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: Berryessa-Jackson Commercial Project

PROJECT FILE NUMBER: H19-020, C19-011 & AT20-017

PROJECT DESCRIPTION: Site Development Permit to allow construction of a retail center totaling 47,000 square feet on a 2.763-gross acre lot.

PROJECT LOCATION: Southeast corner of Berryessa and Jackson Avenue.

ASSESSORS PARCEL NO.: 254-80-021, -022, & -023 **COUNCIL DISTRICT:** 4

APPLICANT CONTACT INFORMATION: Berryessa Property, LLC (Attn: William Chan), 1261 Martin Avenue, Santa Clara, CA 95050. (415) 948-6326

FINDINGS

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 of the proposed project would generate fugitive dust and particulate matter during site preparation and grading.

MM AIR-1.1: Prior to the issuance of any grading, demolition, or building permits, the project applicant shall prepare a construction operations plan including the following dust control measures which would be implemented during all applicable phases of construction:

- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph and visible dust extends beyond site boundaries.
- Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction adjacent to sensitive receptors. Wind breaks should have at maximum 50 percent air porosity.
- The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
- Avoid tracking of visible soil material on to public roadways by employing the following measures if necessary: (1) Site accesses to a distance of 100 feet from public paved roads shall be treated with a six to 12-inch compacted layer of wood chips, mulch, or gravel and (2) washing truck tires and construction equipment of prior to leaving the site.

This plan will be reviewed by the Director of Planning, Building and Code Enforcement or Director's designee prior to issuance of any grading, demolition or buildings permits.

Impact AIR-2: Construction activities associated with the proposed project would result in nearby sensitive receptors being exposed to toxic air contaminant emissions for cancer risk of 82.7 cases per one million persons and annual PM2.5 concentration of 0.51, which are in excess of the BAAQMD thresholds for cancer risk, 10 case per one million persons, and annual PM2.5 concentrations, 0.3.

MM AIR-2.1: Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan to the Director of Planning, Building and Code Enforcement or Director's designee that includes specifications of the equipment to be used during construction to achieve a fleet-wide average 88 percent reduction in DPM exhaust emissions or greater. 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 below.

- All diesel-powered off-road equipment (larger than 25 horsepower) operating on-site for more than two days continuously shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) Tier 4 emission standards for particulate matter.
- Where Tier 4 equipment is not available, equipment larger than 25 horsepower used at the site for more than two continuous days 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 achieves an 88 percent reduction in particulate matter exhaust.

- Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment, such as generators.
- Cranes shall be powered by electricity or alternative fuel.

With implementation of the Standard Permit Conditions for dust control and Mitigation Measure AIR-2.1, the infant residential cancer risk would be reduced to 3.2 cases per one million which would be below the BAAQMD significance threshold of 10 per one million cases for cancer risk. The annual PM2.5 concentration would be reduced to 0.03, which is also below the significance threshold.

D. BIOLOGICAL RESOURCES.

Impact BIO-1: Construction activities could disrupt adult nesting raptors, or other birds, resulting in abandonment of nests and loss of fertile eggs.

MM-BIO-1: Tree removal and construction shall be scheduled 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 tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/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), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.

Prior to any tree or vegetation removal, or approval of any grading or demolition permits, the applicant 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.

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 presence of soil with elevated levels of pesticides at depths greater than four feet below the ground surface and illegally dumped debris piles could present a hazard to construction workers during site redevelopment.

MM-HAZ-1: Prior to issuance of any grading permits, the project applicant shall retain a qualified environmental professional to complete a Site Management Plan (SMP) that documents the site conditions and includes procedures to follow during construction. The SMP shall describe the geomembrane barrier located at four feet below the ground surface and the elevated levels of pesticides in the soil below the geomembrane. The SMP must include standard conditions and procedures such as dust control measures, health and safety practices and soil management. The SMP shall contain procedures for sampling, testing and appropriate disposal of the soil and debris stockpiles that have been illegally dumped on the property. The SMP shall be submitted to the Director of Planning, Building and Code Enforcement, or Director's designee, and the Environmental Compliance Officer of the City of San José's Environmental Services Department prior to issuance of any grading permits.

Implementation of MM HAZ-1 would reduce hazards/hazardous materials impacts to workers and the public at the project site.

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: The proposed project would result in substantial construction noise for a period greater than 12 months which would result in impacts to residents near the project site.

MM-NOI-1.1: Prior to the issuance of any grading, demolition, or building permits the project shall, pursuant to General Plan Policy EC-1.7, prepare a construction noise logistics plan, specifying the hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints. The logistics plan shall be implemented prior to the start of construction and during construction to reduce noise impacts on neighboring residents and other adjacent uses.

- The following best management practices shall be implemented during project construction:
    - Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday

for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.
    - Construct solid plywood fences around construction sites adjacent to operational business, residences, or other noise-sensitive land uses.
    - Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
    - Prohibit unnecessary idling of internal combustion engines.
    - 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 scree stationary noise-generating equipment when located near adjoining sensitive land uses. Temporary noise barriers could reduce construction noise levels by five dBA.
    - Utilize "quiet" are compressors and other stationary noise sources where technology exists.
    - Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- 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 adjacent land uses and nearby residences.
    - If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
    - Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to current 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.

Implementation of NOI-1.1 would reduce extended noise impacts to below 65 dBA, below the City's noise standard.

Impact NOI-2: The proposed project may result in ambient noise exceeding 55 dBA DNL during project operations as a result of rooftop machinery functions.

MM NOI-2.1: Prior to the issuance of any building permits and during building design, in accordance with the General Plan Policy EC-1.7, the following mitigation measure would be implemented to minimize potential ambient noise increases as a result of project operation:

- A detailed acoustical study shall be prepared during building design to evaluate the potential noise generated by building mechanical equipment and to identify the necessary noise controls that are included in the design to meet the City's 55 dBA DNL noise limit at the shared property line. The study shall evaluate the noise from the equipment and predict noise levels at noise-sensitive locations. Noise control features, such as sound attenuators, baffles, and barriers, shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations, such as residences. The study shall be submitted to the Director of Planning, Building and Code

Enforcement or Director's designee and the City of San José Environmental Compliance Officer for review and approval prior to the issuance of any building permits.

Mechanical equipment shall be selected and designed to reduce noise levels to meet the City's 55 dBA DNL noise level requirement at the shared property line of nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's General Plan and Municipal Code noise level requirements.

Implementation of MM NOI-2.1 would reduce noise levels by more than three dBA to achieve compliance with the City's noise standards.

IMPACT NOI-3: The proposed project would exceed the vibration threshold (0.354 in/sec) of 0.2 in/sec PPV during construction at residential structures within 30 feet of the project site.

MM NOI-3.1: Prior to issuance of any demolition, grading, or building permits, whichever occurs earliest, the project applicant shall implement a Construction Vibration Monitoring Plan (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 plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval.

The Plan shall include, but not be limited to, the following measures where vibration levels due to construction activities would exceed 0.2 in/sec PPV at nearby buildings:

- Prohibit the use of heavy vibration-generating construction equipment within 30 feet of adjacent residential buildings.
- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted at the construction site.

Implementation of MM NOI-3.1 would reduce vibration impacts to nearby residential structures below 0.2 in/sec PPV within 30 feet.

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 **Thursday January 5th, 2023** 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

December 5, 2022 — Tina Garg — Digitally signed by Tina Garg Date: 2022.12.05 17:53:42 -08'00'

Date — Deputy

Kara Hawkins
Environmental Project Manager

Circulation period: December 12, 2022 to January 5, 2023