

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE 3464 AMBUM AVENUE RESIDENTIAL PROJECT MITIGATED NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, prior to the adoption of this Resolution, the Director of Planning, Building and Code Enforcement of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the 3464 Ambum Avenue Residential Project under Planning File Nos. PDC22-008, PD22-021, T22-034, ER22-237, all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

WHEREAS, the 3464 Ambum Avenue Residential Project (the “Project”) analyzed under the Initial Study supporting a Mitigated Negative Declaration (IS/MND) consists of a Planned Development Rezoning, Planned Development Permit, and a Tentative Map to allow the demolition of existing improvements on-site, the removal of 23 ordinance-size trees and 16 non-ordinance-size trees, the reconfiguration of the parcel to be subdivided into four lots, the construction of a new single-family residences on each lot, and the reconfiguration of an existing driveway into a private street on a 2.59-acre site (Assessor’s Parcel Number: 654-55-015), San José, California; and

WHEREAS, the IS/MND concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the “Mitigation Monitoring and Reporting Program”); and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

WHEREAS, the City Council has reviewed and considered the IS/MND and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the IS/MND and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and electronically on the City of San José’s Department of Planning, Building and Code Enforcement website, and are, by this reference, incorporated into this Resolution as if fully set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the IS/MND and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the IS/MND prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the IS/MND represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning, Building and Code Enforcement, at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File Nos. PDC22-008, PD22-021, T22-034, ER22-237). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The IS/MND and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and electronically on the City of San José's Department of Planning, Building and Code Enforcement website, and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

3464 Ambum Avenue Residential Project
File No. PDC22-008, PD22-021, T22-034, ER22-237
June 2024



PREFACE

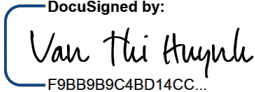
Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the 3464 Ambum Avenue Residential project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This MMRP addresses those measures in terms of how and when they will be implemented.

The mitigation measures enumerated in this document would reduce the level of impact of potential environmental effects of the proposed action. In all cases, these mitigation measures would reduce the impact of effects determined to be significant prior to mitigation to less-than-significant levels.

This document does *not* discuss those subjects for which the IS/MND concluded that the impacts from implementation of the project would be less than significant.

I, Van Thi Huynh, the applicant, on the behalf of VIAM Ambum Partners LLC, hereby agree to fully implement the mitigation measures described below which have been developed in conjunction with the preparation of an IS/MND for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level.

Project Applicant's Signature 

Date 9/4/2024



Planning, Building and Code Enforcement
CHRISTOPHER BURTON, DIRECTOR

File Nos. PDC22-008, PD22-021
T22-034, ER22-237
3464 Ambum Avenue Residential Project

MONITORING AND REPORTING PROGRAM

MITIGATIONS

Implementation Actions
[Project Applicant/Proponent Responsibility]

Compliance Reporting
[Lead Agency Responsibility]

**Method of Compliance
Or Mitigation Action**

**Timing of
Compliance**

**Oversight
Responsibility**

Actions/Reports

**Monitoring
Timing or
Schedule**

BIOLOGICAL RESOURCES

Impact BIO-1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.

MM BIO-1.1: 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 1 through August 31, inclusive.

Schedule tree removal and construction to between July 1 through January 31. Notify the Director of Planning, Building and Code Enforcement or Director’s designee of approximate start and end date of site disturbance activities.

Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest)

Director of Planning, Building and Code Enforcement or Director’s designee

Confirm start of construction activities is outside of nesting season

Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest)

If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active 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 1 through April 30, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1 through August 31, inclusive), unless a shorter pre-construction survey is determined

A qualified ornithologist shall complete pre-construction surveys to identify active nests that may be disturbed during project implementation in the event tree removal and construction cannot be scheduled outside of the nesting season.

Unless a shorter pre-construction survey is determined to be appropriate by the qualified ornithologist, the pre-construction survey shall be completed no more than 14 days prior to the initiation of

Director of Planning, Building and Code Enforcement or Director’s designee

Receive, review, and approve the pre-construction survey results report

Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest)



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to be appropriate based on the presence of a species with a shorter nesting period. During this survey, the ornithologist shall 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 would be disturbed by construction, the ornithologist shall designate a construction-free buffer zone to be established around the nest. The buffer would ensure that raptor or migratory bird nests would not be disturbed during project construction.

demolition/construction activities during the early part of the breeding season and no more than 30 days prior to the initiation of these activities during the late part of the season as per the dates outlined in MM BIO -1.1.

Prior to the issuance of any grading or building permit for work occurring between February 1 –August 31, the project applicant shall submit a report indicating the results of the pre-construction survey and any designated buffer zones to the satisfaction of the Director of Planning, Building, and Code Enforcement.

A report prepared by a qualified ornithologist indicating the results of the pre-construction survey will be submitted to the City.

Prior to the issuance of any grading or building permit for work occurring between February 1 – August 31





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MITIGATIONS	Implementation Actions [Project Applicant/Proponent Responsibility]		Compliance Reporting [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-1: Construction activities associated with the proposed project could expose construction workers and/or nearby residents to contaminated soils from previous agricultural operations.					
<p>MM HAZ-1.1.: Prior to the issuance of any demolition or grading permit, the project applicant shall retain an environmental professional to collect shallow soil samples on the project site to determine whether organochlorine pesticides and metals (e.g., arsenic and lead) from pervious agricultural operations are present on-site at concentrations above established residential environmental screening levels (ESLs). The results of soil sampling and testing shall be provided to the City’s Supervising Planner of the Planning, Building and Code Enforcement Department and the Municipal Compliance Officer of the City of San José Environmental Services Department for review.</p> <p>If pesticide contaminated soils are found in concentrations above regulatory ESLs, the applicant shall obtain regulatory oversight from Santa Clara County Department of Environmental Health (SCCDEH) or the Department of Toxic Substances</p>	<p>The applicant shall have an environmental professional conduct soil sampling to determine the concentrations of organochlorine pesticides and metals, as outlined in MM HAZ-1.1, to determine if they are above residential ESLs.</p> <p>If contaminated soil is found above regulatory ESLs, regulatory oversight from the SCCDEH or DTSC under the SCP will be obtained and a qualified hazardous materials consultant shall prepare a Site Management Plan (SMP), Removal Action Plan (RAP), or</p>	<p>Prior to issuance of the demolition or grading permit (whichever occurs earliest)</p>	<p>City’s Supervising Planner of the Planning, Building and Code Enforcement Department and the Municipal Compliance Officer of the City of San José Environmental Services Department</p>	<p>Receive and review the report(s) from the qualified hazardous materials consultant</p>	<p>Prior to issuance of the demolition or grading permit (whichever occurs earliest)</p>

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Planning, Building and Code Enforcement
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MITIGATIONS	Implementation Actions [Project Applicant/Proponent Responsibility]		Compliance Reporting [Lead Agency Responsibility]		
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Control (DTSC) under their Site Cleanup Plan (SCP). In addition, a Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified hazardous materials consultant. The plan shall establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors. The plan and evidence of regulatory oversight (as well as the results of the soil sampling and testing) 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 Environmental Services Department.	equivalent document. The qualified hazardous materials consultant shall prepare a report summarizing the results of the soil sampling and testing, evidence of regulatory oversight (if required), and include copies of the SMP, RAP, or equivalent document, and submit to the City.				

NOISE

Impact NOI-1: The mechanical equipment for the project has the potential to exceed 55 dBA DNL at adjacent single-family residences.

MM NOI-1.1: 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	The applicant shall retain a qualified acoustical consultant to review the mechanical noise equipment to determine the necessary noise reduction measures necessary to meet the City’s 55 dBA DNL noise level	Prior to issuance of building permits	Director of Planning, Building and Code Enforcement or Director’s Designee	Receive and review the qualified acoustical consultant’s findings and recommendations	Prior to issuance of building permits
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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.	requirement. The acoustical consultant’s findings (including any measures needed to comply with the City’s noise level requirements) will be submitted to the Director of Planning, Building and Code Enforcement or Director’s designee for review and approval .			for approval	
Impact NOI-2: Construction of the project could exceed the vibration limit of 0.2 in/sec PPV at adjacent single-family residences.					
MM NOI-2.1: Prior to the issuance of any demolition, grading, tree removal, or building permits (whichever occurs first), a qualified noise consultant shall review the final construction equipment list for the project to ensure the construction equipment would not exceed the 0.2 in/sec PPV thresholds for conventional construction buildings at the nearby properties. A project-specific vibration plan shall be prepared and	The applicant shall retain a qualified noise consultant to review and confirm the final construction equipment list adheres to the PPV threshold identified in MM NOI-2.1. A project-specific vibration plan shall be prepared by the qualified	Prior to the issuance of any demolition, grading, tree removal, or building permits (whichever occurs first)	The Director of Planning, Building and Code Enforcement or Director’s designee for review and	Receive and review the vibration plan for adherence to MM NOI-2.1	Prior to the issuance of any demolition, grading, tree removal or building permits (whichever occurs first)



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include the project’s planned vibration-generating construction activities (e.g., demolition, vibratory compaction), the potential project-specific vibration levels (given project-specific equipment and soil conditions, if known) at specific building locations that may be impacted by the vibration-generating work activities (generally buildings within 50 feet of the work area), and identify any necessary vibration control measures to reduce levels to 0.2 in/sec PPV or below. The project applicant shall submit a copy of the project-specific vibration plan to the Director of Planning, Building and Code Enforcement or Director’s designee for review and approval.	noise consultant according to the parameters discussed in MM NOI-2.1 and the project applicant shall submit a copy of the plan to the Director of Planning, Building and Code Enforcement or Director’s designee for review and approval.		approval		

Source: City of San José. *3464 Ambum Avenue Residential Subdivision Project*. June 2024.