



**PLANNING DIVISION**

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**MITIGATED NEGATIVE DECLARATION**

**I. DESCRIPTION OF PROJECT:**

**Date:** February 7, 2020

**Application #s:** SD2019-0004, DA 2019-0002,  
EA 2019-0019, SR 2019-0026

**APN:** 726-25-006

**Project Title:** Monterey Gateway

**Project Location:** 18110 Monterey Road  
Morgan Hill, CA 95037

**Project Proponent:** City Ventures, LLC  
444 Spear Street, Suite 200  
San Francisco, CA 94105  
(646) 522-4260

**Project Description:** The proposed project would include a Vesting Tentative Map to provide for subdivision of the project site into two parcels and a Design Review Permit to develop 101 multi-family units (including 15 below market rate (BMR) units and four live/work units), a commercial/retail building, and associated improvements. The existing on-site mobile home would be demolished.

The City adopted a Monterey Corridor Block-Level Master Plan Planned Development (BLMP PD) for the Monterey Road Corridor Block Four (Ordinance No. 2298) consistent with Policy CNF-13.4 of the Morgan Hill 2035 General Plan. The project site is located within Block Four and, thus, is covered by the BLMP PD. The BLMP PD includes the land use regulations for the Block. The project has been designed consistent with the BLMP PD.

Primary access to the proposed project would be provided by a new full-access driveway at Monterey Road, directly opposite the existing signalized intersection of Monterey Road and Old Monterey Road. Approximately 2,383 square feet (0.055-acre) at the project entrance would be dedicated to the City as right-of-way, resulting in a net project site acreage of 5.61-acres. The new east approach to the Monterey Road/Old Monterey Road intersection would include a separate left-turn lane and a shared through and right-turn lane.

At the southern site boundary, the project would include a 26-foot-wide future access easement and a 26-foot-wide future emergency vehicle access (EVA) easement. To facilitate access to the project site, the proposed project would include addition of a separate southbound left-turn lane designed to accommodate a 75-foot-long queue at the Monterey Road/Old Monterey Road intersection. In addition, the project would

include restriping of the middle exclusive eastbound left-turn lane to a shared through and left-turn lane. Such improvements would occur within the existing paved right-of-way.

Water and sewer service for the proposed development would be provided by the City through new connections to an existing eight-inch water line in Monterey Road and an existing sewer manhole in Peral Avenue to the west of the site. Stormwater would be collected by a series of drain inlets along the internal circulation system and transported, by way of underground storm drains, to an underground pipe manifold storage system located near the center of the site. The pipe manifold storage system would treat and detain all on-site runoff prior to discharging to the City's existing stormwater drain located in Monterey Road.

The proposed project would require the City's approval of the following entitlements:

- Adoption of the Initial Study/Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program;
- Approval of a Vesting Tentative Map (VTM) for APN 726-25-006; and
- Design Review Permit

## **II. DETERMINATION**

In accordance with the City of Morgan Hill procedures for compliance with the California Environmental Quality Act (CEQA), the City has completed an Initial Study to determine whether the proposed project may have a significant adverse effect on the environment. On the basis of that study, the City makes the following determination:

- Although the project, as proposed, could have had a significant effect on the environment, there will not be a significant effect in this case because mitigation measures will be included in the project, and, therefore, this **MITIGATED NEGATIVE DECLARATION** has been prepared.

## **III. MITIGATION AND AVOIDANCE MEASURES**

### **A. Biological Resources**

*IV-1(a). Consistent with Condition 15 of the Santa Clara Valley Habitat Plan, prior to any ground disturbance related to covered activities, a qualified biologist will conduct preconstruction surveys in all suitable habitat areas as identified during habitat surveys. The purpose of the preconstruction surveys is to document the presence or absence of burrowing owls on the project site, particularly in areas within 250 feet of construction activity.*

*To maximize the likelihood of detecting owls, the preconstruction survey will last a minimum of three hours. The survey will begin 1 hour before sunrise and continue until 2 hours after sunrise (3 hours total) or begin 2 hours before sunset and continue until 1 hour after sunset. Additional time may be required for large project sites. A minimum of two surveys will be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed will be counted and their location will be mapped.*

*Surveys will conclude no more than 2 calendar days prior to construction. Therefore, the project proponent must begin surveys no more than 4 days prior to construction (2 days of surveying plus up to 2 days between surveys and construction). To avoid last minute changes in schedule or contracting that may occur if burrowing owls are found, the project proponent may also conduct a preliminary survey up to 14 days before construction. This preliminary survey may count as the first of the two required surveys*

*as long as the second survey concludes no more than 2 calendar days in advance of construction. All survey results shall be submitted to the City of Morgan Hill Development Services Department prior to the start of construction. If burrowing owls are not identified, further action is not required.*

*IV-1(b). Should burrowing owls be found on the site during the breeding season (February 1 through August 31), exclusion zones, with a 250-foot radius from occupied burrows, shall be established. All development-related activities shall occur outside of the exclusion area until the young have fledged. Establishment of the exclusion area shall be determined by a qualified biologist to the satisfaction of the City of Morgan Hill Development Services Department.*

*IV-1(c). If pre-construction surveys are conducted during the non-breeding season (September 1 through January 31) and burrowing owls are observed on the site, the project proponent shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of the 250-foot buffer shall be allowed. Construction activities within the non-disturbance buffer shall be allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites:*

- A qualified biologist monitors the owls for at least three days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).*
- The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.*
- If any change in owl foraging behavior occurs as a result of construction activities, such activities shall cease within the 250-foot buffer.*
- If the owls are gone for at least one week, the project proponent may request approval from the Habitat Agency that a qualified biologist excavate usable burrows to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone shall be removed, and construction may continue. Monitoring shall continue as described above for the non-breeding season as long as the burrow remains active.*

*Passive relocation of owls shall not be permitted unless the positive growth trend described in Section 5.4.6 of the SCVHP is achieved and all passive relocation measures identified in the SCVHP are implemented. The project applicant may choose to obtain an exception that would allow for passive relocation, in which case an application shall be submitted to the Habitat Agency along with a passive relocation plan in accordance with Section 6.6.1, Condition 15, Exceptions to Passive Relocation Prohibition, of the SCVHP. The Habitat Agency shall have the final authority to grant or deny the requested exception.*

*IV-2(a). If construction is proposed during breeding season (February 1 to August 31), a pre-construction nesting survey for raptors and other protected migratory birds shall be conducted by a qualified biologist and submitted to the City of Morgan Hill Development Services Department for review no more than 14 days prior to the start of construction. Pre-construction surveys during the non-breeding season (September 1 to January 31) are not necessary for birds, including roosting raptors, as they are expected to abandon their roosts during construction. If these species are deemed absent from the area, no further mitigation is required and construction may occur within 14 days following the survey during the early nesting season (February to May) and within 30 days following the survey during the late nesting season (June to August).*

*If nesting migratory birds or raptors are detected on or adjacent to the site during the survey, a suitable construction-free buffer shall be established around all active nests. The precise dimension of the buffer (250-foot minimum for certain raptors) shall be determined by the qualified biologist at that time and may vary depending on location, topography, type of construction activity, and species. The buffer areas shall be enclosed with temporary fencing, and construction equipment and workers shall not enter the enclosed setback areas. Buffers shall remain in place for the duration of the breeding season or until it has been confirmed by a qualified biologist that all chicks have fledged and are independent of their parents.*

*IV-2(b)*

*If construction activities occur between February 1 and August 31, the applicant shall conduct surveys for Swainson's hawk and white-tailed kite in accordance with the Swainson's Hawk Technical Advisory Committee 2000 guidelines (SHTAC 2000), or current guidance. Surveys will cover a minimum of a 0.5-mile radius around the construction area. If nesting Swainson's hawks or white-tailed kites are detected, a no-disturbance buffer shall be established as determined by the qualified biologist, but shall not be less than 500 feet. Buffers shall be maintained until a qualified biologist has determined that the young have fledged and are no longer reliant upon the nest or parental care for survival.*

*If potential nesting trees are to be removed during construction activities, removal shall take place outside of Swainson's hawk and white-tailed kite nesting season and CDFW will develop a plan to replace known nest trees at a ratio of 3:1. Potential nest trees shall include those trees with current (at the time of the surveys) or documented historic use by Swainson's hawk or white-tailed kites for nesting. If replacement planting is implemented, monitoring shall be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for the mitigation will be 65% survival of all replacement plantings.*

*IV-3.*

*Consistent with Condition 17 of the Santa Clara Valley Habitat Plan, prior to any ground disturbance related to covered activities, a qualified biologist shall investigate whether the nearby Butterfield Retention Basin has been occupied by nesting tricolored blackbirds within the past 5 years. This shall include checking the California Natural Diversity Database, contacting local experts, and conducting a preconstruction survey in all accessible areas identified as supporting potential tricolored blackbird nesting habitat. The survey shall document the current, and to the extent possible, historical presence or absence of nesting colonies of tricolored blackbird. Surveys shall conclude no more than two calendar days prior to construction. If a tricolored blackbird nesting colony is present or has been within the past 5 years, a 250-foot buffer shall be applied from the outer edge of all hydrophytic vegetation associated with the site and the site plus buffer shall be avoided. The Wildlife Agencies shall be notified immediately of nest locations. All survey results shall be submitted to the City of Morgan Hill Development Services Department prior to the start of construction. If current or recent tricolored blackbird nesting colonies are not identified, further action is not required.*

*If construction takes place during the breeding season when an active colony is present, a qualified biologist shall monitor construction to ensure that the 250-foot buffer zone is enforced. If monitoring indicates that construction outside of the buffer is affecting a breeding colony, the buffer shall be increased if space allows (e.g., move staging areas farther away). If space does not allow, construction shall cease until the colony abandons the site or until the end of the breeding season, whichever occurs first. The biological monitor shall also conduct training of construction personnel on the avoidance procedures, buffer zones, and protocols in the event that tricolored blackbirds fly into an active construction zone (i.e., outside the buffer zone).*

IV-4. *The project applicant shall mitigate for the removal of the Ordinance Sized Trees located within the project site, as identified in the tree survey prepared for the proposed project, by providing an on-site replacement planting at a minimum 1:1 ratio with 15-gallon minimum size trees.*

*For the Ordinance Sized Trees to be preserved as part of the project, the project applicant shall retain a certified arborist to prepare a tree protection plan, subject to review and approval by the Development Services Department. The plan shall demonstrate how any retained trees are to be protected during and after construction. The tree protection plan may include, but not be limited to, the following:*

- *Locate structures, grade changes, etc. as far as feasible from the 'dripline' area of the tree.*
- *Avoid root damage through grading, trenching, compaction, etc., at least within an area 1.5 times the 'dripline' area of trees. Where root damage cannot be avoided, roots encountered (over one inch in diameter) should be exposed approximately 12 inches beyond the area to be disturbed (towards tree stem), by hand excavation, or with specialized hydraulic or pneumatic equipment, cut cleanly with hand pruners or power saw, and immediately back-filled with soil. Tearing, or otherwise disturbing the portion of the root(s) to remain, shall be avoided.*
- *A temporary fence shall be constructed as far from the tree stem (trunk) as possible, completely surrounding the tree, and six to eight feet in height. 'No parking or storage' signs shall be posted outside/on the fencing. Postings shall not be attached to the main stem of the tree.*
- *Vehicles, equipment, pedestrian traffic, building materials, debris storage, and/or disposal of toxic or other materials shall not be permitted inside of the fenced off area.*
- *The project applicant shall avoid pruning immediately before, during, or immediately after construction impact. Perform only that pruning which is unavoidable due to conflicts with proposed development. Aesthetic pruning should not be performed for at least one to two years following completion of construction.*
- *Trees that will be impacted by construction may benefit from fertilization, ideally performed in the fall, and preferably prior to any construction activities, with not more than six pounds of actual nitrogen per 1,000 square feet of accessible 'drip line' area or beyond.*
- *The 'rooting' area shall be mulched with an acidic, organic compost or mulch.*
- *The project applicant shall arrange for periodic (Biannual/Quarterly) inspection of tree's condition, and treatment of damaging conditions (insects, diseases, nutrient deficiencies, etc.) as such conditions occur, or as appropriate.*
- *Subject to the discretion of the Development Services Department, individual trees likely to suffer significant impacts may require specific, more extensive efforts and/or a more detailed specification than those contained within the above general guidelines.*

IV-5. *No later than submittal of the first construction or grading permit for the proposed project the owner or designee shall pay the Santa Clara Valley Habitat Plan per-acre fee in effect for the appropriate fee zone of the project site, as determined by the Santa Clara Valley Habitat Agency, in compliance with Section 18.132.050 of the Morgan Hill Municipal Code.*

## **B. Hazards and Hazardous Materials**

- IX-1. If the project site is found to contain an existing septic system associated with the mobile home, the project applicant shall submit an application for Septic/Onsite Wastewater Treatment System Abandonment to the Santa Clara County Department of Environmental Health, Consumer Protection Division. After approval has been obtained, the septic system shall be abandoned consistent with the County's Septic Tank Abandonment Procedures. Proof of abandonment shall be provided to the City of Morgan Hill Development Services Department prior to issuance of a demolition permit.*
- IX-2. Prior to issuance of a demolition permit for the on-site structure, the Developer shall consult with certified Asbestos and/or Lead Risk Assessors to complete and submit for review to the Building Department an asbestos and lead survey. If asbestos-containing materials or lead-containing materials are not discovered during the survey, further mitigation related to asbestos-containing materials or lead-containing materials shall not be required. If asbestos-containing materials and/or lead-containing materials are discovered by the survey, the project applicant shall prepare a work plan to demonstrate how the on-site asbestos-containing materials and/or lead-containing materials shall be removed in accordance with current California Occupational Health and Safety (Cal-OSHA) Administration regulations and disposed of in accordance with all CalEPA regulations, prior to the demolition and/or removal of the on-site structures. The plan shall include the requirement that work shall be conducted by a Cal-OSHA registered asbestos and lead abatement contractor in accordance with Title 8 CCR 1529 and Title 8 CCR 1532.1 regarding asbestos and lead training, engineering controls, and certifications. The applicant shall submit the work plan to the City for review and approval. The City has the right to defer the work plan to the Santa Clara County Department of Environmental Health for additional review. Materials containing more than one (1) percent asbestos that is friable are also subject to BAAQMD regulations. Removal of materials containing more than one (1) percent friable asbestos shall be completed in accordance with BAAQMD Section 11-2-303.*

## **C. Noise**

- XIII-1. Noise-generating construction activities associated with the proposed project shall only occur within the hours identified in Municipal Code Section 8.28.040(D). The above language shall be included on final project improvement plans prior to approval by the City of Morgan Hill Development Services Department.*
- XIII-2. To the maximum extent practical, the following measures shall be implemented during project construction:*
- All noise-producing project equipment and vehicles using internal-combustion engines shall be equipped with manufacturers-recommended mufflers and be maintained in good working condition;*
  - All mobile or fixed noise-producing equipment used on the project site that are regulated for noise output by a federal, State, or local agency shall comply with such regulations while in the course of project construction;*
  - Electrically powered equipment shall be used instead of pneumatic or internal-combustion-powered equipment, where feasible;*

- *Material stockpiles and mobile equipment staging, parking, and maintenance areas shall be located as far as practicable from noise-sensitive receptors;*
- *Project area and site access road speed limits shall be established and enforced during the construction period; and*
- *Nearby residences shall be notified of construction schedules so that arrangements can be made, if desired, to limit their exposure to short-term increases in ambient noise levels.*

*The above requirements shall be included via notation on project grading plans, subject to review and approval by the Development Services Department.*

### **III. FINDING**

The City of Morgan Hill hereby finds that the proposed project could have a significant effect on the environment; however, there would not be a significant effect in this case because mitigation measures summarized above and described in the initial study will reduce the impacts to a less-than-significant level.

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Jennifer Carman, Development Services Director

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Date