

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: 1050 St. Elizabeth Drive Residential Project

PROJECT FILE NUMBER: H20-049 and ER20-270

PROJECT DESCRIPTION: The proposed project would demolish the existing two-story, 28,223-square-foot senior housing facility, parking lot, access roads, carport structure, and landscaping on-site and construct a seven-story multi-family apartment building with 206 residential units above one level of below grade parking and two levels of podium parking. The building would have a maximum height of 87 feet to the top of the building parapet and would include a leasing office, community clubhouse and game room, fitness center, resident lounge, as well as a workshop, pet wash, storage, and media/game rooms for residents. A total of 13,090-square feet of outdoor space would be provided in the form of private decks. The project would also replace the existing six-foot tall chain link fence with a new six-foot tall solid wood fence along the south, east, and north property lines.

PROJECT LOCATION: 1050 St. Elizabeth Drive, in the City of San José

ASSESSORS PARCEL NO.: 284-07-018

COUNCIL DISTRICT: 6

APPLICANT CONTACT INFORMATION: KCR Development, 19620 Stevens Creek Blvd., Suite 200, Cupertino, CA 95014. dchan@kcrdevelopment.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 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 could directly or indirectly impact nesting birds protected under the Migratory Bird Treaty Act and the California Fish and Game Code.

MM BIO-1.1: Prior to issuance of any tree removal, grading, demolition, and/or building permit or construction activities, 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).

MM BIO-1.2: If demolition and construction cannot be scheduled 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 the breeding season (May 1st through August 31st inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

MM BIO-1.3: If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist shall determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction. The no-disturbance buffer shall remain in place until the biologist determines the nest is no longer active. 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.

MM BIO-1.4: Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

With implementation of MM BIO-1.1 through MM BIO-1.4, the project's impact to nesting birds would be reduced to a less than significant level.

Impact BIO-2: Development of the proposed project would result in significant impacts to roosting Townsend's big-eared bats, if present on the site at the time of construction.

MM BIO-2.1: Prior to issuance of any tree removal, grading, demolition, and/or building permit or construction activities, the project applicant shall schedule demolition and construction activities to avoid the nursery season. The nursery season for Townsend’s big-eared bats extends from May 1 through October 1 (inclusive).

MM BIO-2.2: If demolition and construction cannot be scheduled between October 2nd and April 30st (inclusive), the project applicant shall retain a qualified biologist to conduct a habitat assessment for bats and potential roosting sites in trees to be removed and in trees or buildings within 50 feet of the construction. The habitat assessment shall be conducted no more than 14 days prior to tree removal or demolition and construction activities. The habitat assessment shall include a visual inspection of potential roosting features (bats need not be present) and a search for presence of guano within the site, construction access routes, and within a 50-foot buffer around these areas. Cavities, crevices, exfoliating bark, and bark fissures that could provide suitable potential nest or roost habitat for bats shall be surveyed. Assumptions can be made on what species is present due to observed visual characteristics along with habitat use, or the bats can be identified to the species level with the use of a bat echolocation detector such as an “Anabat” unit. Potential roosting features found during the survey shall be flagged or marked.

MM BIO-2.3: If no roosting sites or bats are found, a letter report confirming absence shall be prepared and submitted to the City’s Director of Planning or Director’s designee of the Department of Planning, Building and Code Enforcement for review and approval and no further mitigation is required.

MM BIO-2.4: If bats or roosting sites are found, a letter report documenting their presence shall be prepared and submitted to the City’s Director of Planning or Director’s designee of the Department of Planning, Building and Code Enforcement, and bats shall not be disturbed without specific notice to and consultation with the California Department of Fish and Wildlife.

MM BIO-2.5: If bats are found roosting outside of the nursery season (May 1 through October 1, inclusive), California Department of Fish and Wildlife shall be consulted prior to any eviction or other action. If avoidance or postponement is not feasible, a Bat Eviction Plan shall be submitted to California Department of Fish and Wildlife for written approval prior to project implementation. A request to evict bats from a roost shall include details for excluding bats from the roost site and monitoring to ensure that all bats have exited the roost prior to the start of activity and are unable to re-enter the roost until the activity is completed. Any bat eviction shall be timed to avoid lactation and young rearing. If bats are found roosting during the nursery season, they shall be monitored to determine if the roost site is a maternal roost. This could occur by either visual inspection of the roost bat pups, if possible, or by monitoring the roost after the adults leave for the night to listen for bat pups. Because bat pups cannot leave the roost until they are mature enough, eviction of a maternal roost cannot occur during the nursery season. Therefore, if a maternal roost is present, a 50-foot buffer zone (or different size if determined in consultation with the California Department of Fish and Wildlife) shall be established around the roosting site within which no construction activities including tree removal or structure disturbance shall occur until after the nursery season.

With implementation of MM BIO-2.1 through MM BIO-2.5, the project’s impact to special status bats would be reduced to a less than significant level.

Impact BIO-3: Use of heavy equipment within the dripline of existing trees during development of the proposed project could result in damage to existing trees and failure of preservation, resulting in significant impacts to existing trees.

MM BIO-3.1: Tree Preservation. Prior to issuance of demolition permits on the project, the following measures shall be implemented and marked on all plans to protect the four existing trees to be retained during project construction.

- Establish a Tree Protection Zone around trees to be preserved. As a general guideline, the Tree Protection Zone shall be the property line.
- Route underground services including utilities, sub-drains, water or sewer around the Tree Protection Zone. Where encroachment cannot be avoided, special construction techniques such as hand digging or tunneling under roots shall be employed where necessary to minimize root injury.
- Use only herbicides safe for use around tree and labeled for that use, even below pavement.
- Design irrigation systems so that no trenching will occur within the Tree Protection Zone.
- Install protection at the Tree Protection Zone prior to demolition, grubbing, or grading.
- No entry is permitted into a Tree Protection Zone without permission of the project superintendent.,
- Trees to be preserved may require pruning to clean the crown and to provide clearance. All pruning shall be completed by an International Society of Certified Arborist or Tree Worker and adherence to the latest editions of the American National Standards for tree work (Z133 and A300) and International Society of Arboriculture Best Management Practices, Pruning.
- Any grading, construction, demolition or other work that is expected to encounter roots of trees to be preserved should be monitored by the Consulting Arborist.
- If injury occurs to any tree during construction, it should be evaluated as soon as possible by the Consulting Arborist so that appropriate treatments can be applied.
- Fences are to remain until all site work has been completed. Fences may not be relocated or removed without permission of the project superintendent.
- Construction trailers, traffic and storage areas must remain outside fenced areas at all times.
- No materials, equipment, soil, waste or wash-out water may be deposited, stored, or parked within the Tree Protection Zone (fenced area).
- Any additional tree pruning needed for clearance during construction must be performed by a Consulting arborist and not by construction personnel.
- Any roots damaged during grading or construction shall be exposed to sound tissue and cut cleanly with a saw.

With implementation of MM BIO-3.1, impacts to existing trees from construction activities associated with the proposed project would be reduced to a less than significant level.

E. CULTURAL AND TRIBAL CULTURAL RESOURCES.

Impact CUL-1: Ground disturbing activities associated with project construction may result in impacts to unrecorded archaeological resources.

MM CUL-1.1: Prior to issuance of any grading permits, the project applicant shall submit evidence to the Director of Planning, Building and Code Enforcement or the Director's designee that an Archaeological Monitoring Contractor Awareness Training was held prior to ground disturbance. The training shall be facilitated by the project archaeologist in coordination with a Native American representative from a California Native American tribe that has consulted on the project, is registered with the Native American Heritage Commission (NAHC) 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 CUL-1.2: Prior to the issuance of any grading permits, the project applicant shall engage a qualified archaeological monitor and Native American tribal monitor registered with the NAHC for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 2108.0.3 and that has consulted on the project. The archaeological and tribal monitors shall be present at the project site during all demolition and grading disturbance activities. The project applicant shall submit a copy of the agreement to the Director of Planning, Building and Code Enforcement or the Director's designee.

With implementation of the Mitigation Measure CUL-1.1, and CUL-1.2 the proposed project would have a less than significant impact to as yet unrecorded archaeological resources.

- 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: Due to the agricultural history of the site, there is a potential that the shallow soil contains residual organochlorine pesticides and/or pesticide-based metals arsenic and lead from historic pesticide application. If pesticides are present and not mitigated, construction of the project could result in exposure of construction workers, adjacent properties, and future site occupants to pesticide contamination.

MM HAZ-1.1: Following demolition of the existing building and pavement, but prior to issuance of any grading permits, the project applicant shall retain a qualified environmental professional to complete a Phase II soil contamination investigation to evaluate past agricultural use. The Phase II shall include shallow soil sampling and analysis for organochlorine pesticides and pesticide-based metals, arsenic and lead to determine if these chemicals are present above Regional Water Quality Control Board (RWQCB) environmental screening levels (ESLs) for construction worker safety and residential uses. The results of the soil sampling and testing must be provided to the Director of Planning, Building and Code Enforcement or the Director's designee, and the City's Environmental Compliance Officer. If the Phase II results indicate soil concentrations above the RWQCB ESLs, the project applicant must obtain regulatory oversight from the Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified environmental consultant under regulatory oversight and approval that identifies remedial measures and/or soil management practices to ensure construction worker safety and the health of future site occupants. 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 City's Environmental Compliance Officer in the City of San José Environmental Services Department.

Through incorporation of mitigation measure MM HAZ-1.1, the level of soil contamination (if any)

would be identified, and soils would be handled and disposed of in a safe manner. Therefore, the proposed project would not result in exposure to hazardous materials associated with historical agriculture operations during construction or long-term upon project occupancy.

- 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: Project construction would occur for more than one year and be located within 500 feet of residential uses, conflicting with General Plan EC_1.7 for construction noise impacts.

MM NOI-1.1: Prior to the issuance of any grading or demolition 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 to respond to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. The noise disturbance coordinator shall be in place prior to the start of construction. The noise logistic plan shall be signed by a qualified acoustical specialist verifying that this plan meets the reduction to noise levels and shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee. 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:

- Limit construction hours to 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. 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 PBCE that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses
- 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 screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Utilize “quiet” air 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.

Mitigation measure MM NOI-1.1 would reduce construction noise impacts in accordance with the General Plan Policy EC-1.7 to a less than significant level.

Impact NOI-2: The mechanical equipment for the project has the potential to exceed 55 dBA DNL at adjacent noise-sensitive land uses.

MM NOI-2.1: Prior to issuance of building permits, mechanical equipment shall be selected and designed to meet the City’s 55 dBA DNL noise level requirements at the property line of nearby noise sensitive land uses. The applicant shall retain a qualified acoustical consultant to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce equipment noise to comply with the City’s noise levels requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. Other alternate measures include locating equipment in less noise-sensitive areas (such as along the building facades farthest from the nearest residences) where feasible. The findings and recommendations from the acoustical consultant for noise reduction measures shall be submitted to the Director of Planning, Building and Code Enforcement or Director’s designee for review and approval prior to the issuance of any building permits.

With implementation of NOI-2.1, the project would have a less than significant operational noise impact from mechanical equipment.

- 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** – Refer to item E. Cultural and Tribal Cultural Resources above.
- 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

The public review period starts on **February 3, 2023**, and end on **February 23, 2023**. Before **February 23, 2023, 5:00pm**, 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

February 1, 2023

 Date

 Deputy

Tina Garg
 Environmental Project Manager

Circulation Period: February 3, 2023 to February 23, 2023