

**MITIGATION MONITORING AND REPORTING PROGRAM
THE GATES PROJECT
MORGAN HILL, CALIFORNIA**

Prepared for the:



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MITIGATION MONITORING AND REPORTING PROGRAM

INTRODUCTION

The City of Morgan Hill, as Lead Agency under the California Environmental Quality Act (CEQA) and State CEQA Guidelines, has prepared the Final Mitigated Negative Declaration (MND) for The Gates Project (proposed project). When a lead agency makes findings on significant effects identified in an MND, it must also adopt a program for reporting or monitoring mitigation measures that were adopted or made conditions of project approval (Public Resources Code [PRC] Section 21081.6[a]; State CEQA Guidelines Sections 15091[d], 15097).

This document represents the mitigation monitoring and reporting program (MMRP) prepared by the City of Morgan Hill for the proposed project. This MMRP includes all measures required to reduce potentially significant environmental impacts to a less-than-significant level. In addition, the MMRP identifies the timing of implementation; the agency responsible for implementing the mitigation; and the agency responsible for monitoring the mitigation. The mitigation measures, timing, and responsibility are summarized in Table 1, and the full text of the mitigation measures follows. The implementation and monitoring of the mitigation measures, in conjunction with the implementation of the City's Standard Measures required for such projects, will ensure the reduction of potentially significant environmental effects to less-than-significant levels.

This MMRP has been prepared by the City of Morgan Hill, with technical assistance from Raney Planning & Management, Inc., an environmental consulting firm. Questions should be directed to Gina Paolini, Principal Planner, at the City of Morgan Hill.

Contact Information:

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TABLE 1. MITIGATION MONITORING AND REPORTING PROGRAM – SUMMARY OF MITIGATION MEASURES

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility¹	Timing of Implementation
Prior to Construction			
<p>BIO-1 (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 shall 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.</p> <p>To maximize the likelihood of detecting owls, the preconstruction survey shall last a minimum of three hours. The survey shall 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 shall be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed shall be counted and their location shall be mapped.</p> <p>Surveys shall conclude less than 2 calendar days prior to construction. Therefore, the project proponent must begin surveys less 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 less than 2 calendar days in advance of construction. All survey results shall be submitted to the City of Morgan Hill Development Services</p>	Project Applicant with a Qualified Biologist	City of Morgan Hill Development Services Department	Prior to any ground disturbance related to SCVHP covered activities.

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Mitigation Measure	Implementation Responsibility	Monitoring Responsibility¹	Timing of Implementation
Department prior to the start of construction. If burrowing owls are not identified, further action is not required.			
BIO-2 (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.	Project Applicant with Construction Contractor and a Qualified Biologist	City of Morgan Hill Development Services Department	If pre-construction surveys are conducted during the breeding season (February 1 through August 31) and burrowing owls are observed on the site.
BIO-3 (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:	Project Applicant with Construction Contractor and a Qualified Biologist	City of Morgan Hill Development Services Department	If pre-construction surveys are conducted during the non-breeding season (September 1 through January 31) and burrowing owls are observed on the site.
<ul style="list-style-type: none"> • 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 			

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Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
<p>activities shall cease within the 250-foot buffer.</p> <ul style="list-style-type: none"> 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. <p>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.</p>			
<p>BIO-4 (IV-2): 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, consistent with conditions set forth by the SCVHP, 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</p>	Project Applicant with Construction Contractor and a Qualified Biologist	City of Morgan Hill Development Services Department	Prior to the start of construction, if construction is proposed during the breeding season (February 1 to August 31).

TABLE 1. MITIGATION MONITORING AND REPORTING PROGRAM – SUMMARY OF MITIGATION MEASURES

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility¹	Timing of Implementation
<p>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).</p> <p>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.</p>			
<p>BIO-5 (IV-3): 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 shall 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.</p>	Project Applicant with Construction Contractor and a Qualified Biologist	City of Morgan Hill Development Services Department	Prior to the start of construction, if construction activities occur between February 1 and August 31.

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Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
<p>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.</p>			
<p>BIO-6 (IV-4): 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 existing detention basin, located southeast of the project site, 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</p>	<p>Project Applicant with Construction Contractor and a Qualified Biologist</p>	<p>City of Morgan Hill Development Services Department</p>	<p>Prior to any ground disturbance related to SCVHP covered activities.</p>

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Mitigation Measure	Implementation Responsibility	Monitoring Responsibility¹	Timing of Implementation
<p>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.</p> <p>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).</p>			
<p>BIO-7 (IV-5): Prior to initiation of grading, excavation, or other construction activities, the applicant shall obtain permit authorization, as determined by USACE, to fill waters of the U.S. under Section 404 of the federal Clean Water Act (Section 404 Permit) from USACE. The Section 404 Permit application shall include an assessment of directly impacted, avoided, and preserved acreages of waters of the U.S. Mitigation measures may be developed as part of the Section 404 Permit to ensure the avoidance and minimize impacts to waters of the U.S. Final mitigation requirements shall be developed in consultation with USACE. A copy of the Section 404 Permit issued for the project shall be submitted to the City's Development Services Department prior to</p>	Project Applicant	<p>City of Morgan Hill Development Services Department</p> <p>USACE</p>	Prior to initiation of grading, excavation, or other construction activities.

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commencement of grading, excavation, or other construction activities.			
BIO-8 (IV-6): Prior to initiation of grading, excavation or other construction activities, the project applicant shall submit to the San Francisco Bay Regional Water Quality Control Board an application for Clean Water Act Section 401 Water Quality Certification and/or Waste Discharge Requirements for Projects Involving Discharge of Dredged and/or Fill Material to Waters of the State. The project applicant shall be responsible for conducting all project activities in accordance with the permit provisions outlined in the applicable permit. A copy of the Water Quality Certification or waiver issued for the project shall be submitted to the City's Development Services Department prior to commencement of grading, excavation, or other construction activities.	Project Applicant with Construction Contractor	City of Morgan Hill Development Services Department SFBRWQCB	Prior to initiation of grading, excavation, or other construction activities.
BIO-9 (IV-7): Prior to the commencement of construction, the project applicant shall pay all applicable fees to the SCVHP to address permanent impacts to the project site and the 0.52-acre of onsite wetlands. In addition, the project shall comply with standards set forth by Condition No. 3 and Condition No. 12 of the SCVHP. Proof of payment of applicable fees shall be submitted and reviewed by the City's Development Services Department.	Project Applicant	City of Morgan Hill Development Services Department	Prior to the commencement of construction.
BIO-10 (IV-8): The project applicant shall obtain a tree removal permit prior to the removal of any Ordinance Sized Trees as defined by the City. The project applicant shall mitigate for the removal of the Ordinance Sized Trees located within the project site, as identified in the Arborist Report prepared for the proposed project, by providing an on-site replacement planting at a minimum 1:1 ratio with 15-gallon minimum size trees.	Project Applicant with Construction Contractor	City of Morgan Hill Development Services Department	Prior to the removal of any Ordinance Sized Trees.

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<p>For the Ordinance Sized Trees to be preserved as part of the project, pursuant to the Arborist Report prepared for the proposed project by Monarch Consulting Arborists, the project applicant shall implement Tree Preservation Recommendations, including, but not limited to, the following:</p> <ul style="list-style-type: none"> • Include tree identification numbers, protection fence locations, and preservation and guidelines on all the project plans, or alternatively create a separate plan sheet that includes all tree protection measures labeled “T-1 Tree Protection Plan;” • Place a protection fence around the trees to be retained at a radius of eight times the diameter at breast height (DBH); • Install temporary irrigation or soaker hoses in the Tree Protection Zones (TPZs); • Monitor watering times or amounts to ensure adequate soil saturation; • All tree maintenance and care shall be performed by a qualified arborist with a C-61/D-49 California Contractors License. Tree maintenance and care shall be specified in writing according to American National Standard for Tree Care Operations: Tree, Shrub and Other Woody Plant Management: Standard Practices parts 1 through 10 and adhere to ANSI Z133.1 safety standards and local regulations. All maintenance is to be performed according to ISA Best Management Practices; • Implement all general tree protection guidelines included in Appendix D of the Arborist Report, including recommendations for arborist assistance while working under 			

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<p>trees, trenching, or excavation within a tree's drip line or designated TPZ/Critical Root Zone (CRZ);</p> <ul style="list-style-type: none"> • Provide a copy of the Arborist Report to all contractors and project managers, including the architect, civil engineer, and landscape designer or architect; and • Arrange a pre-construction meeting with the project arborist or landscape architect to verify tree protection is in place, with the correct materials, and at the proper distances. <p>The above measures shall be included in the notes on construction drawings, subject to review and approval by the City of Morgan Hill Development Services Department, prior to initiation of construction.</p>			
BIO-11 (IV-9): Prior to issuance of a 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.	Project Applicant	City of Morgan Hill Development Services Department	Prior to the issuance of grading permits.
GEO-1 (VII-1): All grading and foundation plans for the development shall be designed by a Civil and Structural Engineer and reviewed and approved by City Engineer, Chief Building Official, and a qualified Geotechnical Engineer prior to issuance of grading and building permits to ensure that all geotechnical recommendations specified in the Geotechnical Investigation prepared for the proposed project by Terrasearch, inc., in reference to additional consultation, observation and testing services provided by Quantum Geotechnical, inc., are properly incorporated and utilized in the project design.	Project Applicant with a Civil and Structural Engineer	City of Morgan Hill Development Services Department City Engineer Chief Building Official Qualified Geotechnical Engineer	Prior to the issuance of grading and building permits.

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Mitigation Measure	Implementation Responsibility	Monitoring Responsibility¹	Timing of Implementation
GEO-2 (VII-2): Prior to the issuance of grading permits, the project applicant shall ensure recommendations pertaining to undocumented fill are incorporated into all grading and building plans designed by a Civil and Structural Engineer and reviewed and approved by City Engineer, Chief Building Official, and a qualified Geotechnical Engineer in accordance with recommendations specified in the Geotechnical Investigation prepared by Terrasearch, inc.	Project Applicant with a Civil and Structural Engineer	City of Morgan Hill Development Services Department City Engineer Chief Building Official Qualified Geotechnical Engineer	Prior to the issuance of grading permits.
GHG-1 (VIII-1): The following requirements shall be noted on project improvement plans, subject to review and approval by the Morgan Hill Development Services Department: <ul style="list-style-type: none"> • The proposed project shall be designed such that the project is built all-electric, and natural gas infrastructure shall be prohibited on-site, including in the non-residential development; and • A minimum of four commercial use electric vehicle (EV) capable parking spaces shall be included on-site, consistent with the Tier 2 CALGreen standards. 	Project Applicant	City of Morgan Hill Development Services Department	Prior to project improvement plan approval.
HAZ-1 (IX-1): Prior to commencement of construction activities associated with the project site, the project applicant shall implement the recommendations included in the Additional Arsenic Assessment prepared by Stantec Consulting Services, Inc. for the proposed project, including the excavation and disposal of the on-site soils specified in the Assessment (i.e., associated with HA-1, HA-2, HA-3), and the collection of confirmation soil samples to be analyzed by a state-certified hazardous waste testing laboratory for arsenic, to confirm removal of the arsenic to the proposed cleanup level of 11.0 mg/kg.	Project Applicant with Construction Contractor	City of Morgan Hill Development Services Department	Prior to commencement of construction activities.

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Verification of proper excavation, disposal, and confirmation testing shall be submitted to the Morgan Hill Development Services Department.			
HAZ-2 (IX-2): Prior to commencement of construction activities, the project applicant shall hire a licensed contractor to conduct additional testing of the 35-gallon unlabeled steel cylinder with an undifferentiable liquid to confirm the contents within. In the event that hazardous materials are found within the cylinder, the project applicant shall dispose of the materials and cylinder in accordance with applicable USEPA methods. The results of the testing, as well as verification of proper disposal, shall be submitted to the Morgan Hill Development Services Department.	Project Applicant with Licensed Contractor	City of Morgan Hill Development Services Department	Prior to commencement of construction activities.
HYD-1 (X-1): Finished building pad elevations shall be a minimum of one foot above the 100-year floodplain line, in accordance with Section 15.80.160 of the Morgan Hill Municipal Code, and shall be shown on project Improvement Plans prior to their approval. The final pad elevation shall be certified by a California registered civil engineer or licensed land surveyor and submitted to the City Engineer. This certification shall be done prior to construction of the foundation or at the completion of final grading, whichever comes first. No building construction is allowed until the certification has been received by the City Engineer and approved by the floodplain manager. Benchmark elevation and location shall be shown on the Improvement Plans to the satisfaction of the Morgan Hill Development Services Department.	Project Applicant with California Registered Civil Engineer or Licensed Land Surveyor	City of Morgan Hill Development Services Department City Engineer Floodplain Manager	Prior to project improvement plan approval; and prior to construction of the foundation or at the completion of final grading, whichever comes first.
During Construction			
NOI-1 (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	Project Applicant with Construction Contractor	City of Morgan Hill Development Services Department	Prior to approval of improvement plans, issuance of a grading permit, and during construction activities.

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be included on final project improvement plans prior to issuance of a grading permit by the City of Morgan Hill Development Services Department.			
<p>NOI-2 (XIII-2): To the maximum extent practical, the following measures shall be implemented during project construction:</p> <ul style="list-style-type: none"> • 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. <p>The above requirements shall be included via notation on project grading plans, subject to review and</p>	Project Applicant with Construction Contractor	City of Morgan Hill Development Services Department	Prior to issuance of a grading permit and during construction activities.

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approval by the Development Services Department prior to issuance of a grading permit.			
¹ The City of Morgan Hill may hire a qualified contractor to conduct mitigation monitoring.			

BIOLOGICAL RESOURCES

The project's construction-related activities could have potentially significant effects on burrowing owl, Swainson's hawk, white-tailed kite, tricolored blackbird, and other nesting migratory birds and raptors protected by the Migratory Bird Treaty Act (MBTA). In addition, without compliance with Clean Water Act permit requirements and Santa Clara Valley Habitat Plan (SCVHP) Conditions, the project could have a substantial adverse effect on on-site wetlands. Furthermore, the project would require appropriate protection measures during construction for trees identified for preservation, as well as replacement trees in accordance with the City's Tree Protection Ordinance. Finally, without compliance with applicable SCVHP conditions and payment of fees, the proposed project could conflict with the SCVHP. Implementation of the following measures would reduce the potentially significant impacts to less-than-significant levels.

MM BIO-1:

Consistent with Condition 15 of the Santa Clara Valley Habitat Plan, prior to any ground disturbance related to covered activities, a qualified biologist shall 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 shall last a minimum of three hours. The survey shall 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 shall be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed shall be counted and their location shall be mapped.

Surveys shall conclude less than 2 calendar days prior to construction. Therefore, the project proponent must begin surveys less 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 less 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.

MM BIO-2:

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.

MM BIO-3:

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.

MM BIO-4 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, consistent with conditions set forth by the SCVHP, 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.

MM BIO-5 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 shall 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.

MM BIO-6 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 existing detention basin, located southeast of the project site, 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).

- MM BIO-7** Prior to initiation of grading, excavation, or other construction activities, the applicant shall obtain permit authorization, as determined by USACE, to fill waters of the U.S. under Section 404 of the federal Clean Water Act (Section 404 Permit) from USACE. The Section 404 Permit application shall include an assessment of directly impacted, avoided, and preserved acreages of waters of the U.S. Mitigation measures may be developed as part of the Section 404 Permit to ensure the avoidance and minimize impacts to waters of the U.S.. Final mitigation requirements shall be developed in consultation with USACE. A copy of the Section 404 Permit issued for the project shall be submitted to the City's Development Services Department prior to commencement of grading, excavation, or other construction activities.
- MM BIO-8** Prior to initiation of grading, excavation or other construction activities, the project applicant shall submit to the San Francisco Bay Regional Water Quality Control Board an application for Clean Water Act Section 401 Water Quality Certification and/or Waste Discharge Requirements for Projects Involving Discharge of Dredged and/or Fill Material to Waters of the State. The project applicant shall be responsible for conducting all project activities in accordance with the permit provisions outlined in the applicable permit. A copy of the Water Quality Certification or waiver issued for the project shall be submitted to the City's Development Services Department prior to commencement of grading, excavation, or other construction activities.
- MM BIO-9** Prior to the commencement of construction, the project applicant shall pay all applicable fees to the SCVHP to address permanent impacts to the project site and the 0.52-acre of onsite wetlands. In addition, the project shall comply with standards set forth by Condition No. 3 and Condition No. 12 of the SCVHP. Proof of payment of applicable fees shall be submitted and reviewed by the City's Development Services Department.
- MM BIO-10** The project applicant shall obtain a tree removal permit prior to the removal of any Ordinance Sized Trees as defined by the City. The project applicant shall mitigate for the removal of the Ordinance Sized Trees located within the project site, as identified in the Arborist Report 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, pursuant to the Arborist Report prepared for the proposed project by Monarch Consulting Arborists, the project applicant shall implement Tree Preservation Recommendations, including, but not limited to, the following:

- Include tree identification numbers, protection fence locations, and preservation and guidelines on all the project plans, or alternatively create a separate plan sheet that includes all tree protection measures labeled "T-1 Tree Protection Plan;"
- Place a protection fence around the trees to be retained at a radius of eight times the diameter at breast height (DBH);

- Install temporary irrigation or soaker hoses in the Tree Protection Zones (TPZs);
- Monitor watering times or amounts to ensure adequate soil saturation;
- All tree maintenance and care shall be performed by a qualified arborist with a C-61/D-49 California Contractors License. Tree maintenance and care shall be specified in writing according to American National Standard for Tree Care Operations: Tree, Shrub and Other Woody Plant Management: Standard Practices parts 1 through 10 and adhere to ANSI Z133.1 safety standards and local regulations. All maintenance is to be performed according to ISA Best Management Practices;
- Implement all general tree protection guidelines included in Appendix D of the Arborist Report, including recommendations for arborist assistance while working under trees, trenching, or excavation within a tree's drip line or designated TPZ/Critical Root Zone (CRZ);
- Provide a copy of the Arborist Report to all contractors and project managers, including the architect, civil engineer, and landscape designer or architect; and
- Arrange a pre-construction meeting with the project arborist or landscape architect to verify tree protection is in place, with the correct materials, and at the proper distances.

The above measures shall be included in the notes on construction drawings, subject to review and approval by the City of Morgan Hill Development Services Department, prior to initiation of construction.

- MM BIO-11** Prior to issuance of a 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.

GEOLOGY AND SOILS

Inclusion of project-specific recommendations regarding the removal and replacement of undocumented fill soils within the project site included in the Geotechnical Investigation prepared for the proposed project would be necessary to ensure that substantial impacts related to geology and soils do not occur. Implementation of the following measure would reduce the potentially significant impact to a less-than-significant level.

- MM GEO-1:** All grading and foundation plans for the development shall be designed by a Civil and Structural Engineer and reviewed and approved by City Engineer, Chief Building Official, and a qualified Geotechnical Engineer prior to issuance of grading and building permits to ensure that all geotechnical recommendations specified in the Geotechnical Investigation prepared for the proposed project by Terrasearch, inc., in reference to additional consultation, observation and testing services provided by Quantum Geotechnical, inc., are properly incorporated and utilized in the project design.

- MM GEO-2** Prior to the issuance of grading permits, the project applicant shall ensure recommendations pertaining to undocumented fill are incorporated into all grading and building plans designed by a Civil and Structural Engineer and reviewed and approved by City Engineer, Chief Building Official, and a qualified Geotechnical Engineer in accordance with recommendations specified in the Geotechnical Investigation prepared by Terrasearch, inc.

GREENHOUSE GAS EMISSIONS

In order to be consistent with the Bay Area Air Quality Management District (BAAQMD) thresholds of significance, the proposed project would be required to include all electric appliances and plumbing, and comply with off-street electric vehicle requirements in the most recently adopted version of CALGreen Tier 2 standards. Implementation of the following measure would ensure project compliance, thus, reducing the potentially significant impact to a less-than-significant level.

- MM GHG-1:** The following requirements shall be noted on project improvement plans, subject to review and approval by the Morgan Hill Development Services Department:

- The proposed project shall be designed such that the project is built all-electric, and natural gas infrastructure shall be prohibited on-site, including in the non-residential development; and
- A minimum of four commercial use electric vehicle (EV) capable parking spaces shall be included on-site, consistent with the Tier 2 CALGreen standards.

HAZARDS AND HAZARDOUS MATERIALS

Contaminants of concern (COCs) have been identified within on-site soils. In addition, potential recognized environmental conditions (RECs) and COCs have been identified associated with two propane tanks and an open, approximately 35-gallon unlabeled steel cylinder with unidentifiable liquid in the southern portion of the project site. As such, the proposed project could create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the likely release of hazardous materials in the environment associated with the aforementioned conditions. Implementation of the following measures would reduce such potentially significant impacts to less-than-significant levels.

- MM HAZ-1:** Prior to commencement of construction activities associated with the project site, the project applicant shall implement the recommendations included in the Additional Arsenic Assessment prepared by Stantec Consulting Services, Inc. for the proposed project, including the excavation and disposal of the on-site soils specified in the Assessment (i.e., associated with HA-1, HA-2, HA-3), and the collection of confirmation soil samples to be analyzed by a state-certified hazardous waste testing laboratory for arsenic, to confirm removal of the arsenic to the proposed cleanup level of 11.0 mg/kg. Verification of proper excavation, disposal, and confirmation testing shall be submitted to the Morgan Hill Development Services Department.

- MM HAZ-2:** Prior to commencement of construction activities, the project applicant shall hire a licensed contractor to conduct additional testing of the 35-gallon unlabeled steel

cylinder with an undifferentiable liquid to confirm the contents within. In the event that hazardous materials are found within the cylinder, the project applicant shall dispose of the materials and cylinder in accordance with applicable USEPA methods. The results of the testing, as well as verification of proper disposal, shall be submitted to the Morgan Hill Development Services Department.

HYDROLOGY AND WATER QUALITY

The project site is located within a Special Flood Hazard Area (SFHA) and a Letter of Map Revision (LOMR) has not been approved for the project site. Thus, the potential exists that the project could alter the existing drainage pattern of the site or area in a manner which would impede or redirect flood flows. Implementation of the following measure would reduce the potentially significant impact to a less-than-significant level.

MM HYD-1: Finished building pad elevations shall be a minimum of one foot above the 100-year floodplain line, in accordance with Section 15.80.160 of the Morgan Hill Municipal Code, and shall be shown on project Improvement Plans prior to their approval. The final pad elevation shall be certified by a California registered civil engineer or licensed land surveyor and submitted to the City Engineer. This certification shall be done prior to construction of the foundation or at the completion of final grading, whichever comes first. No building construction is allowed until the certification has been received by the City Engineer and approved by the floodplain manager. Benchmark elevation and location shall be shown on the Improvement Plans to the satisfaction of the Morgan Hill Development Services Department.

NOISE

The proposed project would result in a temporary increase in ambient noise levels that could conflict with City standards in the project vicinity during construction. Implementation of the following measures would reduce such potentially significant impacts to less-than-significant levels.

MM NOI-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 issuance of a grading permit by the City of Morgan Hill Development Services Department.

MM NOI-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 prior to issuance of a grading permit.

FINDING

The City of Morgan Hill Development Services Director 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 MND are included in the project.

Jennifer Carman
Development Services Director

Date: _____