

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: Baywood Mixed-Use Project

PROJECT FILE NUMBER: SP20-008

PROJECT DESCRIPTION: Special Use permit to demolish three existing single-family residences and associated accessory structures and to construct an 11-story mixed-use building with 79 residential condominium units and 9,820 square feet of ground floor commercial space. The project will remove seven trees and replaced by 60 new trees. 98 vehicle parking spaces will be provided on-site, as well as 26 motorcycle parking and 37 bicycle parking.

PROJECT LOCATION: The 0.44-acre project site is located at 375 and 383 S. Baywood Avenue and 382 S. Redwood Avenue in the City of San José.

ASSESSORS PARCEL NO.: 277-34-038, -039, -040

COUNCIL DISTRICT: 6

APPLICANT CONTACT INFORMATION: Cord Associates (Attn: Henry Cord); 401 Fieldcrest Drive, San José, CA 95123; (408) 283-7292; cord100@aol.com

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: The project would conflict with or obstruct implementation of the applicable air quality plan

MM AQ-1: Prior to the issuance of any demolition, grading or building permits, the project applicant shall implement a Construction Particulate Matter Exhaust Emissions Reduction Plan to reduce construction particulate matter exhaust emissions by at least 87 percent; the maximum cancer risk from project construction would be reduced from 55.7 cases per million to 7.1 cases per million, the maximum annual PM_{2.5} concentration would be reduced from 1.06 µg/m³ to 0.26 µg/m³, and the HI would be reduced from 0.05 to 0.01. The plan shall be reviewed and approved by the City of San José Director of Planning, Building and Code Enforcement or Director's designee and may include the following measures:

- a. 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; or
 - i. Use equipment with engines that meet U.S. EPA Tier 3 standards equipped with CARB-certified Level 3 Diesel Particulate Filters, that altogether achieve an 87 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment (i.e., maximum annual PM_{2.5} concentration would be 0.26 µg/m³ and the HI would be 0.01); and/or
 - ii. Use of alternatively fueled equipment or equipment with zero emissions (i.e., electrical equipment); and/or
 - iii. Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment, such as generators.
- b. The plan shall utilize the above measures or equivalent measures, and must demonstrate that particulate matter exhaust emissions would be reduced by at least 87 percent (i.e., maximum annual PM_{2.5} concentration would be 0.26 µg/m³ and the HI would be 0.01), and any alternative measures shall be subject to review and approval of the City of San José Director of Planning, Building and Code Enforcement or Director's designee, prior to issuance of any demolition, grading, or building permits.

D. BIOLOGICAL RESOURCES.

Impact BIO-1: Mature trees within or adjacent to the project site are proposed for removal and may provide nesting habitat for migratory birds.

MM BIO-1: Prior to the issuance of any tree removal, grading, building, or demolition permits (whichever occurs first), the project applicant shall schedule all construction activities to avoid 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). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching. If construction activities cannot be scheduled to occur between September 1st and January 31st (inclusive), a qualified ornithologist or biologist shall conduct pre-construction nesting bird surveys to ensure that no active nests shall be disturbed during construction activities. 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 latter part of the breeding season (May 1st through August 31st inclusive). Appropriate minimum survey radius surrounding the work area is typically 250 feet for passerines, 500 feet for smaller raptors, and 1,000 feet for larger raptors. Surveys shall be conducted at the appropriate times of day to observe nesting activities.

If an active nest is found within the project site or in nearby surrounding areas, the ornithologist/biologist, in coordination with California Department of Fish and Wildlife (CDFW), shall determine an appropriate buffer around the nest (typically 250 feet for raptors and 100 feet for

other birds) to ensure that raptors or migratory birds nests shall not be disturbed during project construction. The buffer shall be clearly marked and maintained until the young have fledged and are foraging independently.

Prior to any site disturbance, such as tree removal, or the issuance of any grading, building or demolition permits (whichever occurs first), the qualified biologist shall conduct baseline monitoring of each nest to characterize “normal” bird behavior and establish a buffer distance, which allows the birds to exhibit normal behavior. The qualified biologist shall monitor the nesting birds daily during construction activities and increase the buffer if birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest).

If buffer establishment is not possible, the qualified biologist or construction foreman shall have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active. If pre-construction nesting bird surveys are necessary, based upon the requirements of this mitigation measure, then a survey report shall be prepared and submitted to the Director of Planning, Building and Code Enforcement, or the director’s designee prior to any site disturbance, such as tree removal, or the issuance of any grading, building or demolition permits (whichever occurs first). The project developer is responsible for this measure.

- 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: The project site was historically used for agricultural purposes and on-site soils could contain agricultural chemicals. Construction of the proposed development could result in the exposure of construction workers and adjacent residences to hazardous levels of contaminated soil due to historic use of the site for agricultural purposes

MM HAZ-1: Prior to the issuance of any demolition or grading permits, shallow soil samples shall be taken from the near surface soil and tested for organochlorine pesticides and pesticide-based metals arsenic and lead to determine if contaminants from previous agricultural operations occur at concentrations above established construction worker safety and commercial/industrial environmental screening levels. The result of soil sampling and testing shall be provided to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the Municipal Compliance Officer of the City of San José Environmental Services Department for review.

If contaminated soils are found in concentrations above established regulatory environmental screening levels, the project applicant shall enter into the Santa Clara County Department of Environmental Health’s Voluntary Cleanup Program, or equivalent, to formalize regulatory

oversight of the mitigation of contaminated soil to ensure the site is safe for construction workers and the public after development. The project applicant must remove contaminated soil to levels acceptable to the Santa Clara County Department of Environmental Health's Voluntary Cleanup Program (or equivalent oversight agency). The Santa Clara County Department of Environmental Health's Voluntary Cleanup Program (or equivalent oversight agency) may also approve leaving in-place some of the contaminated soil if the contaminated soil will be buried under hardscape and/or several feet of clean soil. A Removal Action Plan, Soil Mitigation Plan or other similarly titled report describing the remediation must be prepared and implemented to document the removal and /or capping of contaminated soil. A copy of any reports prepared shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the Municipal Compliance Officer of the City of San José Environmental Services Department. All work and reports produced shall be performed under the regulatory oversight and approval of the Santa Clara County Department of Environmental Health's Voluntary Cleanup Program (or equivalent oversight agency).

- 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 N-1: The project would result in substantial noise generating activities continuing for more than twelve months, which is considered a significant impact pursuant to General Plan Policy EC-1.7.

MM N-1: Prior to the issuance of any demolition, grading or building permits, the project applicant shall prepare 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 noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction (i.e. prior to grading permits) and implemented during construction to reduce noise impacts on neighboring residents and other uses. The construction noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee for review prior to issuance of any demolition, grading, or building permits.

Impact N-2: Implementation of the proposed project would result in significant construction related to groundborne vibration impacts at the nearest structures.

MM N-2: 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 to 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 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. Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 25 feet of any adjacent building.
- Identification of the sensitivity of nearby structures to groundborne vibration. Vibration limits should be applied to all vibration-sensitive structures located within 50 feet of construction activities identified as sources of high vibration levels.
- Preconstruction condition surveys of the structures within 50 feet of construction activities identified as source of high vibration levels shall be completed with the agreement of the property owner.
- Surveys shall be performed prior to any construction activity, in regular interval during construction and after project completion.
- At a minimum, vibration monitoring should be conducted during demolition and excavation activities.
- If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures.
- 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.
- Conduct post-survey on structures where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.

The construction vibration plan shall be submitted to the Supervising Environmental Planner prior to the issuance of any demolition permits and grading permits. The associated monitoring reports shall be submitted after substantial completion of each phase identified in the project schedule to the Supervising Environmental Planner. An explanation of all events that exceeded vibration limits shall be included together with proper documentation of any exceedance event.

- 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

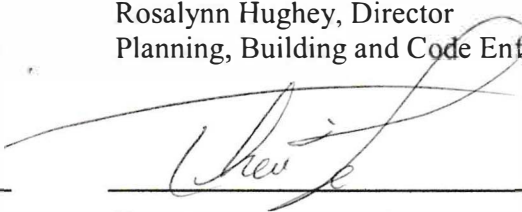
Before 5:00 p.m. on **Tuesday, April 20, 2021** any person may:

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

03/23/2021

Date


Deputy

Bethelhem Telahun
Environmental Project Manager

Circulation period: April 1, 2021 to April 20, 2021