



**ADDENDUM TO AN EIR  
USE OF A FINAL EIR PREPARED FOR A PREVIOUS PROJECT**

Pursuant to Section 15164 of the CEQA Guidelines, the City of San Jose has prepared an Addendum to an Environmental Impact Report (EIR) because minor changes made to the project that are described below do not raise important new issues about the significant impacts on the environment.

**PROJECT DESCRIPTION AND LOCATION**

PDC05-114. Planned Development Rezoning from CO(PD) Commercial Office Planned Development, LI Light Industrial, CG Commercial General Zoning Districts to A(PD) Planned Development Zoning District to allow up to 460 multi-family attached residences and 20,000 square feet for retail commercial uses on a 2.4 gross acres site  
Council District 3. County Assessor's Parcel Number 230-29-034 & 230-29-022

The environmental impacts of this project were addressed by a Final EIR entitled, "North San Jose Area Development Policies Update," and findings were adopted by City Council Resolution No. 72768 on June, 2005. Specifically, the following impacts were reviewed and found to be adequately considered by the EIR:

Traffic and Circulation	Soils and Geology	Noise
Cultural Resources	Hazardous Materials	Land Use
Urban Services	Biotics	Air Quality
Aesthetics	Airport Considerations	Microclimate
Energy	Relocation Issues	Construction Period Impacts
Transportation	Utilities	Facilities and Services
Water Quality		

**ANALYSIS:**

The City of San Jose may take action on the proposed project as being within the scope of the North San Jose Area Development Policies Update Final EIR adequately addresses the environmental effects of the proposed project, and project would not result in significant environmental effects that are not already identified in the Final EIR. The project, therefore, meets the eligibility requirements for preparation of an addendum and does not require a supplemental EIR or ND.

Chris Burton  
Project Manager

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

8/16/07  
Date

Atari Sanchez  
Deputy

**1731 and 1733 North First Street Mixed-Use Project  
(PDC05-114)**

**ADDENDUM TO THE  
NORTH SAN JOSE DEVELOPMENT POLICIES UPDATE  
FINAL ENVIRONMENTAL IMPACT REPORT**

**CITY OF SAN JOSE**

**August, 2007**

**Table 4.4-1  
Tree Survey Summary**

Common Name	Scientific Name	Diameter in Inches			Total # of Trees	Health		
		1-11	12-17	18+		Poor	Fair	Good
Japanese Maple	<i>Acer palmatum</i>	1			1			1
Birch	<i>Betula papyrifera</i>	4			4			4
Crape Myrtle	<i>Lagerstroemia indica</i>	29			29			29
Privet	<i>Ligustrum lucidum</i>	8	1		9	1	8	
Liquidamber	<i>Liquidamber styraciflua</i>	4	4	1	9			9
Aleppo Pine	<i>Pinus halepensis</i>		1		1			1
Sycamore	<i>Platanus racemosa</i>	8	8		16		1	15
Xylosma	<i>Xylosma congestum</i>	1	1		2			2
Totals		55	15	1	71	1	9	61

**4.4.1.3 City of San José Heritage Trees**

Under the City of San José Municipal Code, Section 13.28.330 and Section 13.32.090, specific trees are found, because of factors including, but not limited to, their history, girth, height, species or unique quality, to have a special significance to the community and are designated Heritage Trees. There are no heritage trees on the project site.

**4.4.2 Environmental Checklist and Discussion**

BIOLOGICAL RESOURCES						
	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as "Approved Project"	Less Impact than "Approved Project"	Information Source(s)/ Discussion Location
Would the project:						
1) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1
2) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1

BIOLOGICAL RESOURCES						
	New Potentially Significant Impact	New Less Than Significant With Mitigation Incorporated	New Less Than Significant Impact	Same Impact as "Approved Project"	Less Impact than "Approved Project"	Information Source(s)/ Discussion Location
Would the project:						
3) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1
4) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1
5) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1,6
6) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1

4.4.2.1 *Special-Status Plant and Animal Species*

As described above, due to the lack of suitable habitat, special-status plant species are not likely to occur on-site. The development of the proposed project, therefore, would not result in impacts to special-status plant species.

**Nesting Raptors**

Although the site is primarily used by species common to developed areas, some raptors (i.e., falcons, hawks, eagles, owls) may use the larger trees on the site for nesting. Nesting raptors are protected under provisions of the Migratory Bird Treaty Act (MBTA) and the California Department of Fish and Game (CDFG). The federal Migratory Bird Treaty Act (MBTA; 16 U.S.C., §703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs. Construction disturbance on the site during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment, a violation of the Migratory Bird Treaty Act.

Migratory birds are also protected in California. The California Fish and Game Code §3503 emulates the federal MBTA and protects birds' nests and eggs from all forms of take. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "take" by the California Department of Fish and Game (CDFG). Section 3503.5 states that it is "unlawful to take, possess, or destroy any birds in the order Falconiformes or Strigiformes (birds of prey) or to take, possess, or

destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.” In addition, the State Code includes a section enforcing the Migratory Bird Treaty Act.

**Impact BIO-1:** The proposed project could result in direct impacts to nesting raptors. (Significant Impact)

**Mitigation Measures:** The project proposes the following mitigation measure to reduce impacts to nesting raptors to a less than significant level:

**MM BIO-1.1:** Pre-construction surveys for nesting raptors shall be completed by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be completed no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be completed no more than (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish and Game, designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Department of Planning, Building, and Code Enforcement prior to the issuance of any grading or building permit.

#### **4.4.2.2 Ordinance-Size Trees**

The project would result in the removal of all 71 trees on-site, including one ordinance-size liquidamber tree. The development of the proposed project, therefore, would contribute to the significant impact to trees identified in the certified 2005 NSJ FPEIR. Construction and demolition activities within the dripline of trees on adjacent properties may result in impacts to the health of those trees. The proposed project, however, would not result in any new or more significant impacts to trees than were described in the certified 2005 NSJ FPEIR.

**Impact BIO-2:** The project would result in the removal of 71 trees, including one ordinance-size tree on the site. (Significant Impact)

**Mitigation Measures:** The project proposes to implement the following mitigation and avoidance measures:

**MM BIO-2.1:** The proposed project shall replace trees removed at the following ratios:

Table 4.4-2 Standard Tree Replacement Requirements		
Diameter of Tree to be Removed	Non-Native	Minimum Size of Each Replacement Tree
18 inches or greater	4:1	24-inch box
12 – 18 inches	2:1	24-inch box
Less than 12 inches	1:1	15-gallon container
<b>Notes:</b> X:X = Tree replacement to tree loss ratio Trees greater than 18-inches in diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.		

**MM BIO-2.2:** Since the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building, and Code Enforcement, at the development permit stage:

- The size of a 15-gallon replacement tree can be increased to 24-inch box and count as two replacement trees.
- An alternative site(s) shall be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement.<sup>3</sup>
- A donation of \$300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting will be provided to the Planning Project Manager prior to issuance of a development permit.

**AM BIO-2.1:** The project shall implement the following measures to avoid impacts to trees on adjacent properties:

- The project proponent shall retain a consulting arborist prior to any ground disturbance activities. The consulting arborist shall develop a tree protection plan outlining specific procedures to ensure that trees on adjacent properties are protected during the construction phase.
- For retained trees in the immediate vicinity of construction or demolition areas, problems of soil compaction within the root zone resulting from

<sup>3</sup> Contact Todd Capurso, PRNS Landscape Maintenance Manager, at (408) 277-2733 or [todd.capurso@sanjoseca.gov](mailto:todd.capurso@sanjoseca.gov) for specific park locations in need of trees.

heavy construction equipment shall be prevented. In order to minimize construction and demolition impacts to remaining trees, barrier fencing shall be installed around the dripline of all retained trees or at the edge of construction areas. Any construction or demolition activities taking place within the dripline of retained trees shall be done by hand or with light equipment that does not cause soil compaction. All fencing shall remain in place throughout the construction phase of the project. The type of fencing to be utilized shall be at the direction of the consulting arborist.

- Any limb or root pruning to be conducted on retained trees shall be approved and supervised by the consulting arborist and shall follow best management practices developed by the International Society of Arboriculture.
- Supplemental irrigation to retained trees shall be applied as determined by the consulting arborist.
- If any of the retained trees should be damaged during the construction phase, they shall be evaluated at the earliest possible time by the consulting arborist so that appropriate measures can be taken.

#### 4.4.3 Conclusion

**Impact BIO-1:** The proposed project, with the implementation of the above mitigation measure, would not result in any new or more significant impacts to nesting raptors than those addressed in the certified 2005 NSJ FPEIR. (No New Impact)

**Impact BIO-2:** The proposed project, with the implementation of the above mitigation and avoidance measures, would not result in any new or more significant impacts to biological resources than those addressed in the certified 2005 NSJ FPEIR. (No New Impact)