

**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:** River Oaks Stormwater Capture Project

**PROJECT FILE NUMBER:** ER20-186

**PROJECT DESCRIPTION:** Public project to convert the existing flood control basin to provide stormwater treatment via bioretention prior to discharge to the Guadalupe River. The proposed project would allow dry weather runoff and low flows from the upstream watershed to be routed into the detention basin after trash capture and sedimentation. Water would then flow through the bioretention basin to receive bio-treatment. The treated stormwater would then be captured by underdrains and discharged to the pump station wet well; the treated water would then be discharged to the Guadalupe River via the existing 84-inch outfall. The project would also include the installation of park-like enhancements, such as a boardwalk viewing platform, interpretive signage, a perimeter trail, and public art, to provide recreational, aesthetic, and educational benefits for the community. The area surrounding the detention basin would be planted with new trees, native grasses, and a pollinator garden.

**PROJECT LOCATION:** The 5.2-acre project site is located in North San José between Riverview Parkway and the Guadalupe River.

**ASSESSORS PARCEL NO.:** 097-060-37

**COUNCIL DISTRICT:** 4

**APPLICANT CONTACT INFORMATION:** City of San José, Department of Public Works (ATTN: Ellen Yuen); 200 East Santa Clara St, 6th floor, San José, CA 95113; [Ellen.Yuen@sanjoseca.gov](mailto:Ellen.Yuen@sanjoseca.gov); (408)535-8489

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

## D. BIOLOGICAL RESOURCES.

**Impact BIO-1:** The Project could have a substantial adverse effect, either directly or through habitat modifications, on burrowing owls.

**MM BIO-1: Compliance with SCVHCP for Burrowing Owl.** Fee payments into the Santa Clara Valley Habitat Conservation Plan have been made by the City. Participation in the plan allows for participating projects to move forward without additional mitigation, though the terms of the plan must be followed, and the terms are species specific. With respect to burrowing owl, projects occurring within mapped burrowing owl breeding habitat require preconstruction surveys and subsequent measures to protect burrowing owls, if detected. However, the Project Area is not in an area mapped as burrowing owl breeding habitat and may proceed without additional mitigation.

**Impact BIO-2:** The Project could have a substantial adverse effect, either directly or through habitat modifications, on nesting birds.

**MM BIO-2: Preconstruction Nesting Bird Surveys.** A survey for active bird nests shall be conducted by a qualified biologist no more than 14 days prior to the start of Project activities (vegetation removal, grading, or other initial ground-disturbing activities) if ground disturbing activities commence during the nesting season (February 1 through August 31, inclusive). The survey shall be conducted in a sufficient area around the Project Area to identify the location and status of any nests that could potentially be directly or indirectly affected by vegetation removal, or grading activities. For white-tailed kite, the survey area shall extend at least 0.25 miles from the area of potential disturbance. Based on the results of the pre-construction breeding bird survey, the following measure shall apply:

- If active nests of protected species are found within the Project Area, or close enough to the area that nesting success would be adversely affected, a work exclusion zone shall be established around each nest. Established exclusion zones shall remain in place until all young in the nest have fledged or the nest otherwise becomes inactive (e.g., due to predation). Appropriate exclusion zone sizes vary dependent upon bird species, nest location, existing visual buffers, ambient sound levels, and other factors; an exclusion zone radius may be as small as 25 feet (for common, disturbance-adapted species) or more than 250 feet (for raptors). Listed species are typically provided more extensive exclusion zones, which may be specific to the species and/or follow CDFW guidance. Exclusion zone size may also be reduced from established levels if supported with nest monitoring by a qualified biologist indicating that work activities are not adversely impacting the nest.
- A copy of the survey shall be submitted to the Director of PBCE or Director's Designee prior to any ground-disturbance activities.

## E. CULTURAL RESOURCES.

**Impact CR-1:** Implementation of the Project could cause a substantial adverse change in the significance of a cultural resource.

**MM CR-1: Protection of Cultural Resources.** The City shall implement the following measures:

- **Disclaimer on Documents:** The City shall note on any plans that require ground

disturbing excavation that there is a potential for exposing buried cultural resources including prehistoric Native American burials. Any archaeological site information supplied to the Contractor shall be considered confidential.

- **Training Materials:** The City shall retain a Qualified Archaeologist to develop an Alert Sheet outlining the potential for the discovery of unexpected archaeological resources and protocols to deal with a discovery. The Qualified Archaeologist shall provide the Contractor's construction crew "tool box" sensitivity training to present the Alert Sheet and protocols to supervisors, foreman, project managers, and non-supervisory contractor personnel. The Contractor is responsible for ensuring that all workers requiring training are in attendance.
- **Accidental Discovery:** The City shall retain a Qualified Archaeologist on an "on-call" basis during ground disturbing construction to review, identify and evaluate cultural resources that may be inadvertently exposed during construction. If cultural resources are found, all work must be stopped until further examination and determination of the finds are made and approved. The archaeologist shall review and evaluate any discoveries to determine if they are historical resource(s) and/or unique archaeological resources under CEQA.
  - o 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 Department of Public Works shall be notified, and a qualified archaeologist shall examine the find.
  - o If the Qualified Archaeologist determines that any cultural resources exposed during construction constitute a historical resource and/or unique archaeological resource under CEQA, he/she shall notify the City and other appropriate parties of the evaluation and recommend mitigation measures to mitigate to a less-than significant impact in accordance with California Public Resources Code Section 15064.5. Mitigation measures may include avoidance, preservation in-place, recordation, additional archaeological testing and data recovery among other options. The completion of a formal Archaeological Monitoring Plan (AMP) and/or Archaeological Treatment Plan (ATP) that may include data recovery may be recommended by the Qualified Archaeologist if significant archaeological deposits are exposed during ground disturbing construction. Development and implementation of the AMP and ATP and treatment of significant cultural resources will be determined by City in consultation with any regulatory agencies.
  - o A Monitoring Closure Report shall be filed with the Department of PBCE and the Department of Public Works at the conclusion of ground disturbing construction if archaeological and Native American monitoring of excavation was undertaken.

**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:** The Project could create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials or reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.

**MM HAZ-1: Hazardous Materials Management and Spill Prevention and Control Plan.** Before construction begins, the City shall prepare a Hazardous Materials Management and Spill Prevention and Control Plan that includes a project-specific contingency plan for hazardous materials and water operations. The Plan shall be applicable to construction activities and shall establish policies and procedures according to applicable codes and regulations, including but not limited to the California building and fire codes, and federal and California Occupational Safety and Health Administration regulations. The Plan shall include, but is not limited to the following procedures:

- A discussion of hazardous materials management, including delineation of access and egress routes, waterways, emergency assembly areas, and hazardous material disposal;
- Notification and documentation of procedures; and
- Spill control and countermeasures, including employee spill prevention/response training.

**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.**

**Impact NOI-1:** Implementation of the Project could cause a substantial temporary or permanent impact in ambient noise levels.

**MM NOI-1: Construction Noise Logistics Plan.** The City of San José shall require its contractor to implement the following actions relative to construction noise:

- Submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistic plan shall be submitted to the Director of PBCE or Director's Designee, and the Department of Public Works prior to the start of any ground disturbance activities. The logistic plan shall also include, but is not limited to, the following procedures:
  - Prior to construction, the City, in coordination with the construction contractor, shall provide written notification, to all properties within 100 feet of the proposed Project site informing occupants of the type and duration of construction activities. Notification materials shall identify a method to contact the City's project manager with noise concerns. Prior to construction commencement, the City's project manager shall establish a noise complaint process to allow for resolution of noise problems. This process shall be clearly described in the notifications.

- Stationary noise-generating equipment shall be located as far from sensitive receptors as possible. Such equipment shall also be oriented to minimize noise that would be directed toward sensitive receptors. Whenever possible, other non-noise generating equipment (e.g., water tanks, roll-off dumpsters) shall be positioned between the noise source and sensitive receptors.
- Equipment and staging areas shall be located as far from sensitive receptors as possible. At the staging location, equipment and materials shall be kept as far from adjacent sensitive receptors as possible.
- Construction vehicles and equipment shall be maintained in the best possible working order; operated by an experienced, trained operator; and shall utilize the best available noise control techniques (including mufflers, use of intake silencers, ducts, engine enclosures and acoustically attenuating shields or shrouds).
- Unnecessary idling of internal combustion engines shall be prohibited. In practice, this would require turning off equipment if it would idle for five or more minutes.
- Electrically powered equipment shall be used instead of pneumatic or internal-combustion powered equipment, where feasible. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- The use of noise-producing signals, including horns, whistles, alarms, and bells, shall be for safety warning purposes only.
- Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of historical buildings, or buildings in poor condition.

**MM NOI-2: Pump Noise Control.** The proposed dewatering pumps and sump pumps are anticipated to be placed below-ground, which would reduce operational noise levels at the nearest residential property line to negligible levels. However, in the event that the pumps are located above-ground, the contractor shall install shielding around the dewatering pumps and sump pumps such that the noise generated at the nearest residential property line does not increase by more than 3 dBA DNL above ambient conditions. If the pumps are located above-ground, the contractor shall install shielding that would reduce noise levels by at least 10 dBA. Confirmation of new site plans, if applicable, with information on shielding shall be provided to the Director of PBCE or Director’s Designee.

- 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** – The project would not have a significant impact on this

resource, therefore no mitigation is required.

- 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.**

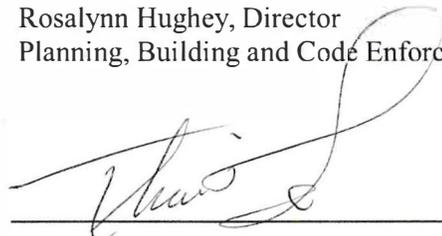
Cumulative impacts would be less than significant. The proposed Project would implement the identified mitigation measures and would have either have no impacts or less-than-significant impacts on riparian habitat or other sensitive natural communities, migration of species, or applicable biological 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**

Before 5:00 p.m. on **Friday January 15, 2021** 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.

Rosalynn Hughey, Director  
Planning, Building and Code Enforcement

  
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Deputy

12/09/2020  
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Date

Bethelhem Telahun  
Environmental Project Manager

**Circulation period: Wednesday December 23, 2020 and ends on Friday January 15, 2021**