

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: 4962 Almaden Expressway Retail Project

PROJECT FILE NUMBER: H20-017

PROJECT DESCRIPTION: Site Development permit to demolish the existing 4,470 square foot gas station building, six fuel pumps, and the canopy structure, and to remove three existing underground fuel storage tanks. The project would construct a new 7,800 square foot retail building and reconfigure the surrounding parking area. The new retail building would allow for two commercial spaces, and a patio area for tables, benches, and bike racks is proposed on the eastern side of the building. Nine trees are proposed to be removed, and they will be replaced by 19 new trees. Additionally, five street trees will be replaced along Cherry Avenue. The project includes the closure of the driveway on Cherry Avenue that currently accesses the site. The proposed retail building would be accessed from within the existing shopping center parking lot.

PROJECT LOCATION: The 0.6 project site is located at 4962 Almaden Expressway, on the northeast corner of the intersection of Almaden Expressway and Cherry Avenue, in the City of San José

ASSESSORS PARCEL NO.: 458-17-022

COUNCIL DISTRICT: 9

APPLICANT CONTACT INFORMATION: Brereton Architects (Atten: Michael J. Castro); 909 Montgomery Street, Suite 260, San Francisco, CA 94133; (415)963-4626; mcastro@brereton.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 – The project would not have a significant impact on this resource, therefore no mitigation is required.

D. BIOLOGICAL RESOURCES.

Impact BIO-1: Project construction, including tree removals, that occur during the breeding season could result in a significant impact to nesting birds and other protected migratory bird species.

MM BIO-1: Prior to the issuance of any grading, building or demolition permits, 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), as amended.

If demolition and construction cannot be scheduled to occur between September 1st and January 31st (inclusive) to avoid the nesting season, pre-construction surveys for nesting raptors and other migratory nesting birds shall be conducted by a qualified ornithologist to identify active nests that may be disturbed during project implementation on-site and within 250 feet of the site. Projects that commence demolition and/or construction activities between February 1st and April 30th (inclusive) shall conduct a pre-construction survey for nesting birds no more than 14 days prior to initiation of construction, demolition activities, or tree removal. Between May 1 and August 31 (inclusive), the pre-construction survey shall be conducted no more than 30 days prior to initiation of construction, demolition, or tree removal activities. Nesting bird surveys are not required for construction activities occurring between August 31 and February 1, inclusive.

If an active nest is found in or close enough to the project area to be disturbed by construction activities, a qualified ornithologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction free buffer zone (typically 250 feet for raptors and 100 feet for other birds) around the nest, to ensure that raptor or migratory bird nests would not be disturbed during ground disturbing activities. The construction-free buffer zones shall be maintained until after the nesting season has ended and/or the ornithologist has determined that the nest is no longer active.

The ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement prior to any tree removal activities, or issuance of any demolition, grading or building permits (whichever occurs first).

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 proposed project could result in disturbance of contaminated soil which could release hazardous material into the environment; and could result in exposure of future site occupants to a vapor intrusion related health risk.

MM HAZ-1: Prior to any Underground Storage Tank (UST) removal activities including excavation, the project applicant shall contact the San Jose Fire Department and the Santa Clara County Department of Environmental Health (SCCDEH) and coordinate any necessary field inspections and required permits and paperwork from both agencies. The project applicant shall complete and submit a UST System Closure Permit Application to the SCCDEH and a UST System Closure Application (UN-003) to the City of San Jose's Fire Department. Additional permits (i.e., demolition permits, electrical permits, plumbing permits, etc.) may be required by the City of San Jose's Department of Planning, Building, and Code Enforcement or other state or federal agencies. The project applicant shall perform post removal sampling of the UST and surrounding soil/and or groundwater as directed by the SCCDEH under their Local Oversight Program (LOP). If the UST(s) have been determined by the SCCDEH to have leaked, a regulatory case will be opened and further investigation and cleanup (if necessary) shall be performed under LOP oversight. Copies of evidence of consultation with SCCDEH and the San Jose Fire Department shall be submitted to the Municipal Compliance Office of the City of San José Environmental Services Department.

MM HAZ-2: Prior to the issuance of a site grading permit, the project applicant shall hire a qualified environmental professional to complete a Phase II Environmental Site Assessment (ESA) to address the concerns and recommendations posed in the Phase I ESA prepared for the project site by Baseline Environmental Consulting dated 21 August 2020. The Phase II ESA shall include soil sampling for agricultural contaminants in at least four discrete sample locations at the project site, and soil gas sampling in accordance with recommendations of the Phase I ESA. Results of the Phase II ESA shall be provided to the SCCDEH, the City of San Jose Planning, Building, and Code Enforcement Supervising Environmental Planner, and the Environmental Services Department Municipal Compliance Officer. If the Phase II ESA results indicate soil, soil gas and/or groundwater contamination above applicable regulatory environmental screening levels, the project applicant shall obtain regulatory oversight from the San Francisco Bay Regional Water Quality Control Board or SCCDEH. Any further investigation and remedial actions shall be performed under regulatory oversight to mitigate the contamination and make the project site suitable for the proposed development.

- 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** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- 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 **Monday, May 17, 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.

Chu Chang, Acting Director
Planning, Building and Code Enforcement

04/20/2021

Date

Deputy

Bethelhem Telahun
Environmental Project Manager

Circulation period: April 26, 2021 to May 17, 2021