County of Santa Clara

Department of Planning and Development County Government Center, East Wing, 7th Floor 70 West Hedding Street San Jose, California 95110



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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	APN(s)	Date	
PLN22-039	779-12-006	9/30/2022	
Project Name	Project Type		
Harding Avenue 2-Lot Subdivision	Tentative Subdivision Map		
Person or Agency Carrying Out Project	Address	Phone Number	
Marc Lewis	16110 Wasa Ct, Pauma Valley, CA 92061	(859) 383-6626	
Name of Applicant	Address	Phone Number	
Gloria Ballad	16075 Vineyard Blvd., Morgan Hill, CA 95037	(408) 779-7381	

Project Location

The project is located at 12645 Harding Avenue in unincorporated Morgan Hill (see Figure l), west of State Route 101, with the nearest major intersection at San Martin Avenue.

Project Description

The proposed project is a two-lot subdivision of a 10-gross-acre parcel into two lots (Parcels 1 and 2) of approximately 5 gross acres each. The subject property is located on Harding Avenue in the rural, unincorporated community of San Martin, west of State Route 101 (see Figure 1). Figure 2 shows the tentative subdivision map. Grading of the project site would involve approximately 22 cubic yards (c.y.) of cut, and 135 c.y. of fill for subdivision frontage improvements along Harding Avenue. An existing 215 square feet (sq.ft.) shed in the northwestern corner of the property is proposed to be demolished. No tree removal is proposed.

Once the property is subdivided, Parcel 1 and Parcel 2 could be 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 is shown on Figure 3.

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 November 3, 2022. 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: 30 days	Begins: October 3, 2022	Ends: November 2, 2022
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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 <u>charu.ahluwalia@pln.sccgov.org</u>. A file containing additional information on this project may be requested from 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 <u>https://plandev.sccgov.org/development-projects/current-projects</u>
(under "Development Projects" > "Current Projects">PLN22-039)

Responsible Agencies sent a copy of this document

None



Figure 1 - Location Map



Figure 2 – Vesting Tentative Map



Figure 3 – Development Feasibility Site Plan

BIOLOGICAL RESOURCES MITIGATION:

<u>BIO-1a:</u> Habitat assessment for burrowing owls shall be conducted within 30 days of grading, or construction activities that shall result in ground disturbance or vegetation removal, 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.

<u>BIO-1a:</u> 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.

<u>BIO-1b:</u> 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.

<u>BIO-2</u>: 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).

Western Burrowing Owl Habitat Survey - Habitat surveys in occupied nesting habitat are required in both breeding and non-breeding seasons. If the project site falls within occupied nesting habitat, a qualified biologist will map areas with burrows (i.e., areas of highest likelihood of burrowing owl

activity) and all burrows that may be occupied (as indicated by tracks, feathers, egg shell fragments, pellets, prey remains, or excrement) on the project site. This mapping will be conducted while walking transects throughout the entire project footprint, plus all accessible areas within a 250-foot radius from the project footprint. The centerline of these transects will be no more than 50 feet apart and will vary in width to account for changes in terrain and vegetation that can preclude complete visual coverage of the area. For example, in hilly terrain with patches of tall grass, transects will be closer together, while in open areas with little vegetation they can be 50 feet apart.

This methodology is consistent with other accepted survey protocols for this species (California Burrowing Owl Consortium 1993). The Implementing Entity may update this protocol during the permit term based on changes to the accepted protocol with the concurrence of the Wildlife Agencies. Adjacent parcels under different land ownership will be surveyed only if access is granted or if the parcels are visible from authorized areas. If suitable habitat is identified during the habitat survey, and if the project does not fully avoid impacts to the suitable habitat, preconstruction surveys will be required. Suitable habitat is fully avoided if the project footprint does not impinge on a 250-foot buffer around the suitable burrow

Preconstruction Survey 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.

Implementation of Covered Activities in Burrowing Owl Habitat In order to allow covered activities to go forward in burrowing owl habitat prior to the formal take authorization of individuals described above, project applicants will employ avoidance measures described below to ensure that direct take does not occur. The below avoidance measures apply to all projects that affect any burrowing owl habitat, regardless of whether surveys are required by this condition. In other words, if a project is occurring outside of modeled occupied nesting habitat, the project proponent is obligated to ensure avoidance and minimization of impact to burrowing owls according to the measures described below.

Avoidance Measures

Breeding Season If evidence of western burrowing owls is found during the breeding season (February 1–August 31), the project proponent will 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 will 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 will be reviewed by the Implementing Entity and the Wildlife Agencies prior to project construction based on the following criteria.
 - The Implementing Entity and the Wildlife Agencies 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 will 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 monitoring indicates that the nest is abandoned prior to the end of nesting season and the burrow is no longer in use by owls, the non-disturbance buffer zone may be removed. The biologist will excavate the burrow to prevent reoccupation after receiving approval from the Wildlife Agencies.

The Implementing Entity and the Wildlife Agencies have 21 calendar days to respond to a request from the project proponent to review the proposed construction monitoring plan. If these parties do not respond within 21 calendar days, it will be presumed that they concur with the proposal and work can commence.

Non-Breeding Season

During the non-breeding season (September 1–January 31), the project proponent will establish a 250foot 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 will cease within the 250-foot buffer.
- If the owls are gone for at least one week, the project proponent may request approval from the Implementing Entity that a qualified biologist excavate usable burrows to prevent owls from reoccupying the site. After all usable burrows are excavated, the buffer zone will 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 will be established and maintained if applicable. A qualified biologist will monitor the site consistent with the requirements described above to ensure that buffers are enforced and owls are not disturbed. The biological monitor will 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 Passive relocation would not be allowed under the Plan until the positive growth trend described in Section 5.4.6 is achieved. Once this occurs, passive owl relocation may be allowed, with the approval of the Wildlife Agencies, on project sites in the non-breeding season (September 1–January 31) if the other measures described in this condition 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 will be in place for 48 hours to ensure owls have left the burrow, and then the biologist will excavate the burrow to prevent reoccupation. Burrows will be excavated using hand tools. During excavation an escape route will 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. Other methods of passive relocation, based on best available science, may be approved by the Wildlife Agencies during Plan implementation.

Exceptions to Passive Relocation Prohibition Due to the relatively low numbers of burrowing owls in the study area, it is not expected that the prohibition of passive relocation will result in project delays. However, it is possible that a covered activity could not proceed due to avoidance measures for burrowing owl in this condition if owls continually persist on a site where avoidance is not feasible. In such cases, a project proponent may apply for an exception based on the following process. For this condition, the term exception means an allowance to conduct passive relocation of burrowing owls during the non-breeding season only when this activity is not otherwise allowed. This exception process is necessary to allow reasonable use and development of a property based on the variety of constraints and factors that may affect the property. In situations where exceptions are granted, other portions of this condition may still apply. Exceptions will be used in a minority of cases with special circumstances that limit or restrict the ability of a landowner to fully apply the condition. Exceptions may be requested through the standard application process described in Section 6.8, or through a separate request process. Private applicants must apply for a passive relocation exception a passive relocation plan. The passive relocation plan must document the following.

- 1. That owls have occupied the site for a full year without relocating voluntarily. Surveys documenting presence must be completed by a qualified biologist and results must be provided in a written report. The report should confirm that one or more individuals (i.e., unique owl[s]) were monitored for a year and that the owl(s) had used the site for a full year.
- 2. The proposed process for relocation, including schedule for the proposed passive relocation and name of the qualified biologist.

The local jurisdiction, the Implementing Entity, and the Wildlife Agencies will meet to discuss the proposed passive relocation plan. Exceptions will be considered based on, but not limited to, the following factors:

- 1. The parcel is equal to or less than 3 acres and is more than 1,000 feet from other suitable nesting or foraging habitat such that it is unlikely the site can sustain burrowing owls into the future.
- 2. If the site has historically been used for nesting (within the last 3 years).
- 3. If the site is a target for a burrowing owl temporary or permanent management agreement.

As part of the review process, the Implementing Entity and Wildlife Agencies will consider the implications of an exception on the burrowing owl population and progress toward the biological goals and objective of the Plan. A passive relocation exception will not be granted if the Implementing Entity and Wildlife Agencies determine that such an exception, as mitigated, would preclude implementation of the conservation strategy of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies. The local jurisdiction or the Implementing Entity must make written findings that document these considerations and the rationale for the exception.

Additional mitigation may be required as part of an approval to implement passive relocation that is otherwise prohibited by the Plan. The need for and form of additional mitigation will be determined and approved by the Implementing Entity and Wildlife Agencies. Additional mitigation could include payment of additional fees, or contribution of occupied lands to the Reserve System. Applicable fees may be imposed by the local jurisdiction for processing exception requests. Mitigation will be proportional to the impact occurring as a result of a specific eviction and will fully mitigate such evictions.

The Implementing Entity will compile a list of all exceptions granted each calendar year for inclusion in the annual report to the Wildlife Agencies.

<u>BIO-3:</u> 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.

Preconstruction Surveys for Badgers - 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.

<u>BIO-4</u>: Workers Environmental Training - Prior to the start of the project, a worker's environmental training shall be performed with the entire construction team. All workers on the project shall attend a training that includes a description of the species, a summary of its biology, and minimization measures and instructions on what to do if a Burrowing Owl or American badger is observed.

<u>BIO-5:</u> 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

<u>BIO-6a:</u> Avoidance and Minimization of Impact to Wetlands - The preferred method of mitigation would be avoidance of all waters of the U.S. and State to the maximum extent practicable by designing the project so that it avoids the placement of fill within potential jurisdictional waters.

<u>BIO-6b</u>: Wetland Compensation - If development of the site is not designed to completely avoid the wetland features, then a formal wetland delineation should be conducted and verified by the U.S. Army Corps to determine the jurisdictional status of these features. Compensation measures for a loss of wetland habitat would include the replacement of the lost habitat value of these impacts through the creation, restoration, and/or enhancement of jurisdictional waters at a minimum 1:1 replacement-to-loss ratio. The final mitigation amounts shall be based on actual impacts to be determined during the design phase. Mitigation can be accomplished at an appropriate onsite or nearby offsite location. Alternatively, mitigation can be accomplished via the purchase of an appropriate number of credits from an agency approved mitigation bank.

CULTURAL RESOURCES MITIGATION:

<u>CUL-1</u>: Should prehistoric or historic archaeological features, such as a concentration of flaked stone artifacts, culturally modified soil, dietary shell, or the remnants of a historic trash deposit over 50 years old be uncovered during grading, trenching, or other on-site excavation(s), all project-related work shall cease within a 50-foot radius until the County has been notified, and a qualified archeologist is contacted and retained by the applicant to evaluate the significance of the find, and, if deemed necessary, suggest appropriate mitigation(s)

<u>CUL-2:</u> In the event that human skeletal remains are encountered, the applicant is required by County Ordinance No. B6-18 to immediately notify the County Coroner. Upon determination by the County Coroner that the remains are Native American, the coroner shall contact the California Native American Heritage Commission, pursuant to subdivision (c) of section 7050.5 of the Health and Safety Code and the County Coordinator of Indian affairs. No further disturbance of the site may be made except as authorized by the County Coordinator of Indian Affairs in accordance with the provisions of state law and this chapter. If artifacts are found on the site a qualified archaeologist shall be contacted along with the County Planning Office. No further disturbance of the artifacts may be made except as authorized by the County Office.

GEOLOGY/ SOILS MITIGATION:

<u>GEO-1</u>: Should unique paleontological materials be uncovered during grading, trenching, or other onsite excavation(s), all earthwork within 30 yards of the materials shall be stopped until the County has been notified, and a qualified paleontologist contacted and retained by the applicant to evaluate the significance of the find, and, if deemed necessary, suggest appropriate mitigation(s)

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

Prepared by: Charu Ahluwalia, Senior Planner	DocuSigned by: ULARU AULUWALIA E260F57503D0427 Signature	9/30/2022 Date	
Approved by: Samuel Gutierrez, Principal Planner	DocuSigned by: 4BFDD21FF1FB4D2 Signature	9/30/2022 Date	-