

## 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:** Camden Avenue Residential

**PROJECT FILE NUMBER:** PDC21-019

**PROJECT DESCRIPTION:** The applicant proposes to construct seven single-family residences ranging between 2,274 and 2,292 square feet in size, equivalent to 8.5 dwelling units per acre.<sup>1</sup> The residences would range from two to 2.5 stories, with a maximum height of 35 feet. In total, the FAR of the proposed development would be 0.26. Access to and from the proposed residences would be provided via two 20-foot-wide private driveways accessible from Camden Avenue. Each residence would provide two parking garage spaces and a driveway apron capable of providing parking for up to two vehicles (28 off-street parking spaces total). No additional street parking would be provided within the project site. Additionally, the project would provide a 31-foot-wide dedication of public street right-of-way to allow for the widening of Camden Avenue (an approximately 0.18-acre area).

**PROJECT LOCATION:** The project site consists of a triangle-shaped parcel located on the east side of Camden Avenue between Canna Lane and Malpas Drive in the Oak Canyon district of the City of San José. Adjacent east of the project site is Guadalupe Creek.

**ASSESSORS PARCEL NO.:** 567-26-014

**COUNCIL DISTRICT:** 10

**APPLICANT CONTACT INFORMATION:** DAL Properties, LLC (Mark Lazzarini); 255 W Julian Street #502, San José, CA 95110; [mlazzarini@dalpropertiesllc.com](mailto:mlazzarini@dalpropertiesllc.com); (408) 298-9302

## 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 AIR-1:** Construction activities involving diesel particulate matter (DPM) exhaust emissions at the project site would result in significant cancer risk (significant cancer risk threshold is greater than 10.0 chances per million) at the maximally exposed individual located 20 feet north of the project site (23.75 chances per million).

### MM AIR-1:

Prior to issuance of any tree removal, grading and/or building permits (whichever occurs first), the project applicant shall develop a plan demonstrating that the off-road equipment used on-site to construct the project would achieve a fleet-wide average 60 percent reduction in diesel particulate matter exhaust emissions or greater. The plan shall be signed and verified by an air quality specialist. The plan shall be submitted to the Director of Planning, Building, and Code Enforcement or the Director's designee. Construction equipment measures shall be printed on all construction documents, contracts, and project plans. Feasible plans to achieve this reduction would include one of the two following options:

- 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 PM, if feasible, otherwise:
  - o If use of Tier 4 equipment is not available, alternatively use equipment that meets 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 a 60 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination). The use of Tier 3 equipment shall not exceed five percent of all equipment usage (described in terms of total horsepower hours during a phase).
  - o Use of alternatively fueled equipment with lower PM emissions that meet the PM reduction requirements above.
- Alternatively, the applicant may develop another construction operations plan demonstrating that the construction equipment used on-site would achieve a reduction in construction diesel particulate matter emissions by 60 percent or greater. Elements of the plan could include a combination of some of the following measures:
  - o Implementation of Item 1a above to use Tier 4 or alternatively fueled equipment,
  - o Installation of electric power lines during early construction phases to avoid use of diesel generators and compressors,
  - o Use of electrically-powered equipment,
  - o Forklifts and aerial lifts used for exterior and interior building construction shall be electric or propane/natural gas powered,
  - o Change in construction build-out plans to lengthen phases, and
  - o Implementation of different building techniques that result in less diesel equipment usage.

## D. BIOLOGICAL RESOURCES.

**Impact BIO-1:** Development of the proposed project would result in impacts to nesting birds, if adjacent to the site at the time of construction.

### MM BIO-1.1:

Prior to any tree removal or approval of any grading 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). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, grading, and trenching.

**MM BIO-1.2:**

If construction activities cannot be scheduled 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 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 late part of the breeding season (May 1st through August 31st inclusive). During this survey, the qualified ornithologist/biologist shall inspect all trees and other possible nesting habitats on-site and within 250 of the site for nests.

**MM BIO-1.3:**

If an active nest is found within 250 feet of the project area to be disturbed by construction, the qualified ornithologist/biologist 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.

**MM BIO-1.4:**

Prior to issuance of any tree removal or grading permits (whichever occurs first), the qualified ornithologist/biologist 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 Director's designee.

**Impact BIO-2:** Without mitigation, debris generated during project construction, light and glare generated by windows and surfaces, and landscaping plants and chemicals could cause a substantial adverse effect to the Riparian Forest portion of the project site.

**MM BIO-2.1:**

Prior to the issuance of any tree removal, grading, or building permits (whichever occurs first), the project applicant shall submit a final site plan to the Director of Planning, Building, and Code Enforcement or the Director's designee that shows that the project shall observe a 50-foot development-free setback from the top-of-bank of the Guadalupe Creek and a 35-foot setback from riparian vegetation, which is the minimum setback allowed by the Santa Clara Valley Habitat Plan.

**MM BIO-2.2:**

Prior to the issuance of any building permits, the project applicant shall submit a final lighting plan set to the Director of Planning, Building and Code Enforcement or the Director's designee that shows that all lighting is designed such that the throw of light is low to the ground and not directed toward the riparian corridor. Lighting shall also be in compliance with the City's Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design, including that lighting shall not be directed into riparian corridors.

**MM BIO-2.3:**

Prior to the issuance of any building permits, the project applicant shall submit a final construction

plan set to the Director of Planning, Building and Code Enforcement or the Director's designee that shows all windows that directly face the riparian habitat are constructed with un-mirrored surfaces and are comprised of bird-friendly glass, such as glass products that are etched or textured to be observable to birds (e.g., glass products certified as Bird Smart by the American Bird Conservancy). The project shall be in compliance with the City's Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design, including that large mirrors and large areas of reflective glass shall be avoided, freestanding glass walls and transparent building corners shall be avoided, open space shall not be funneled into a building façade, landscaping shall be strategically placed to reduce reflection and views of foliage inside of and through glass, up-lighting and spotlights shall be avoided, and that non-emergency lighting shall be turned off or shielded at night to minimize light from buildings that is visible to birds, especially during the nesting season (February – May and August – November).

**MM BIO-2.4:**

Prior to the issuance of any grading permits, the project applicant shall submit a landscape plan to the Director of Planning, Building, and Code Enforcement or the Director's designee showing that all landscaping within 100 feet of the riparian edge is comprised of locally native and/or non-invasive species that are not featured on the California Invasive Plant Council's Invasive Plant Inventory of invasive plant species ([www.cal-ipc.org/ip/nventory](http://www.cal-ipc.org/ip/nventory)).

**MM BIO-2.5:**

During construction, the project applicant shall implement trash control measures to ensure that the riparian habitat is protected from litter or construction debris moving into the riparian habitat from the development site due to wind or storm water. This shall include placement of lidded trash cans near construction area parking, near portable toilets, and near actively constructed houses. The project applicant shall place tight-fitting lids on all trash cans at the site at the end of each day and they shall be emptied before they are overflowing. Prior to issuance of any construction permits, the project applicant shall provide verification that all trash control measures are listed on the final construction plan sets and construction contractors are contractually obligated to implement them.

**MM BIO-2.6:**

Prior to the issuance of any occupancy permits, the project applicant shall submit a copy of the homeowners association (HOA) bylaws to the Director of Planning, Building, and Code Enforcement or the Director's designee for verification that the HOA bylaws do not allow any activities that would violate MM BIO-2.2, MM BIO-2.3, and MM BIO-2.4. The HOA bylaws shall include mandatory provisions prohibiting the installation of any lighting, reflective surfaces, or landscaping by future residents that would violate the provisions of MM BIO-2.2, MM BIO-2.3, and MM BIO-2.4.

- 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:** Development of the project could result in an impact to construction workers and nearby sensitive receptors from exposure to soil and soil vapor contaminated with organochloride pesticides from past agricultural uses and chlorinated solvents from upgradient dry cleaning operations.

### **MM HAZ-1.1:**

Due to detections of volatile organic compounds (VOCs) above regulatory environmental screening levels in soil vapor, prior to issuance of any grading permit, the applicant must obtain regulatory oversight from the Regional Water Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC), or the Santa Clara County Department of Environmental Health (SCDEH) under their Site Cleanup Program. The applicant shall meet with the appropriate regulating agency and perform additional soil and soil vapor sampling and testing to adequately define the known and suspected contamination from past agricultural use and any other past uses of concern. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared under regulatory oversight and approval by a qualified environmental consultant that identifies remedial measures and/or soil management practices to ensure construction worker safety and protect the health of nearby sensitive receptors. The plan and evidence of regulatory oversight shall be provided to the Director of Planning, Building, and Code Enforcement or Director's designee and the Environmental Compliance Officer in the City of San José Environmental Services Department prior to issuance of tree removal, grading, or building permits (whichever occurs first).

**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-1.1:** Construction-related vibration levels would be 0.268 in/sec PPV in/sec at the nearest residential uses located approximately 20 feet north of the project site.

### **MM NOI-1.1:**

Prior to the issuance of any tree removal, grading, or building permits (whichever occurs first), the project applicant shall prepare a construction vibration monitoring plan to reduce construction impacts at the buildings where vibration level would exceed 0.2 in/sec PPV. The plan shall include, but is not limited to, the following:

- Place operating equipment on the construction site as far as possible from vibration-sensitive receptors.
- Vibratory rollers (if necessary) that are used within 30 feet of the adjacent residences to the north shall be equivalent in size to a Caterpillar model CP433E vibratory compactor or

smaller such that vibration levels would not exceed 0.2 in/sec PPV. Only use the static compaction mode when compacting materials within 15 feet of adjacent buildings.

- Avoid dropping equipment (such as a clam shovel) within 30 feet of adjacent residences to the north. Use alternative methods for breaking up existing pavement, such as a pavement grinder within 30 feet of adjacent buildings.
- The project applicant shall designate a City of San José employee responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
- Prior to the issuance of any demolition or grading permits, the project applicant shall submit a copy of the vibration construction plan to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval.

**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 air quality, biological resources, hazards and hazardous materials, and noise. 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**

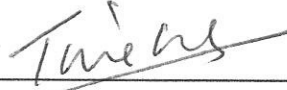
Before 5:00 p.m. on **Wednesday, August 10, 2022** any person may:

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

July 21, 2022



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Date

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Deputy

Cort Hitchens  
Environmental Project Manager

Circulation period: July 22, 2022 to August 10, 2022