

## **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:** 70-80 North 27th Street Residential Project

**PROJECT FILE NUMBER:** SP22-0004 and ER22-038

**PROJECT DESCRIPTION:** The proposed project is an application for a Special Use Permit (SUP) to demolish a partially occupied 21,454 square feet two -story retail commercial building and construct a new residential building consisting of five floors of residential units (198 in total) over common open space and vehicle parking for a total building height of 87 feet (including architectural features , such as parapets, turrets, and spires)..

**PROJECT LOCATION:** at 70-80 North 27th Street, in the City of San José

**ASSESSORS PARCEL NO.:** 467-09-076

**COUNCIL DISTRICT:** 3

**APPLICANT CONTACT INFORMATION:** HC Investment Associates LP, 63 Crescent Drive, Palo alto, CA, 94301. vickymings@gmail.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** –

**Impact AQ-1:** The project would have an exceedance with respect to community risk caused by project construction since the unmitigated maximum cancer risk exceeds the BAAQMD single-source threshold. Construction activities associated with the proposed project would expose the maximum exposed individual (MEI) to a cancer risk of 35.89 cases per one million for infants which exceeds the Bay Area Air Quality Management District (BAAQMD) significance threshold of 10 cases per one million.

**MM AQ-1:** Prior to the issuance of any demolition or grading permits (whichever occurs first), a qualified air quality consultant shall prepare and submit a construction operations plan to the Director of Planning or Director's designee of the City of San José Department of Planning, Building and Code Enforcement demonstrating use of construction equipment with low diesel particulate matter exhaust or meets a fleet-wide average 70-percent reduction in DPM exhaust emissions. 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.

1. 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 (PM<sub>10</sub> and PM<sub>2.5</sub>), if feasible, otherwise,
  - a. 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 75 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination).
  - b. Use of electrical or non-diesel fueled equipment.
2. 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 75 percent or greater. Elements of the plan could include a combination of some of the following measures:
  - Implementation of No. 1 above to use Tier 4 or alternatively fueled equipment,
  - Installation of electric power lines during early construction phases to avoid use of diesel generators and compressors,
  - Use of electrically-powered equipment,
  - Forklifts and aerial lifts used for exterior and interior building construction shall be electric or propane/natural gas powered,

- Change in construction build-out plans to lengthen phases, and
- Implementation of different building techniques that result in less diesel equipment usage.

With implementation of MM AQ-1, the infant residential cancer risk would be reduced to 7.67 cases per one million which would be below the BAAQMD significance threshold of 10 per one million cases for cancer risk.

#### **D. BIOLOGICAL RESOURCES.**

**Impact BIO-1:** Project construction would result in impacts to nesting birds, if present on the site at the time of construction.

**MM BIO-1.1:** Prior to any tree removal, or issuance of any grading or demolition 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). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching.

**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 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 ornithologist shall inspect all trees and other possible nesting habitats on-site and within 250 feet 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 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.

**MM BIO-1.4:** Prior to any tree removal, or any grading or demolition activities (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.

- E. CULTURAL AND TRIBAL 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.

## **HAZARDS AND HAZARDOUS MATERIALS.**

**Impact HAZ-1:** Development of the proposed project could result in impacts to construction workers, future site occupants, nearby communities, and the environment from exposure to potentially hazardous soil conditions resulting from previous railroad uses on the site. These include chemicals commonly used by railroad companies for dust suppression and weed control along rail lines, including metals, petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), and pesticides which may be present in site soil.

**MM HAZ-1:** Prior to the issuance of any grading permits, the project applicant shall hire a qualified environmental professional to complete a Phase II Environmental Site Assessment to address the concerns associated with the presence of former railroad track spurs as recommended in the Phase I Environmental Site Assessment completed by Cornerstone Earth Group dated May 11, 2021. The Phase II ESA shall include the collection of soil samples in the vicinity of the former railroad spurs to determine if commonly noted contaminants along railroad lines such as metals, petroleum hydrocarbons, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs) and pesticides occur at concentrations above established construction worker safety and residential standard environmental screening levels. Results of the Phase II shall be provided to the City of San José Planning, Building, and Code Enforcement Supervising Planner, and the Environmental Services Department Municipal Compliance Officer.

If the Phase II ESA results indicate soil contamination above the applicable regulatory environmental screening levels, the applicant shall obtain regulatory oversight from the Regional Water Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC) or Santa Clara County Department of Environment Health (SCCDEH) under their Site Cleanup Program. Any further investigation and remedial actions shall be performed under regulatory oversight to mitigate the contamination. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified hazardous materials consultant and the plan must establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and site occupants. The Plan and evidence of regulatory oversight shall be provided to the Supervising Environmental Planner of the City of San José Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

Implementation of MM HAZ-1 (on-site soil sampling and remediation, if needed) in conformance with General Plan policies and federal, state, and local laws would ensure that hazards and hazardous material impacts associated with historic railroad use would be reduced to a less than significant level.

- 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 a significant temporary construction-related noise impact to surrounding residential, commercial, and industrial uses for more than 12 months.

**MM NOI-1.1:** Pursuant to General Plan Policy EC-1.7, prior to issuance of any grading or demolition permits, the project applicant shall prepare a construction noise logistics plan that specifies 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 plan shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. Project construction operations shall use best available noise suppression devices and techniques including, but not limited to, the following:

- Pile driving is prohibited.
- Limit construction hours to between 7:00 a.m. and 7:00 p.m., 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 Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses, if necessary to reduce noise to acceptable levels.
- 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. Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. 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. 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.

- 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** – 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**

The public review period starts on **April 7, 2023**, and end on **April 27, 2023**. Before **April 27, 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

April 4, 2023

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Date

*Tina Garg*

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Deputy

Tina Garg  
Environmental Project Manager

**Circulation Period: April 7, 2023 to April 27, 2023**