

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: Evergreen Circle Rezoning

PROJECT FILE NUMBER: PDC20-002

PROJECT DESCRIPTION: A Planned Development Rezoning (PDC) of the project site from A(PD) Planned Development Zoning District to a new PD Planned Development Zoning District to allow for 150,000 square feet of medical office space. The rezoning would also allow for previously entitled and built commercial square footage with an increase in commercial square footage equivalency, totaling up to 369,560 square feet with only 60,238 of new commercial square footage.

PROJECT LOCATION: The project is located on an approximately 29-acre site located in Evergreen Circle in San José, south of Quimby Avenue and west of Capitol Expressway. The existing property is completely rough-graded and has been part of an active construction site for two years. The project is located within the Evergreen East Hills Development Policy Area.

ASSESSORS PARCEL NO.: 670-29-032, 670-29-033, 670-29-035, and 670-50-001, 670-50-002, 670-50-003, 670-50-004, 670-50-005. **COUNCIL DISTRICT:** 8

APPLICANT CONTACT INFORMATION: Arcadia Development (ATTN: Gerry De Young, Ruth & Going Inc., gdeyoung@ruthandgoing.com); P.O. Box 5368, San Jose, CA 95150; 408-286-4400.

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: Development of future development on the project site with medical office or commercial use equivalency would exceed BAAQMD thresholds from construction and operation activities, since the maximum unmitigated cancer risk and PM2.5 concentration exceed the BAAQMD single-source thresholds.

MM AQ-1 Prior to the issuance of any grading or demolition permits, the project shall develop a plan demonstrating that the off-road equipment used on-site to construct the project would achieve a fleet-wide average 65 percent reduction in particulate matter exhaust emissions or greater. Feasible plans to achieve this reduction would include the following:

- All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously or 20 total hours shall, at a minimum, meet U.S. EPA particulate matter emissions standards for Tier 4 Interim engines or equivalent. Where equipment meeting Tier 4 standards are not available, the equipment will be required to include Tier 3 engines with CARB-certified Level 3 Diesel Particulate Filters that are considered CARB verified diesel emission control devices (VDECs). Equipment that is electrically powered or uses non-diesel fuels would also meet this requirement.
- Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment, such as generators.
- Other measures may include the use of added exhaust devices; or a combination of measures, provided that these measures are demonstrated to reduce community risk impacts to less than significant.

Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs first), the project applicant shall submit to the Director of Planning, Building, and Code Enforcement or Director's designee a construction-operations plan that includes specifications of the equipment to be used during construction. The plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards set forth in this measure.

D. BIOLOGICAL RESOURCES.

Impact BIO-1: Prior to the issuance of any grading or building permits (whichever occurs first), the project applicant shall schedule all 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).

MM BIO-1 Prior to the issuance of any grading or building permits (whichever occurs first), the project applicant shall schedule all 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).

If construction cannot be scheduled to occur between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist or biologist to ensure that no nests shall be disturbed during project implementation. 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 late part of the breeding season (May 1st through August 31st, inclusive). During this survey, the ornithologist/biologist shall inspect all trees and other possible nesting habitats within 250 feet of the construction areas for nests.

If an active nest is found within 250 feet of the work areas to be disturbed by construction, the ornithologist/biologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, (typically 250 feet for raptors and 100 feet for other birds), to ensure that raptor or migratory bird nests shall not be disturbed during project construction.

Prior to any construction activities or issuance of any grading or building permits, the ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of the Planning, Building, and Code Enforcement or the Director's designee.

MM BIO-2 Prior to issuance of any grading or building permits, future development on the site shall incorporate the following measures.

- **Preconstruction Surveys:** Prior to issuance of any grading or building permits, preconstruction surveys shall be conducted for burrowing owls regardless of whether impacts are to occur during the breeding or non-breeding season. These surveys consist of a minimum of two surveys conducted for a minimum of a 3-hour period within 1 hour of sunrise and/or sunset, with the first survey no more than 14 days prior to initial construction activities (i.e., vegetation removal, grading, excavation, etc.) and the second survey conducted no more than two days prior to initial construction activities. The survey shall ensure complete visual coverage of the site and a 250-foot radius of the site. These survey results shall be documented in a letter report to be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee for review and approval.
- **Burrowing Owl Monitoring Plan:** If burrowing owls are observed during the preconstruction surveys, occupied burrows shall be identified by the qualified biologist and a buffer shall be established. The qualified biologist

shall submit a Burrowing Owl Monitoring Plan that shall include, but would not be limited to, the following:

- Identification of appropriate non-disturbance buffers (i.e., 250-foot) around all active burrows as identified and defined by a qualified biologist.
- Determination of nests and occupancy (i.e., vacant or not)
- Determination of protocols to relocate nests, collapse suitable vacant burrows, or other equivalent protocol to ensure the safety of owls and habitat, consistent with Santa Clara Valley Habitat Plan (SCVHP) protocols.
- Protocols for monitoring during non-nesting seasons if owls are found.
- Protocols for avoidance measures.
- Protocols for on-going reporting to the necessary agency.

Only after the biologist determines that the active burrow has become vacant can the non-disturbance buffer zone be removed. This Monitoring Plan shall be documented in a letter report to be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee for review and approval.

- Non-nesting Season Avoidance Measures: Should a burrowing owl be located onsite in the non-breeding season (September 1 through January 31), construction activities would not be allowed within the 250-foot buffer of the active burrow(s) used by any burrowing owl unless the following avoidance measures are adhered to. These include, but are not limited to, the following:
 - The qualified biologist monitors the owls for at least 3 days prior to construction to determine baseline nesting and foraging behavior (i.e., behavior without construction).
 - The qualified biologist monitors the owls during construction and finds no change in owl nesting and foraging behavior in response to construction activities, ending the monitoring requirement.
 - However, if the qualified biologist finds that there is any change in owl nesting and foraging behavior as a result of construction activities, these activities will cease within the 250-foot buffer. Construction cannot resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site. The results of this evaluation shall be documented in a letter report to be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee.
 - If monitoring indicates that the nest is abandoned prior to the end of nesting season and the burrow is no longer in use by owls, the non-disturbance buffer zone may be removed. The biologist will excavate the burrow to prevent reoccupation after receiving approval from the Wildlife Agencies.

These avoidance measures shall be documented in a letter report to be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee for review and approval.

Nesting Season Reduced Buffer Exception: For permission to engage in construction activities within 250 feet of such burrows during the nesting season (February 1 through August 31), an Avoidance, Minimization, and Monitoring Plan shall be prepared by a qualified biologist and approved by the SCVHP Implementing Agency (i.e., the City of San José) and the Wildlife Agencies prior to such encroachment. The plan shall ensure that burrowing owls and active nests are not impacted by the encroachment, based on the professional judgement of the qualified biologist, and shall include the same criteria for non-nesting season encroachment.

E. CULTURAL RESOURCES

Impact CR-1: If future development of the project site requires excavation (e.g., for basement parking), this could result in the loss of unknown subsurface historic resources on the site.

MM CR-1.1 Preliminary Investigation: Prior to excavation activities, including grading and potholing for utilities, a qualified archaeologist who is trained in both local prehistoric and historical archaeology shall complete subsurface exploration at the site, to determine if there are any indications of discrete historic-era subsurface archaeological features. Exploring for historic-era features shall consist of at least one trench mechanically excavated below existing stratigraphic layers to evaluate the potential for Native American and historic-era resources. If any archaeological resources are exposed, these should be briefly documented, tarped for protection, and left in place. The results of the presence/absence exploration, including any treatment recommendations if any, shall be submitted to the Director or Director's designee of the City of San José Department of Planning, Building, and Code Enforcement for review and approval prior to issuance of any grading permit. Based on the findings of the subsurface testing, an archaeological resources treatment plan as described in MM CR-1.2 shall be prepared by a qualified archaeologist if necessary.

MM CR-1.2 Treatment Plan. If MM CR-1.1 is applicable, the project applicant shall prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director or Director's designee of the City of San José Department of Planning, Building, and Code Enforcement prior to approval of any grading permit. The treatment plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.
- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).

- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).
- Detailed field strategy to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc. Implementation of the plan, by a qualified archaeologist, shall be required prior to the issuance of any grading permits. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.

MM CR-1.3 Evaluation. The project applicant shall notify the Director or Director’s designee of the City of San José Department of Planning, Building, and Code Enforcement of any finds during the preliminary field investigation, grading, or other construction activities. Any historic or prehistoric material identified in the project area during the preliminary field investigation and during excavation activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Information Center, and/or equivalent.

- 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 site was historically used for agricultural purposes and may contain agricultural residuals contaminants.

MM HAZ 1 Prior to the issuance of any grading permits, a qualified consultant shall be retained to conduct shallow soil samples in the near surface soil in the proposed project area and test 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 standard environmental screening levels. The results

of the soil sampling and testing will be provided to the City's Supervising Environmental Planner and Municipal Environmental Compliance Officer for review.

MM HAZ-2 Prior to construction, a qualified consultant shall be retained to prepare a Site Management Plan to reduce or eliminate exposure risk to human health and the environment associated with the presence of agricultural buildings and the potential for the presence of underground storage tanks. At a minimum, the SMP shall include the following:

- Stockpile management including dust control, sampling, stormwater pollution prevention and the installation of BMPs
- Proper disposal procedures of contaminated materials
- Monitoring, reporting, and regulatory oversight notifications
- Proper procedure for removal of Underground Storage Tanks
- A health and safety plan for each contractor working at the site that addresses the safety and health hazards of each phase of site operations with the requirements and procedures for employee protection
- The health and safety plan will also outline proper soil/ and or groundwater handling procedures and health and safety requirements to minimize worker and public exposure to contaminated soil/and or groundwater during construction.

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 NSE-1: Existing noise-sensitive land uses would be exposed to a temporary increase in ambient noise levels due to construction activities on the project site.

MM NSE-1 Construction Noise Logistics Plan: Prior to the issuance of any grading or building permits, the project applicant shall 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 Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits. As a part of the noise logistic plan, construction activities for the proposed project shall include, but are not limited to, the

following best management practices:

- Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence (San José Municipal Code Section 20.100.450).
- Construct temporary noise barriers, where feasible, to screen mobile and stationary construction equipment. The temporary noise barrier fences provide noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receiver and if the barrier is constructed in a manner that eliminates any cracks or gaps.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Unnecessary idling of internal combustion engines shall be strictly prohibited.
- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- Construction staging areas shall be established at locations that would create the greatest distance between the construction-related noise source and noise-sensitive receptors nearest the project site during all project construction.
- A temporary noise control blanket barrier shall be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling.
- If impact pile driving is proposed, foundation pile holes shall be predrilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile.
- Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- The project applicant shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.
- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.
- Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

MM NSE 2 Construction Vibration Monitoring, Treatment, and Reporting Plan: 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 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 to the Director of Planning or Director's designee of the Department of Planning, Building, and Code Enforcement 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. Phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.
- Prohibit the use of heavy vibration-generating construction equipment within 30 feet of adjacent buildings.
- Use a smaller vibratory roller, such as the Caterpillar model CP433E vibratory compactor, when compacting materials within 30 feet of adjacent buildings. Only use the static compaction mode when compacting materials within 15 feet of buildings.
- Document conditions at all structures located within 30 feet of construction 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. Specifically:
 - Vibration limits shall be applied to vibration-sensitive structures located within 30 feet of all construction activities identified as sources of high vibration levels.
 - Performance of a photo survey, elevation survey, and crack monitoring survey for each structure of normal construction within 30 feet of all construction activities identified as sources of high vibration levels. Surveys shall be performed prior to any construction activity, in regular intervals during construction, and after project completion of vibration generating construction activities, and shall include internal and external crack monitoring in the structures, settlement, and distress, and shall document the condition of the foundations, walls and other structural elements in the interior and exterior of said structures.

- Avoid dropping heavy equipment and use alternative methods for breaking up existing pavement, such as a pavement grinder, instead of dropping heavy objects, within 30 feet of adjacent buildings.
- The contractor shall alert heavy equipment operators to the close proximity of the adjacent structures so they can exercise extra care.
- 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.
- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.
- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.
- Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.

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 / TRAFFIC – 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 **Wednesday June 9, 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

5/13/21



Date

Deputy

Circulation period: **Thursday May 20, 2021 to Wednesday June 9, 2021.**