

**MITIGATION MONITORING AND REPORTING PROGRAM
MONTEREY GATEWAY PROJECT
MORGAN HILL, CALIFORNIA**

Prepared for the:



Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037
408.778.6480

Prepared by:



1501 Sports Drive, Suite A, Sacramento, CA 95834

March 2020

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 Monterey Gateway 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 Tiffany Brown, Associate Planner, at the City of Morgan Hill.

Contact Information:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037
408.310.4655

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	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 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.</p>	<p>Project Applicant with Construction Contractor, Qualified Biologist, and City of Morgan Hill</p>	<p>City of Morgan Hill – Development Services Department</p>	<p>Two burrowing owl surveys shall be completed no more than two days prior to construction.</p>
<p>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.</p>			
<p>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</p>			

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
Development Services 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, Qualified Biologist, and City of Morgan Hill	City of Morgan Hill – Development Services Department	If burrowing owls are found on the site during the breeding season (February 1 through August 31).
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, Qualified Biologist, and City of Morgan Hill	City of Morgan Hill – Development Services Department	If burrowing owls are found on the site during the non-breeding season (September 1 through January 31).
<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. 			

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
<ul style="list-style-type: none"> 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. 			
<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(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</p>	<p>Project Applicant with Construction Contractor, Qualified Biologist, and City of Morgan Hill</p>	<p>City of Morgan Hill – Development Services Department</p>	<p>If construction is proposed during breeding season (February 1 to August 31). No more than 14 days prior to the start of construction.</p>

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
<p>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).</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>Project Applicant with Construction Contractor, Qualified Biologist, and City of Morgan Hill</p>	<p>City of Morgan Hill – Development Services Department</p>	<p>If construction is proposed between February 1 and August 31.</p>
<p>BIO-5 (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</p>			

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
<p>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>	<p>Project Applicant with Construction Contractor, Qualified Biologist, and City of Morgan Hill</p>	<p>City of Morgan Hill – Development Services Department</p>	<p>If nest tree removal occurs, it shall take place outside of the Swainson’s hawk and white-tailed kite nesting season.</p>
<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>Project Applicant with Construction Contractor, Qualified Biologist, and City of Morgan Hill</p>	<p>City of Morgan Hill – Development Services Department</p>	<p>Prior to any ground disturbance. Surveys shall conclude no more than two days prior to construction.</p>
<p>BIO-6 (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</p>	<p>Project Applicant with Construction Contractor, Qualified Biologist, and City of Morgan Hill</p>	<p>City of Morgan Hill – Development Services Department</p>	<p>Prior to any ground disturbance. Surveys shall conclude no more than two days prior to construction.</p>

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
<p>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.</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-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.</p>	<p>Project Applicant with Construction Contractor and Certified Arborist</p>	<p>City of Morgan Hill – Development Services Department</p>	<p>Prior to and during construction.</p>
<p>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</p>			

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
<p>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:</p>			
<ul style="list-style-type: none"> • 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 			

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
<p>pruning should not be performed for at least one to two years following completion of construction.</p> <ul style="list-style-type: none"> • 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. 	Project Applicant	Santa Clara Valley Habitat Agency	No later than submittal of the first construction or grading permit.
<p>HAZ-1 (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</p>	Project Applicant with Construction Contractor	City of Morgan Hill – Development Services Department	Prior to issuance of a demolition permit, if the project site is found to contain an existing septic system associated with the mobile home.

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
<p>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.</p>		<p>Santa Clara County Department of Environmental Health, Consumer Protection Division</p>	
<p>HAZ-2 (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</p>	<p>Project Applicant with Construction Contractor and Certified Asbestos and/or Lead Risk Assessor</p>	<p>City of Morgan Hill – Development Services Department, Building Division</p>	<p>Prior to issuance of a demolition permit.</p>

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
<p>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.</p>			
During Construction			
<p>See BIO-2 (IV-1(b)), BIO-3 (IV-1(c)), BIO-4 (IV-2(a)), BIO-5 (IV-2(b)), and BIO-6 (IV-3).</p>			
<p>NOI-1 (XIII-1): Noise-generating construction activities associated with the proposed project shall not 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.</p>	<p>Project Applicant with Construction Contractor</p>	<p>City of Morgan Hill – Development Services Department</p>	<p>Included on grading plans and implemented during construction activities.</p>
<p>NOI-2 (XIII-2): To the maximum extent practical, the following measures should 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; 	<p>Project Applicant with Construction Contractor</p>	<p>City of Morgan Hill – Development Services Department</p>	<p>Included on grading plans and implemented during construction activities.</p>

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

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility ¹	Timing of Implementation
<ul style="list-style-type: none"> • 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 approval by the Development Services Department.</p>			
<p>NOI-3 (XIII-3): During construction activities associated with the proposed project, any compaction required within 25 feet of existing structures adjacent to the project site shall be accomplished by using static drum rollers rather than vibratory compactors. The above requirement shall be included via notation on any grading plans approved for the project to the satisfaction of the City of Morgan Hill Development Services Department.</p>	<p>Project Applicant with Construction Contractor</p>	<p>City of Morgan Hill – Development Services Department</p>	<p>Prior to approval of grading plans and during construction activities.</p>
<p>¹ The City of Morgan Hill may hire a qualified contractor to conduct mitigation monitoring.</p>			

BIOLOGICAL RESOURCES

The project's construction-related activities, including site preparation and grading, could have potentially significant effects on burrowing owl and nesting migratory birds and raptors protected by the MBTA, including the special-status white-tailed kite, Swainson's hawk, and tricolored blackbird. Furthermore, the project includes the removal of trees that are protected by the City's Municipal Code, and would be subject to payment of fees consistent with the Santa Clara Valley Habitat Plan. Implementation of the following measures would reduce such potentially significant effects to less-than-significant levels.

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 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.

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.

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.

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 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, 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 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.

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 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.

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 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).

BIO-7: 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.

- BIO-8:** 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.

HAZARDS AND HAZARDOUS MATERIALS

Inclusion of the appropriate safety measures would be necessary to ensure that construction workers are not exposed to asbestos-containing materials and lead-based paint during demolition of the existing on-site structures. In addition, should any septic systems be present on-site, proper abandonment of the septic system would be required prior to demolition of the mobile home. Implementation of the following measures would reduce such potentially significant impact to a less-than-significant level.

- HAZ-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.
- HAZ-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.

NOISE

The proposed project would result in a temporary or periodic increase in ambient noise levels, as well as vibration levels, in the project vicinity during construction. Implementation of the following measures would reduce such potentially significant impacts to less-than-significant levels.

NOI-1: Noise-generating construction activities associated with the proposed project shall not 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.

NOI-2: To the maximum extent practical, the following measures should 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.

NOI-3: During construction activities associated with the proposed project, any compaction required within 25 feet of existing structures adjacent to the project site shall be accomplished by using static drum rollers rather than vibratory compactors. The above requirement shall be included via notation on any grading plans approved for the project to the satisfaction of the City of Morgan Hill Development Services Department.

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: _____