 shall designate an adequate buffer zone to be established around the nest, in consultation with the California Department of Fish and Wildlife (CDFW). The buffer would ensure that nests shall not be disturbed during project construction. The no-disturbance buffer shall remain in place until the biologist determines the nest is no longer active or the nesting season ends. If construction ceases for seven days or more and then resumes again during the nesting season, an additional survey would be necessary to avoid impacts on active bird nests that may be present.
- The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the Director of Planning, Building and Code Enforcement prior to construction.

### **Standard Permit Condition:**

**Santa Clara Valley Habitat Plan.** The project may be subject to applicable Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

### **Standard Permit Condition:**

**Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's

designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal 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 examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee, the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

**Standard Permit Condition:**

**Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- The MLD identified fails to make a recommendation; or
- The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.



### **Standard Permit Conditions:**

- **Soil Erosion/Loss of Topsoil:**
  - All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
  - Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
  - Ditches shall be installed, if necessary, to divert runoff around excavations and graded areas.

### **Standard Permit Condition:**

If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

### **Standard Permit Conditions:**

#### **Construction-related water quality.**

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.

- All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

**Standard Permit Condition:**

**Post-construction impacts.**

- The project shall design and construct low-impact development (LID) stormwater treatment control measures to treat runoff from impervious surfaces.