

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: 5853 Rue Ferrari Project

PROJECT FILE NUMBER: H21-006 and ER21-022

PROJECT DESCRIPTION: The proposed project would demolish the two existing warehouse buildings, totaling 289,330 sf, and construct a 302,772 sf tilt-up warehouse building. The project intends to redevelop the property as a modern industrial facility. While no end users have been identified, the building is programmed and designed to attract users such as logistics, e-commerce, warehouse/distribution, wholesaling, industrial services, and light to medium manufacturing. The new warehouse building would contain approximately 292,772 sf of warehouse space and 10,000 sf of office space. Because office space is considered an incidental or ancillary use to the permitted warehouse use, the analysis in this document integrates office space into the primary warehouse use to be consistent with industry standards and municipal code. The office space may serve as additional office/research and design (R&D) space, storage or a variety of other uses. The proposed warehouse building would include 47 loading dock doors for trailer, box, and recycling trucks on the west side of the warehouse building. The proposed project also includes surface parking with 108 trailer truck stalls and 296 automobile stalls on site.

PROJECT LOCATION: The 17.38-acre project site is located at 5853 Rue Ferrari in the City of San José.

ASSESSORS PARCEL NO.: 678-05-057

COUNCIL DISTRICT: 6

APPLICANT CONTACT INFORMATION: Duke Realty Corporation (Attn: Randy Dilag); 409 13th Street, Suite 1600, Oakland, CA 94612; 415-994-9769; randy.dilag@dukerealty.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: Project construction would temporarily exceed BAAQMD threshold limit of 10 per million for cancer risk.

MM AQ-1: Prior to issuance of any demolition, grading permits, and/or building permits (whichever occurs earliest), the project applicant shall prepare and submit a construction operations plan that includes specifications of the equipment to be used during construction to the Director of Planning, Building and Code Enforcement or the Director’s Designee. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.

- For all construction 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 Tier 4 Final emission standards.
- If Tier 4 Final equipment is not available, 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 emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve an 85 percent reduction in particulate matter exhaust and 40 percent reduction in NOx in comparison to uncontrolled equipment.

The project applicant shall submit a construction operations plan prepared by the construction contractor that outlines how the contractor will achieve the measures outlined in this mitigation measure. The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee for review and approval prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest). The plan shall include, but not be limited to the following:

- List of activities and estimated timing.
- Equipment that would be used for each activity.
- Manufacturer’s specifications for each equipment that provides the emissions level; or the manufacturer’s specifications for devices that would be added to each piece of equipment to ensure the emissions level meet the thresholds in the mitigation measure.
- How the construction contractor will ensure that the measures listed are monitored.
- How the construction contractor will remedy any exceedance of the thresholds.
- How often and the method the construction contractor will use to report compliance with this mitigation measure.

D. BIOLOGICAL RESOURCES.

Impact BIO-1: Construction activities on the project site could impede the movement of nesting raptors or other migratory birds.

MM BIO-1: Avoidance: Prior to the issuance of any demolition, grading, tree removal or building permits (whichever occurs first), 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).

Nesting Bird Surveys: If demolition and 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 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 breeding season (May 1st through August 31st inclusive). During this survey the ornithologist shall inspect all trees and other possible nesting habitats within 250 feet of the construction areas for nests.

Buffer Zones: If an active nest is found within 250 feet of the work areas to be disturbed by construction, the qualified ornithologist, 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. The no-disturbance shall remain in place until the ornithologist determines the nest is no longer active or the nesting season ends. If construction ceases for two days or more then resumes again during the nesting season, an additional survey shall be necessary to avoid impacts to active bird nests that may be present.

Reporting: Prior to any tree removal and construction activities or issuance of any demolition, grading or building permits (whichever occurs first), the qualified ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or the Director's designee.

Impact BIO-2: Construction activities on the project site could result in disturbance to burrowing owl nests.

MM BIO-1: Pre-construction survey: Prior to the issuance of any demolition, grading, or building permits, a qualified biologist shall conduct preconstruction surveys to ascertain whether or not burrowing owls occupy burrows on or in the ruderal habitat adjacent to the site. These surveys consist of a minimum of two surveys, 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 2 days prior to initial construction activities. If no burrowing owls or fresh sign of burrowing owls are observed during pre-construction surveys, construction may proceed. If burrowing owls or their recent sign are observed during these surveys, occupied burrows shall be identified by the monitoring biologist and appropriate buffers shall be established.

Buffers: A 250-foot non-disturbance buffer shall be established around all active burrowing owl burrows or nest sites as identified and defined by a qualified biologist. If the biologist determines that a nest is vacant, the non-disturbance buffer zone around that nest may be removed. The Santa Clara Valley Habitat Plan (SCVHP) specifies that a vacation from the site for a week or more by a burrowing owl, a determined by a qualified biologist, would constitute a voluntary relocation by the owl, and the qualified biologist could then take measures to collapse suitable burrows of the site to discourage reoccupation. The biologist shall supervise hand excavation of the burrow to prevent reoccupation only after receiving approval from the wildlife agencies (SCVHP, Chapter 6, Condition 15).

For permission to encroach within 250 feet of such burrows during the nesting season (February 1 through August 31), an Avoidance, Minimization, and Monitoring Plan would need to be prepared and approved by the Implementing Entity and the Wildlife Agencies prior to encroachment. A copy of the Plan and approval by the required agencies shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

Should a burrowing owl be located onsite in the non-breeding season construction activities would not be allowed within this 250-foot buffer of the active burrow(s) used by any burrowing owl unless the following avoidance measures are adhered to:

- A qualified biologist monitors the owls for at least 3 days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).
- The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.
- If 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.
- If the owls are gone for at least one week, the project applicant may request approval from the Implementing Entity that a qualified biologist excavate usable burrows to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone will be removed and construction may continue.

E. CULTURAL RESOURCES.

Impact CUL-1: Construction activities on the project site could result in the disturbance of an archaeological resource pursuant to § 15064.5.

MM CUL-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, in consultation with a Native American 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 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 of the City of San José Department of Planning, Building, and Code Enforcement, or Director's designee, 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 CUL-1.2 shall be prepared by a qualified archaeologist if necessary.

MM CUL-1.2: Treatment Plan. If MM CUL-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 of the City of San José Department of Planning, Building, and Code Enforcement or Director's designee prior to approval of any grading permits. The treatment plan shall contain, at a minimum:

- i. Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.

- ii. Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
- iii. Monitoring schedules and individuals
- iv. Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).
- v. Detailed field strategy to record, recover, or avoid the finds and address research goals.
- vi. Analytical methods.
- vii. Report structure and outline of document contents.
- viii. Disposition of the artifacts.
- ix. Security approaches or protocols for finds.
- x. 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 CUL-1.3 Evaluation. The project applicant shall notify the Director of the City of San José Department of Planning, Building, and Code Enforcement or Director’s designee 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 Native American Heritage Commission (NAHC) Sacred Land Files, and/or equivalent prior to the issuance of an occupancy permit. A copy of the evaluation shall be submitted to the City of San José Department of Planning, Building, and Code Enforcement or Director’s designee.

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

Impact TRANS-1: The Project would result in an increase of regional vehicle miles traveled (VMT) above the City’s adopted threshold levels of 14.37 for City’s VMT per employee threshold for industrial land uses.

MM TRANS-1.1: Prior to the issuance of any development permits, the project applicant shall prepare a development plan set that illustrates the design of the site enhancements, and shall coordinate with the City Parks, Recreation, & Neighborhood Services, Department of Transportation, and the Department of Public Works to install a rectangular rapid-flashing beacon enhanced mid-block crosswalk and connecting pathway located west of the project’s southernmost driveway on Eden Park Place, and construct an ADA compliant connection at the mid-block crosswalk with curb ramps from the project frontage to the existing Coyote Creek Trail. The project plans illustrating the enhanced mid-block crosswalk and connection pathway mentioned above shall be submitted to the Director of Public Works and the Director of the Department of Planning, Building and Code Enforcement or Director’s designee for review and approval. Prior to the issuance of the Improvement Plan with the Department of Public Works, the project applicant shall reconfirm with the Department of Public Works on the final design of the enhancement. The project applicant shall install the crosswalk and connection pathway prior to the issuance of any occupancy permit (temporary or final).

R. TRIBAL CULTURAL RESOURCES.

Impact TCR-1: Construction activities on the project site could result in the disturbance of a tribal cultural resource, defined in Public Resources Code section 21074.

MM TCR-1.1: Tribal Cultural Sensitivity Training. Prior to issuance of the Grading Permit, the project applicant shall be required to submit evidence that a Cultural Awareness Training will be provided to construction personnel prior to ground disturbances. The training shall be facilitated by the project archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commissions 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.

MM TCR-1.2: Monitoring. A qualified Native American monitor, registered with the Native American Heritage Commission for the City of San Jose and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, in

collaboration with a qualified archeologist shall also be present during applicable earthmoving activities such as, but not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping.

- 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, February 8, 2022** 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.

CHRISTOPHER BURTON, Director
Planning, Building and Code Enforcement

01/18/2022

Date

Deputy

Thai-Chau Le
Environmental Project Manager

Circulation period: January 19, 2022 to February 8, 2022