

**DRAFT  
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.

**NAME OF PROJECT:** Lands of Lester

**PROJECT FILE NUMBER:** GP10-10-01, PDC10-007, and Downer No. 11

**PROJECT DESCRIPTION:** The approximately 9.8-acre project site consists of an approximately 8.5-acre parcel (APN 464-22-030), an approximately 1.2-acre parcel (APN 464-44-057), and approximately 0.1 acres of a larger 1.3-acre parcel (APN 464-22-029). Parcels 464-22-030 and 464-22-029 are located in unincorporated Santa Clara County. Parcel 464-44-057 is located within the City of San José. The project proposes to:

- Subdivide APN 464-22-029 into two parcels: one parcel 0.1 acres in size and the other parcel 1.2 acres in size;
- Annex an 8.5-acre parcel (APN 464-22-030) and 0.1 acres of APN 464-22-029 into the City of San José;
- Prezone the 8.5-acre parcel and 0.1 acres of APN 464-22-029 and rezoning the 1.2-acre parcel (APN 464-22-057) to *A(PD) – Planned Development* to allow for the development of between 85 and 90 single-family detached units;
- Amend the City of San José’s General Plan to change the land use designation on the entire project site from *Public Park and Open Space* to *Medium Density Residential* (8-16 dwelling units per acre); and
- Relocate the existing park easement on APN 464-22-030 to APN 464-44-057.

**PROJECT LOCATION & ASSESSORS PARCEL NO.:** The approximately 9.8-acre project site is located at the northeast quadrant of Blossom Hill Road and Cahalan Avenue. The project site consists of the following parcels: APN’s 464-22-030, 464-44-057, and a portion of 464-22-029.

**COUNCIL DISTRICT:** 10

**APPLICANT CONTACT INFORMATION:** SummerHill Homes, 777 California Avenue Palo Alto, CA 94304. ATTN: Vince Cantore, (925) 244-7532.

## **FINDING**

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

### **MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL**

- I. AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- II. AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- III. AIR QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- IV. BIOLOGICAL RESOURCES** –

The project will implement the following standard measure to reduce impacts to white-tailed kite, raptors, and migratory birds to a less than significant level:

- If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted 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 conducted 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 no more than thirty (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 & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.

The project will implement the following standard measure to reduce impacts to burrowing owls to a less than significant level:

- The developer shall have a qualified biologist complete a survey and prepare a report not more than one month prior to construction activities to determine the presence of burrowing owls on the site.

The survey shall be conducted in a manner consistent with the recommendations as outlined by the California Department of Fish & Game's *Staff Report on Burrowing Owl Mitigation* (1995), the burrowing owl's consortium's *Burrowing Owl Survey Protocol and Mitigation Guidelines* (1997). In summary, these protocols recommend conducting pedestrian surveys of the subject parcel in such a way as to allow 100 percent visual coverage of the site. An initial survey is used to determine if the site supports potentially suitable nesting habitat (i.e., ground squirrel burrows) for the owl. Typically, sites in Santa Clara County that support open habitats (e.g., ruderal field, grassland, oak savanna, etc.) and ground squirrel activity are considered potentially suitable habitat for the owl. If the initial survey concludes that the site supports potentially suitable habitat, then three additional, or Phase II, surveys may be necessary to ascertain if owls are present on the site.

If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (February 1 through August 31). Prior to the issuance of any grading or building permits, the developer shall submit a biologist's report to the satisfaction of the City's Environmental Principal Planner indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.

- V. CULTURAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VI. GEOLOGY AND SOILS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VII. GREENHOUSE GAS EMISSIONS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VIII. HAZARDS AND HAZARDOUS MATERIALS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- IX. HYDROLOGY AND WATER QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- X. LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XI. MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XII. NOISE** –

The project proposes to implement the following mitigation measures to reduce short-term construction noise impacts to a less than significant level:

- **MM NOI – 1.1:** Construction will be limited to the hours of 7:00 AM to 7:00 PM 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 uses.
- **MM NOI – 1.2:** The contractor shall use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poor maintained engines or other components.
- **MM NOI – 1.3:** Locate stationary noise generating equipment as far as possible from sensitive receptors. Staging areas shall be located as close as feasible to the City’s goal of at least 200 feet from noise sensitive receptors, such as residential uses.
- **MM NOI – 1.4:** The developer shall implement a Construction Management Plan, approved by the Director of Planning, Building and Code Enforcement, to minimize impacts on the surrounding sensitive land uses to the fullest extent possible. The Construction Management Plan would include measures to minimize impacts of construction upon adjacent sensitive land uses, including early and frequent notification and communication with the neighborhood of the construction activities.
- **MM NOI – 1.5:** Prohibit unnecessary idling of internal combustion engines.
- **MM NOI – 1.6:** Designate a “noise disturbance coordinator” who would be responsible for responding 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. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.

The project proposes to implement the following mitigation measures to reduce interior noise levels to 45 dBA DNL or lower:

- **MM NOI – 2.1:** Use sound-rate windows, doors, and exterior wall assemblies to reduce interior noise from outdoor sources to 45 dBA DNL.
  - Assuming a typical room size of 12 feet by 14 feet, with approximately 33-percent window on one or two exterior facades, and exterior walls consisting of three-coat stucco over wood sheeting, insulation in stud cavities, and at least two-layers of gypsum board on the interior, preliminary calculations suggest that sound insulation ratings in the range of STC 39 to 42 or higher may be needed at residences in the northern portion of the site nearest to Highway 85, and sound insulation ratings in the range of STC 32 to 35 may be needed in residences along Blossom Hill Road.
  - Sound insulation ratings will decrease towards the middle of the site, where typical dual-pane construction-grade windows will likely suffice, without specific higher STC ratings. For reference, typical dual-pane construction grade windows and sliding glass doors have sound insulation ratings in the range of STC 26 to 28.
  - Window and door sound insulation ratings must be for the complete assemblies, including frames and operable sashes. Sound insulation ratings shall be from tests conducted by an NVLAP accredited laboratory. For reference, sound insulation ratings of up to STC 36 can typically be achieved using high quality insulated windows with glazing selected to meet the required ratings. Sound insulation ratings between STC 36 and 39 can be achieved by some specialty window manufacturers by using 1-inch or 1-½ inch glazing sections. Ratings above STC 39 typically require dual sash or “four track” windows with frames that are 5 to 6 inches deep.
  - Specific details and sound insulation ratings shall be determined during the design phase, when the site plan, grading and floor plans, and exterior elevations have been developed. The height of the noise barrier along Highway 85 should be determined and a qualified acoustical consultant shall review this and drawings during the design phase and determine appropriate noise mitigation measures.
  - Dual pane windows and doors with equal glass thicknesses can have resonances that result in audible tones indoors. Acoustical test reports of all sound rated windows and doors shall be reviewed by a qualified acoustical consultant, and compared with traffic noise spectrums, prior to approval of building permits.
- **MM NOI – 2.2:** The project shall provide mechanical ventilation or air conditioning systems for each unit to allow a more habitable interior environment since windows will need to be closed to meet the indoor noise criterion.

**XIII. POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**XIV. PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

- XV. RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVI. TRANSPORTATION / TRAFFIC** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVII. UTILITIES AND SERVICE SYSTEMS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVIII. MANDATORY FINDINGS OF SIGNIFICANCE** – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

### **PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **November 3, 2010**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;  
or
2. Submit written comments regarding the information, analysis, and mitigation measures 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.

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

Circulation period, from October 14, 2010 to November 3, 2010

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Deputy

Revised 10.20.08 sbw

**Dear Project Applicant or Lead Agency: You requested that DFG evaluate your project and determine if your project is eligible for a CEQA filing fee exemption based on your assertion the project has “no effect” on fish and wildlife. Please complete the information below and return this document by email. To qualify for a fee exemption, the “Brief Project Description” below must clearly indicate why the project has no effect on fish and wildlife. The fee is required even if the effect on fish and wildlife is minimal or de minimis. Information in the Brief Project Description should come directly from the CEQA document prepared for the project. DFG’s determination will be final.**

**Applicant Name:**

**Date Submitted:**

**Applicant Address:**

**Project Name:**

**CEQA Lead Agency:** City of San Jose

**CEQA Lead Agency contact:**

**CEQA Lead Agency Address and phone number:** 200 East Santa Clara Street, T3, San Jose CA 95113

**CEQA Document Type: (ND, MND, EIR):**

**SCH Number and/or local agency ID number:**

**Project Location:**

**Brief Project Description:**

**Describe clearly why the project has no effect on fish and wildlife:** .