

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: Brookside Estates

PROJECT FILE NUMBER: PDC10-005

PROJECT DESCRIPTION: A Planned Development Rezoning from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow for the development of up to 94 single family detached residences on an approximately 15.8 gross acre site.

PROJECT LOCATION & ASSESSORS PARCEL NO.: Westerly side of Guadalupe Mines Road, approximately 1,350 feet southerly of Via Campagna (6401, 6409 & 6411 Guadalupe Mines Road); (APNs 575-02-022, -023, -024, -025, -026, and -027)

COUNCIL DISTRICT: 10

APPLICANT CONTACT INFORMATION:

Trumark Companies, 4185 Blackhawk Plaza Circle, Suite 200, Danville, CA 94506 (925-648-8300) ATTN: Chris Davenport

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 following dust control measures will be implemented by contractors during demolition of existing structures.
 - Watering to control dust generation during demolition of structures and break-up of pavement;
 - Cover all trucks hauling demolition debris from the site;
 - Use dust-proof chutes to load debris into trucks whenever feasible. Watering will be used to control dust generation during transport and handling of recycled.
 - The following construction practices will be implemented during all phases of construction to prevent visible dust emissions from leaving the site.
 - Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses will be kept damp at all times, or will be treated with non-toxic stabilizers or dust palliatives;
 - Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
 - Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
 - Sweep daily, or more often if necessary (preferably with water sweepers), all paved access roads, parking areas and staging areas at construction sites; water sweepers will vacuum up excess water to avoid runoff-related impacts to water quality;
 - Sweep streets daily, or more often if necessary (preferably with water sweepers), if visible soil material is carried onto adjacent public streets;
 - Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more);
 - Enclose, cover, water at least twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.) to prevent visible dust from leaving the site;
 - Limit traffic speed on unpaved roads to 15 mph;
 - Install sandbags or other erosion control measures to prevent silt runoff to public roadways; and
 - Replant vegetation in disturbed areas as quickly as possible.

IV. BIOLOGICAL RESOURCES

- Any tree that is removed shall be replaced with the addition of a new tree(s) at the ratios shown in the following Tree Replacement Ratios table.

Tree Replacement Ratios

Diameter of Tree to be Removed	<u>Type of Tree to be Removed</u>			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12 to 17 inches	3:1	2:1	None	24-inch box
Less than 12 inches	1:1	1:1	None	15-gallon container

x:x = tree replacement to tree loss ratio

Note: Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

- The species and exact number of trees to be planted on the site shall be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.
- Replacement trees are to be above and beyond standard landscaping; required street trees do not count as replacement trees.
- In the event 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 may be increased to 24-inch box and count as two replacement trees.
 - An alternative site(s) will 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. Contact Jaime Ruiz, Parks, Recreation and Neighborhood Services Landscape Maintenance Manager, at 975-7214 or jaime.ruiz@sanjoseca.gov for specific park locations in need of trees.
 - A donation of \$300.00 per mitigation tree will be paid to Our City Forest for in-lieu offsite tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. Contact Rhonda Berry, Our City Forest, at (408) 998-7337 x106 to make a donation. A donation receipt for offsite tree planting will be provided to the Planning Project Manager prior to issuance of a development permit.
- The following tree protection measures shall also be included in the project in order to protect trees to be retained during construction:

Pre-construction Treatments

- The applicant will retain a consulting arborist. The construction superintendent will meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
- Fence all trees to be retained to completely enclose the tree protection zone prior to demolition, grubbing or grading. Fences will be 6-foot chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction are completed.
- Prune trees to be preserved to clean the crown and to provide clearance. All pruning will be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.

During Construction

- No grading, construction, demolition or other work will occur within the tree protection zone. Any modifications must be approved and monitored by the consulting arborist.
 - Any root pruning required for construction purposes will receive the prior approval of, and be supervised by, the consulting arborist.
 - Supplemental irrigation will be applied as determined by the consulting arborist.
 - If injury should occur to any tree during construction, it will be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
 - No excess soil, chemicals debris, equipment or other materials will be dumped or stored within the tree protection zone.
 - Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel.
 - As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees will be designed to withstand differential displacement.
- If possible, construction should be scheduled between September and December (inclusive) to avoid the nesting season. If this is not possible, pre-construction surveys for nesting white-tailed kite, non-listed raptors and other non-listed breeding birds shall be conducted by a qualified biologist to identify active 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 shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying biologist shall inspect all trees in and within 250 feet of the construction area for active nests. If an active nest is found in or close enough to the construction area to be disturbed by these activities, the biologist shall, in consultation with the California Department of Fish and Game, designate a construction-free buffer zone (typically 250 feet) around the nest, which shall be maintained until after the breeding season has ended and/or a qualified biologist has determined that the young birds have fledged. 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 City's

Environmental Principal Planner prior to the issuance of any grading or building permit.

- A detailed bat survey shall be conducted to determine if bats are roosting or breeding in the onsite buildings prior to demolition. A qualified bat specialist shall look for individuals, guano, staining, and/or vocalization by direct observation and potential waiting for nighttime emergence. The survey shall be conducted during the time of year when bats are active, between April 1 and September 15. If demolition is planned within this timeframe, the survey shall be conducted within 30 days of demolition. An initial survey could be conducted to provide early warning if bats are present, but a follow-up survey will be necessary within 30 days. If demolition is planned outside of this timeframe (September 16 through March 31), the survey shall be conducted in September prior to demolition. If no bats are observed to be roosting or breeding in these structures, then no further action would be required, and demolition can proceed.
- If a non-breeding bat colony is found in the buildings to be demolished, the individuals should be humanely evicted via the partial dismantlement of the buildings prior to demolition under the direction of a qualified bat specialist to ensure that no harm or “take” would occur to any bats as a result of demolition activities. If a maternity colony is detected in the buildings, then a construction-free buffer shall be established around the structure and remain in place until it has been determined that the nursery is no longer active. Demolition should preferably be done between March 1 and April 15 or August 15 and October 15 to avoid interfering with an active nursery.
- A biologist report outlining the results of pre-construction bat surveys and any recommended buffer zones or other mitigation shall be submitted to the City’s Environmental Principal Planner and shall be approved to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.

V. CULTURAL RESOURCES

- Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California: In the event of the discovery of human remains during construction, there will be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner will be notified by the developer and will make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner will reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
- Any Native American human remains that are discovered and would be subject to disturbance will be removed and analyzed, a report will be prepared, and the remains

will be reburied in consultation and agreement with the Native American Most Likely Descendant designated by the Native American Heritage Commission. Prior to obtaining a Building Permit, a copy of the report will be submitted to the City's Environmental Principal Planner to the satisfaction of the Director of Planning.

- A qualified professional archaeologist shall be required to monitor all construction grading and utility trenching until the archaeologist is satisfied that construction will not disturb important archaeological deposits, as follows:
 - If no resources are discovered, the archaeologist shall submit a report to the City's Environmental Principal Planner verifying that the required monitoring occurred and that no further mitigation is necessary.
 - If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation shall proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines.
 - The archaeologist shall submit reports, to the satisfaction of the City's Environmental Principal Planner, describing the testing program and subsequent results; these reports shall identify any program mitigation to be completed in order to mitigate archaeological impacts (including resource recovery and/or avoidance, testing and analysis, removal, reburial, and curation of archaeological resources at a recognized storage facility). A final report shall verify completion of the mitigation program to the satisfaction of the City's Environmental Principal Planner.
 - In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required.

VI. GEOLOGY AND SOILS

- A Certificate of Geologic Hazard Clearance has been obtained from the Director of Public Works prior to any discretionary approval for all development in areas shown on the Geologic Hazards Ordinance map; and any Conditions of Clearance including, but not limited to, measures identified in the geologic evaluation for slope stabilization, surface and subsurface drainage control, offsite improvements, use restrictions, erosion control and/or maintenance guarantees for private improvements contained therein shall be implemented as specified. *A Certificate of Geologic Hazard Clearance was issued for the project on June 25, 2010.*
- A City-approved Erosion Control Plan will be developed and implemented prior to approval of a grading permit or Public Works clearance with such measures as: 1) the timing of grading activities during the dry months, if feasible; 2) temporary and permanent planting of exposed soil; 3) temporary check dams; 4) temporary sediment basins and traps and/or 5) temporary silt fences.
- The proposed structures on the site will be designed and constructed in conformance with the Uniform Building Code Guidelines for Seismic Zone 4 to avoid or minimize potential damage from seismic shaking on the site.
- The geologic hazard and preliminary geotechnical investigation report addressing the potential hazard of liquefaction will be submitted to, and reviewed and approved by, the City Geologist prior to issuance of a grading permit or Public Works clearance.

The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center (“SCEC”) report.

- The upper 3 to 4 feet of all existing artificial fill shall be over-excavated and replaced as engineered fill.
- All of the previously-placed fill material in the former detention pond area shall be over-excavated and replaced as engineered fill.
- Material transitions shall be over-excavated and rebuilt with engineered fill to reduce the potential for differential movement beneath structures.
- A creek bank setback equivalent to a 2:1 slope projection shall be established from the base of the creek bank.
- Foundations constructed within the potential co-seismic deformation zones shall be supported on rigid mat foundations designed to tolerate increased foundation movement compared to foundations located outside the designated zones.

VII. GREENHOUSE GAS EMISSIONS AND ENERGY

- Energy efficient design standards including the design and exposure of windows, insulation, mechanical and electrical equipment and landscaping will be incorporated in accordance with the provisions of Title 24 of the California Administrative Code and of the San Jose Building Code.
- The project will be reviewed for conformance to the Green Building Policy (Policy 6-32) at the Planned Development Permit stage.

VIII. HAZARDS AND HAZARDOUS MATERIALS

- If a well is found during grading operations, a well destruction permit will be obtained from the Santa Clara Valley Water District, and the well will be destroyed in accordance with District standards.
- If a septic system is found during grading operations, it will be abandoned in accordance with the requirements of the Santa Clara County Sewage Disposal Ordinance.
- The structure(s) to be removed will be surveyed for the presence of asbestos-containing materials at the demolition permit stage; and if any suspect ACM are present, they will be sampled prior to demolition in accordance with NESHAP guidelines, and all potentially friable ACM will be removed prior to building demolition and disposed of by offsite burial at a permitted facility in accordance with NESHAP, Cal-OSHA and BAAQMD requirements.
- The structure(s) to be removed will be surveyed for the presence of lead based paint at the demolition permit stage; and if any suspect LBP is present, it will be sampled prior to demolition, and all potential LBP will be removed prior to building demolition and disposed of by offsite burial at a permitted facility in accordance with EPA and OSHA requirements.

- A Soil Management Plan that provides protocol for contractors in the event that pockets of buried suspect materials (debris and/or garbage) are encountered during site development activities shall be prepared and implemented.
- Soil at the location of the boring with the mercury concentration detected above the residential CHHSL (SB-8) shall be over-excavated for appropriate offsite disposal.
- Soil at the location of the boring with the cadmium concentration detected above the residential CHHSL (SB-5) shall be over-excavated for appropriate offsite disposal.
- Verification samples shall be collected and analyzed for mercury and cadmium to document that the impacted soil has been sufficiently removed from the site.
- Regulatory agency oversight shall be requested if significantly elevated levels of contaminants of concern are detected in the soil samples.
- Soil with TPHd and TPHmo detected above the residential ESLs shall be over-excavated for appropriate offsite disposal.
- If pockets of petroleum-impacted soil are observed (i.e., soil with significant odors or discoloration) during project development, such soil shall be over-excavated for appropriate offsite disposal.
- Verification samples shall be collected and analyzed for TPHd and TPHmo to document that the impacted soil has been sufficiently removed from the site.

IX. HYDROLOGY AND WATER QUALITY

- Prior to the commencement of any clearing, grading or excavation, the project will comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the Director of Public Works, as follows:
 - The applicant will develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities; and
 - The applicant will file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB)The project design will conform to the City's Residential Design Guidelines.
- The project will incorporate Best Management Practices (BMPs) into the project to control the discharge of stormwater pollutants including sediments associated with construction activities.
- The project applicant will comply with the City of San Jose Grading Ordinance, including erosion and dust control during site preparation and with the City of San Jose Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:
 - Restriction of grading to the dry season (April 15 through October 15) or meet City requirements for grading during the rainy season;

- Utilize onsite sediment control BMPs to retain sediment on the project site;
 - Utilize stabilized construction entrances and/or wash racks;
 - Implement damp street sweeping;
 - Provide temporary cover of disturbed surfaces to help control erosion during construction; and
 - Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.
- Prior to the issuance of a Planned Development Permit, the applicant will provide details of specific BMPs including, but not limited to, bioswales, disconnected downspouts, landscaping to reduce impervious surface area, and inlets stenciled “No Dumping – Flows to Bay” to the satisfaction of the Director of Planning, Building and Code Enforcement
 - The project will comply with the Municipal Regional Stormwater NPDES Permit No. CAS612008, which provides enhanced performance standards for the management of stormwater of new development.
 - The project will comply with applicable provisions of the following City Policies – 1) Post-Construction Urban Runoff Management Policy (6-29) which establishes guidelines and minimum BMPs for all projects; and 2) Post-Construction Hydromodification Management Policy (8-14) which provides for numerically-sized (or hydraulically-sized) TCMs.

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

- Mechanical ventilation will be provided in accordance with Uniform Building Code requirements when windows are to be closed for noise control, to the satisfaction of the Chief Building Inspector.
- Post-construction mechanical equipment will conform to the City’s General Plan limitation of 55 dB DNL at residential property lines and 60 dB DNL at commercial property lines by utilizing measures such as equipment selection and location and, if necessary, equipment enclosures.
- Construction activities will be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or offsite 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.

- The contractor will 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 will be equipped with adequate mufflers and will be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.
- Stationary noise-generating equipment will be located as far as possible from sensitive receptors. Staging areas will be located a minimum of 200 feet from noise-sensitive receptors, such as residential uses.
- A 6-foot-high noise attenuation barrier shall be constructed along Guadalupe Mines Road.
- Windows and sliding glass doors shall be operable and STC 40 to 45 rated windows and doors and/or exterior wall assemblies including additional layers of gypsum board shall be installed to reduce indoor noise levels to 50 dBA in bedrooms and 55 dBA in other rooms at all residences subject to excessive single-event noise.
- Windows and sliding glass doors shall be operable and STC 28 or higher rated windows and doors shall be installed at all living spaces on the remainder of the site.
- All units shall be equipped with forced air ventilation systems to allow the occupants the option of maintaining the windows closed to control noise, and maintain an interior noise level of 45 dB DNL.
- Prior to issuance of building permits, the developer shall retain a qualified acoustical consultant to check the building plans for all units to ensure that interior noise levels will be attenuated to 45 dB DNL to the satisfaction of the Director of Planning, Building and Code Enforcement.
- A “noise disturbance coordinator,” who will be responsible for responding to any local complaints about construction noise, shall be designated. The disturbance coordinator shall 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 shall be conspicuously posted at the construction site.

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 **July 28, 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; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 801 North First Street, San Jose, Room 400 and include a \$50 filing fee. The written protest should make a “fair argument” based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Joseph Horwedel
Director, Planning, Building and Code Enforcement

Circulated on: _____

Deputy

Adopted on: _____

Deputy

MND/RE/9/24/01