

County of Santa Clara

Department of Planning and Development

County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, CA 95110
Phone: (408) 299-5700
www.sccplandev.org



Notice of Intent to Adopt a Mitigated Negative Declaration

A notice, pursuant to the California Environmental Quality Act of 1970, as amended (Public Resources Code 21,000, et sec.) that the following project will not have a significant effect on the environment.

File Number	TAZ	APN(s)	Date
PLN21-223		825-25-104	8/16/2023
Project Name		Project Type	
Foothill Avenue Two-Lot Subdivision		Tentative Subdivision Map	
Person or Agency Carrying Out Project		Address	Phone Number
Raj Durga		509 Sequoia Drive, Sunnyvale, CA 95037	(847) 660-4250
Name of Applicant		Address	Phone Number
David Faria (MH Engineering)		P.O. Box 209, Morgan Hill, CA 95037	(408) 659-2055
Project Location			
The subject property is located at 12475 Foothill Avenue in the rural unincorporated community of San Martin, east of State Route 101.			
Project Description			
<p>The proposed project is a two-lot subdivision of a 10-gross-acre parcel into two lots (Parcels 1 and 2) of 5 gross acres each. The subject property is located on Foothill Avenue in the rural, unincorporated community of San Martin, east of State Route 101 (see Figure 1). Figure 2 shows the tentative subdivision map. Grading of the project site would involve approximately 33 cubic yards (c.y.) of cut, and no fill for subdivision frontage improvements along Foothill Avenue. An existing 44,000 square feet (sq.ft.) greenhouse, a 3,600 sq.ft. shed, a 600 sq.ft. boiler room, a private well, a 10,000-gallon water tank, and a driveway located on proposed Parcel 1 are proposed to remain. An existing 26,000 sq.ft. greenhouse and leach field (associated with existing development) are proposed to be demolished. No tree removal is proposed.</p> <p>Once the property is subdivided, Parcel 1 and Parcel 2 could be individually developed with a single-family residence, an accessory dwelling unit (ADU) and a junior accessory dwelling unit (JADU). Future home development would be served by well and onsite septic systems. No construction of residences is proposed as a part of this subdivision. A feasible location for future residences and associated site improvements are shown on Figure 3.</p>			
Purpose of Notice			
The purpose of this notice is to inform you that the County Planning Staff has recommended that a Mitigated Negative Declaration be approved for this project. County of Santa Clara Planning Staff has reviewed the Initial Study for the project, and based upon substantial evidence in the record, finds that although the			

proposed project could initially have a significant effect on the environment, changes or alterations have been incorporated into the project to avoid or reduce impacts to a point where clearly no significant effects will occur. The project site is not on a list of hazardous material sites as described by Government Code 65962.5 (Cortese List).

A public hearing for the proposed project is tentatively scheduled for the Zoning Administrator on September 7, 2023. The hearing will be held by virtual teleconference only. No physical location will be available for this public meeting; however, members of the public will be able to participate in the public meeting by virtual teleconference. Meeting link for the Zoning Administration virtual teleconference will be posted on this County webpage <https://plandev.sccgov.org/commissions-other-meetings/zoning-administration>, 7 days prior to the hearing date. Where a date is not given, a separate notice will be sent to you informing you of the hearing date. It should be noted that the approval of a Mitigated Negative Declaration does not constitute approval of the project under consideration. The decision to approve or deny the project will be made separately.

Public Review Period: 20 days	Begins: August 17, 2023	Ends: September 6, 2023
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Public Comments regarding the correctness, completeness, or adequacy of this mitigated negative declaration are invited and must be received on or before the above date. Such comments should be based on specific environmental concerns. **Written comments should be addressed to the attention of Charu Ahluwalia at charu.ahluwalia@pln.sccgov.org.** A file containing additional information on this project may be reviewed at the Planning Office under the file number appearing at the top of this form. For additional information regarding this project and the Mitigated Negative Declaration, please contact Charu Ahluwalia at (408) 299-5740 or charu.ahluwalia@pln.sccgov.org.

The Mitigated Negative Declaration and Initial Study may be viewed at the following locations:

(1) Santa Clara County Planning Office, 70 West Hedding Street, East Wing, 7th Floor, San Jose, CA 95110

(2) Planning & Development website <https://plandev.sccgov.org/development-projects/current-projects> (under “Development Projects” > “Current Projects”>PLN21-223)

Responsible Agencies sent a copy of this document

None

Mitigation Measures included in the project to reduce potentially significant impacts to a less than significant level:

SECTION D: BIOLOGICAL RESOURCES

BIO-1a: Habitat assessment for burrowing owls shall be conducted within 30 days of grading, or construction activities for the future proposed residences that shall result in ground disturbance, to confirm that habitat for burrowing owls remains absent from the site. If the habitat assessment confirms that habitat for this species remains absent from the site, then no further mitigation for burrowing owls would be required.

BIO-1b: Preconstruction Surveys for Burrowing Owls - Should a habitat assessment for burrowing owls confirm that site conditions have changed and that there is potential habitat present for this species (i.e., California ground squirrel burrows or other burrows of sufficient size), then the following measures shall be implemented to ensure that the project does not impact this species.

Pre-construction surveys A pre-construction survey shall be conducted by a qualified biologist for burrowing owls within 30 days of the on-set of grading, or construction activities. This survey shall be conducted according to methods described in the Staff Report on Burrowing Owl Mitigation (CDFW 2012).

Avoidance During the Breeding Season. If evidence of western burrowing owls is found during the breeding season (February 1–August 31), the project proponent shall avoid all nest sites that could be disturbed by

project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging). Avoidance shall include establishment of a 250-foot non-disturbance buffer zone around nests.

Construction may occur outside of the 250-foot non-disturbance buffer zone. Construction may occur inside of the 250-foot non-disturbance buffer during the breeding season if the nest is not disturbed, and the project proponent develops an avoidance, minimization, and monitoring plan that shall be reviewed by the County and CDFW prior to project construction based on the following criteria.

- The County and CDFW approves of the avoidance and minimization plan provided by the project applicant.
- A qualified biologist monitors the owls for at least 3 days prior to construction to determine baseline nesting and foraging behavior (i.e., behavior without construction). The same qualified biologist monitors the owls during construction and finds no change in owl nesting and foraging behavior in response to construction activities.
- If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities shall cease within the 250-foot buffer. Construction cannot resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site.
- If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities shall cease within the 250-foot buffer. Construction cannot resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site.

Avoidance During the Non-Breeding Season. During the non-breeding season (September 1–January 31), the project proponent shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of this 250-foot buffer are allowed. Construction activities within the non-disturbance buffer are 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 3 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 there is any change in owl nesting and foraging behavior as a result of construction activities, these 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 County that a qualified biologist excavates usable burrows to prevent owls from re-occupying the site. After all usable burrows are excavated, the buffer zone shall be removed, and construction may continue. Monitoring must continue as described above for the non-breeding season as long as the burrow remains active.

Construction Monitoring. Based on the avoidance, minimization, and monitoring plan developed (as required in the above section), during construction, the non-disturbance buffer zones shall be established and maintained if applicable. A qualified biologist shall monitor the site consistent with the requirements described above to ensure that buffers are enforced and owls are not disturbed. The biological monitor shall also conduct training of construction personnel on the avoidance procedures, buffer zones, and protocols in the event that a burrowing owl flies into an active construction zone.

Passive Relocation. Any passive relocation plan would need to be approved by the County and CDFW, and would only occur during the non-breeding season (September 1–January 31) if the other measures described above do not allow work to continue. Passive relocation would only be proposed if the burrow needed to be removed, or had the potential of collapsing (e.g., from construction activities), as a result of the covered activity.

If passive relocation is eventually allowed, a qualified biologist can passively exclude birds from their burrows during non-breeding season only by installing one-way doors in burrow entrances. These doors shall be in place for 48 hours to ensure owls have left the burrow, and then the biologist shall excavate the burrow to prevent reoccupation. Burrows shall be excavated using hand tools. During excavation an escape route shall be maintained at all times. This may include inserting an artificial structure into the burrow to avoid having the overburden collapse into the burrow and trapping owls inside.

Exceptions to Passive Relocation Prohibition. Any exceptions to passive relocation prohibitions would be subject to the approval of the County and CDFW.

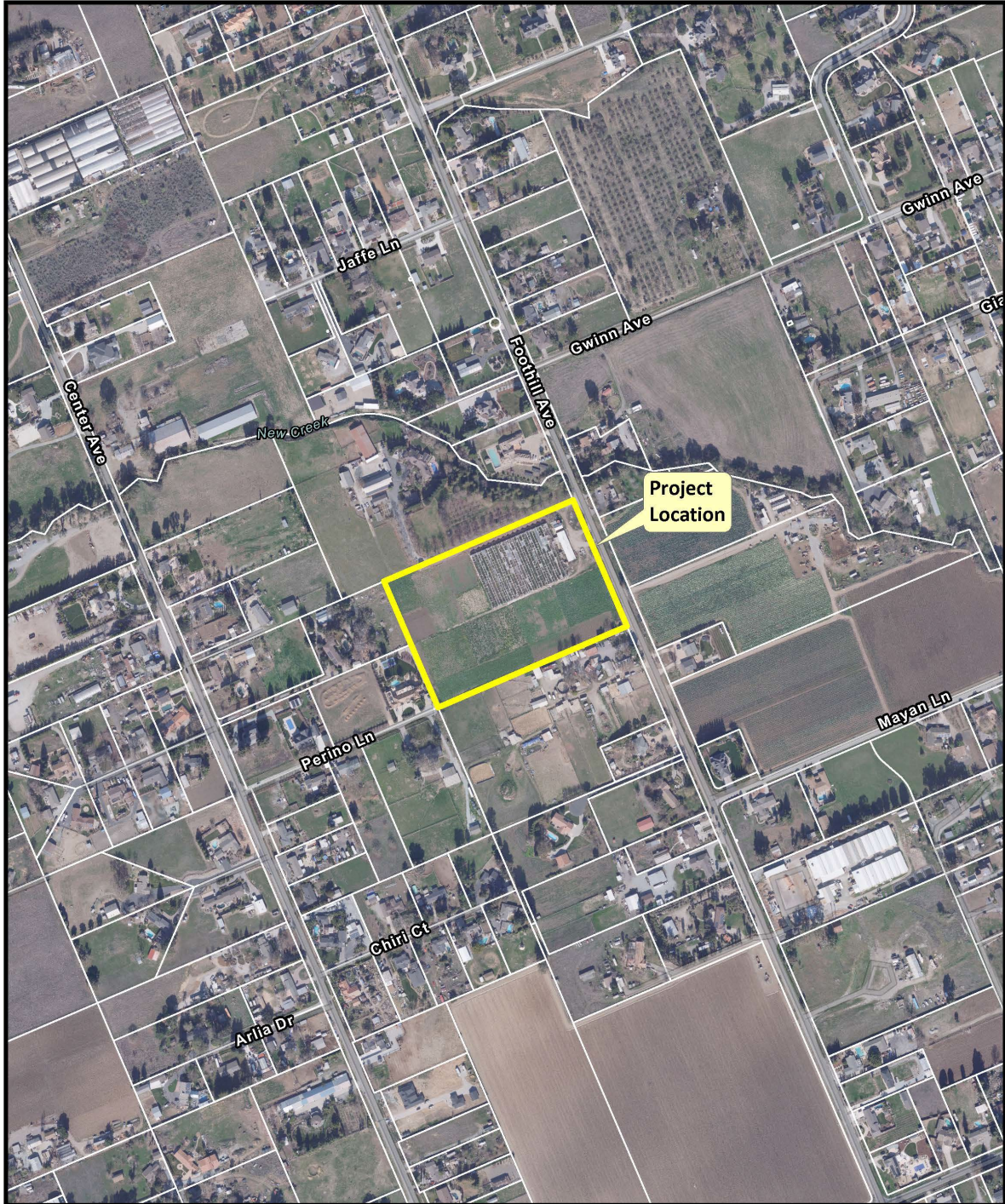
BIO- 2: Alternative Mitigation BIO-MIT-1b, the project can opt-in to the Santa Clara Valley Habitat Plan and follow the mitigations measures for burrowing owls included under Condition 15 of the Habitat Plan (6-62, Santa Clara Valley Habitat Plan; Attachment A).

BIO-3: Preconstruction Surveys for Badgers - During the course of the preconstruction surveys for other species, a qualified biologist shall also determine the presence or absence of badgers prior to the start of construction. If badgers are found to be absent, no other mitigations for the protection of badgers shall be warranted.

Avoidance and Monitoring - If an active badger den is identified during pre-construction surveys within or immediately adjacent to an area subject to construction, a construction-free buffer of up to 300 feet shall be established around the den. Once the biologist has determined that badger has vacated the burrow, the burrow can be collapsed or excavated, and ground disturbance could proceed. Should the burrow be determined to be a natal or reproductive den, and because badgers are known to use multiple burrows in a breeding burrow complex, a biological monitor shall be present onsite during construction activities in the vicinity of the burrows to ensure the buffer is adequate to avoid direct impact to individuals or natal/reproductive den abandonment. The monitor shall be required to be present until it is determined that young are of an independent age and construction activities would not harm individual badgers.

Tailgate Training. All workers on the project shall attend a tailgate training that includes a description of the species, a brief summary of its biology, and minimization measures and instructions on what to do if an American badger is observed.

BIO-4: Preconstruction Surveys for Ground Nesting Migratory Birds - To the extent possible, any project-related ground disturbance or vegetation removal activities should occur outside of the bird breeding season, i.e., during the period from September 1st through January 31st. Project-related activities that occur during the bird breeding season, i.e., during the period from February 1st through August 31st, could be constrained in the vicinity of any active of ground nesting migratory birds. **If tree removal or ground disturbance activities are scheduled to commence during the breeding season, a qualified biologist shall conduct pre-construction nesting bird surveys to identify possible nesting activity within 15 days prior to such activities.** A construction-free buffer of suitable dimensions as determined by a qualified biologist must be established around any active raptor or migratory bird nest for the duration of the project, or until it has been determined that the young have fledged and are foraging independently from their parents.



Location and Vicinity Map

Record No. PLN21-223
APN 825-25-104
12475 Foothill Ave., San Martin



Figure 1 – Location and Vicinity Map

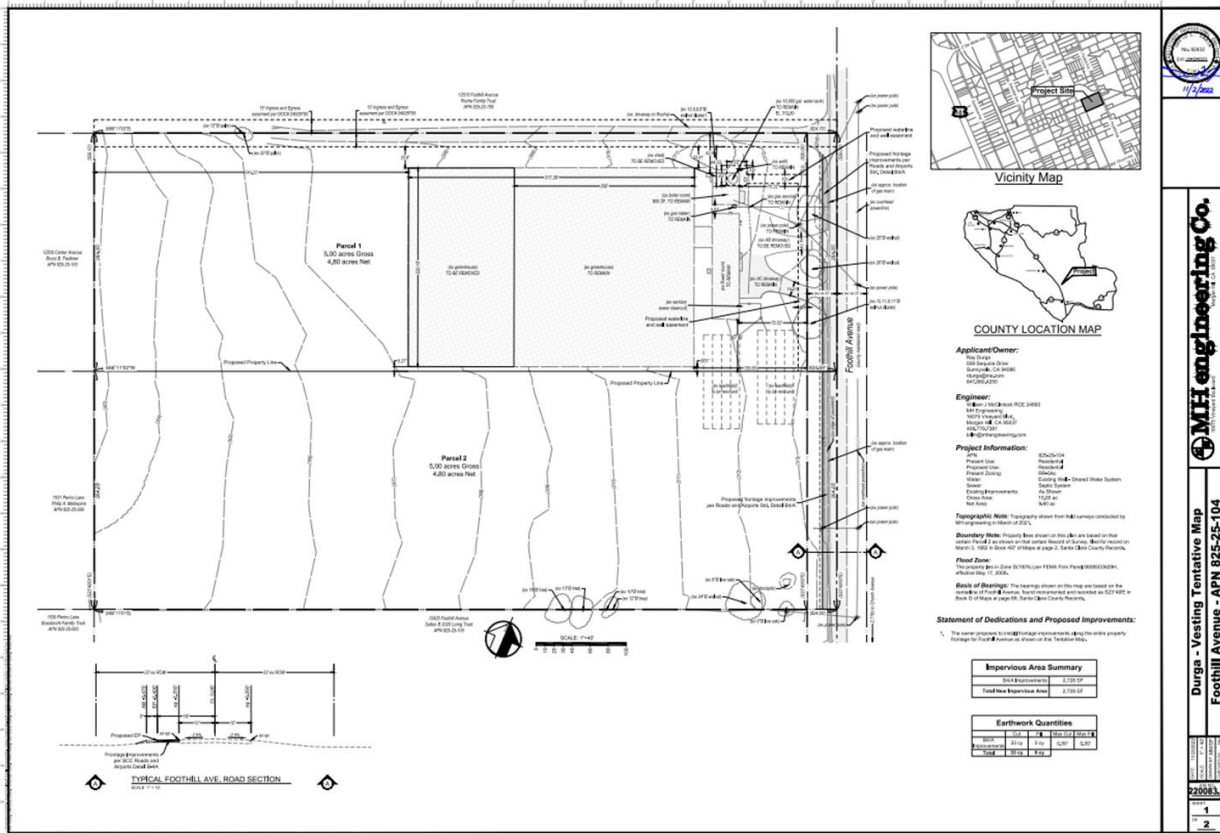


Figure 2 – Vesting Tentative Map

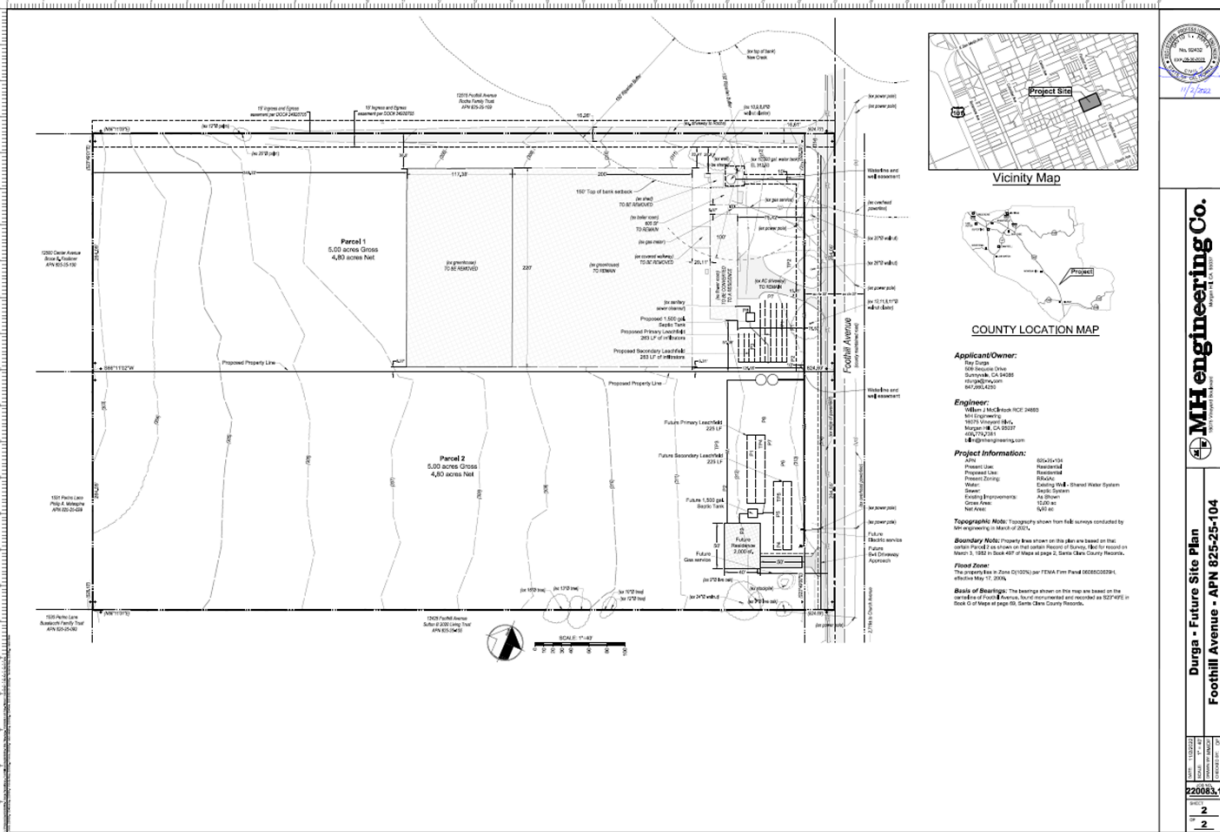


Figure 3 – Development Feasibility Site Plan

A reporting or monitoring program must be adopted for measures to mitigate significant impacts at the time the Mitigated Negative Declaration is approved, in accord with the requirements of section 21081.6 of the Public Resources Code.

Prepared by:

Charu Ahluwalia, Senior Planner

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Charu Ahluwalia
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8/16/2023

Signature

Date

Approved by:

Samuel Gutierrez, Principal Planner

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8/17/2023

Signature

Date