

# Community Development Department Planning Division (408) 846-0440

## MITIGATED NEGATIVE DECLARATION

City of Gilroy  
7351 Rosanna St.  
Gilroy, CA 95020

**City File Number:** File No. Z 22-02, TM-21-02, and AS 21-13

### **Project Description:**

**Name of Project:** Gilroy Square

**Nature of Project:** Application for a six-lot subdivision, and Architectural and Site Review to establish the development plan for Phase II of the PUD for development on four of the lots. The proposed project includes two, four-story hotels, a drive-through fast food restaurant, a convenience store, and two, one-story speculative warehouse buildings. The warehouse buildings are proposed as future development.

### **Project Location:**

**Location:** 6970 Camino Arroyo in the city of Gilroy.

**Assessor's Parcel Number:** 841-70-049

### **Entity or Person(s) Undertaking Project:**

**Name:** Jaspal Singh Sidhu  
**Address:** 1024 Iron Point Road, Folsom, CA 95630  
**Staff Planner:** Kraig Tambornini, Senior Planner

### **Initial Study:**

An initial study of this project was undertaken and prepared for the purpose of ascertaining whether this project might have a significant effect on the environment. A copy of this study is attached.

### **Findings & Reasons:**

The initial study identified potentially significant effects on the environment. However, this project has been mitigated (see Mitigation Measures below which avoid or mitigate the effects) to a point where no significant effects will occur. On the basis of the whole record, there is no substantial evidence the project will have a significant effect on the environment. The following reasons will support these findings:

- The proposal is a logical component of the existing land use of this area.
- Identified adverse impacts are proposed to be mitigated on-site and a mitigation monitoring and reporting program have been prepared.
- The proposed project is consistent with the adopted goals and policies of the General Plan of the City of Gilroy.
- City staff independently reviewed the Initial Study, and this Mitigated Negative Declaration reflects the independent judgment of the City of Gilroy.
- With the application of the following Mitigation Measures the proposed project will not have any significant impacts on the environment.
- The Gilroy Planning Division is the custodian of the documents and other material that constitute the record of proceedings upon which this decision is based.

### **Air Quality**

Refer to Mitigation Measure GHG-1.

### **Biological Resources**

BIO-1 To avoid/minimize impacts to burrowing owls potentially occurring within the project site, the project applicant shall retain a biologist qualified in ornithology to conduct surveys for burrowing owl. The approved biologist shall conduct a two-visit (i.e., morning and evening) presence/absence survey at areas of suitable habitat on and adjacent to the project site boundary no less than 14 days prior to the start of construction or ground disturbance activities. Surveys shall be conducted according to methods described in the Burrowing Owl Survey Protocol and Mitigation Guidelines (California Burrowing Owl Consortium 1993) and the Staff Report on Burrowing Owl Mitigation (California Department of Fish and Wildlife 2012). The applicant shall submit evidence of completion of the preconstruction survey to the City of Gilroy Planning Department prior to issuance of a grading permit. Because burrowing owls occupy habitat year-round, seasonal no-disturbance buffers, as outlined in the Burrowing Owl Survey Protocol and Mitigation Guidelines (California Burrowing Owl Consortium 1993) and the Staff Report on Burrowing Owl Mitigation (California Department of Fish and Wildlife 2012), shall be in place around occupied habitat prior to and during any ground disturbance activities. The following table includes buffer areas based on the time of year and level of disturbance (California Department of Fish and Wildlife 2012), unless a qualified biologist approved by the California Department of Fish and Wildlife verifies through non-invasive measures that either: 1) birds have not begun egg laying and incubation; or

2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance Buffers (meters)		
		Low	Med	High
Nesting Sites	April 1 – Aug 15	200 m	500 m	500 m
Nesting Sites	Aug 16 – Oct 15	200 m	200 m	500 m
Nesting Sites	Oct 16 – Mar 31	50 m	100 m	500 m

If burrowing owl is found and avoidance is not possible, burrow exclusion may be conducted by qualified biologists only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. Occupied burrows shall be replaced with artificial burrows at a ratio of one collapsed burrow to one constructed artificial burrow (1:1). Evicted burrowing owls may attempt to colonize or re-colonize an area that would be impacted, thus ongoing surveillance during project activities shall be conducted at a rate sufficient to detect burrowing owls if they return.

If surveys locate occupied burrows in or near construction areas, consultation with the CDFW shall occur to interpret survey results and develop a project-specific avoidance and minimization approach.

BIO-2 To avoid impacts to nesting birds during the nesting season (January 15 through September 15), to the extent feasible, construction activities that include any vegetation removal or ground disturbance (such as grading or grubbing) shall be conducted between September 16 and January 14, which is outside of the bird nesting season. If construction activities commence during the bird nesting season, then a qualified biologist shall conduct a pre-construction survey for nesting birds to ensure that no nests would be disturbed during project construction.

If construction activities are scheduled during the nesting season (February 15 to August 30 for small bird species such as passerines; January 15 to September 15 for owls; and February 15 to September 15 for other raptors), a qualified biologist shall conduct nesting bird surveys. Two surveys for active nests of such birds shall occur within 10 days prior to start of construction, with the second survey conducted with 48 hours prior to start of construction. Appropriate minimum survey radius surrounding the work area is typically 250 feet for passerines, 500 feet for smaller raptors, and 1,000 feet for larger raptors. Surveys shall be conducted at the appropriate times of day to observe nesting activities.

If no nesting activity is observed, a report shall be submitted to the City of Gilroy and disturbance activities may commence. If the qualified biologist documents active nests within the project site or in nearby surrounding areas, a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors shall be established. The buffer shall be clearly marked and maintained until the young have fledged and are foraging independently. Prior to construction, the qualified biologist shall conduct baseline monitoring of each nest to characterize “normal” bird behavior and establish a buffer

distance, which allows the birds to exhibit normal behavior. The qualified biologist shall monitor the nesting birds daily, or as otherwise required by the California Department of Fish and Wildlife, during construction activities and increase the buffer if birds show signs of unusual or distressed behavior (e.g., defensive flights and vocalizations, standing up from a brooding position, and/or flying away from the nest). If buffer establishment is not possible, the qualified biologist or construction foreman shall have the authority to cease all construction work in the area until the young have fledged and the nest is no longer active. This measure shall be implemented by the developer prior to start of construction activities.

### **Geology and Soils**

GEO-1 The developer shall prepare an erosion control plan that details appropriate methods to prevent and/or minimize erosion. The erosion control plan is subject to the review and approval of the City of Gilroy Public Works Department prior to the issuance of a grading permit.

GEO-2 Prior to issuance of a grading permit, the developer shall implement the recommendations outlined in the geotechnical report prepared for the proposed project including, but not limited to:

- Recompact the surface soils;
- Fill material to be excavated and stockpiled so that the native soils can be prepared properly, with inspection of the bottom of the excavation by a qualified geotechnical engineer to verify no additional removal is required; and
- Replace the upper 30 inches of soil within slab-on-grade and exterior flatwork areas with non-expansive fill to reduce the potential soil movement.

### **Greenhouse Gas Emissions**

GHG-1 The proposed project shall be designed to meet the following performance standards:

- a. With exception of the planned fast-food use, no permanent natural gas infrastructure shall be permitted as part of the improvement plans for any other individual project uses. These uses shall be all electric; and
- b. Electric vehicle infrastructure (e.g., electric vehicle parking spaces, charging station infrastructure, chargers, etc.) consistent with CALGreen Tier 2 mandatory standards in effect at the time individual building permits are issued, shall be installed at each individual proposed use.

GHG-2 The applicant shall:

- a. Prepare a Greenhouse Gas (GHG) Reduction Plan which identifies one or more GHG reduction actions that will be taken to reduce GHG emissions from the proposed fast food use by a minimum of 28.9 MT CO<sub>2</sub>e per year to offset emissions produced by using natural gas. The GHG Reduction Plan shall prioritize on-site GHG reduction design features.

In lieu of or in addition to one or more of the on-site measures above, the applicant may make direct investments in off-site GHG reduction activities/programs in the vicinity. Examples include building retrofit programs that pay for cool roofs, solar panels, solar water heaters, smart meters, energy efficient lighting energy efficient windows, and insulation. Other examples include financing programs for installing electric vehicle charging stations, electrifying school buses, or planting local urban forests.

The applicant may retain a qualified air quality / GHG professional to quantify the GHG reductions from implementing the Reduction Plan using substantial evidence to be included in the Reduction Plan.

If the applicant elects to quantify the GHG emissions reductions from on-site measures and/or investments in off-site reduction programs and the reductions are less than insufficient to reduce project emissions by a minimum of 28.9 MT CO<sub>2</sub>e per year, the applicant may secure the reduction balance by purchasing and retiring carbon offset credits. The carbon offset credits shall meet the following standards:

- Carbon offset credits shall be issued by a recognized, reputable and accredited registry that mandates the use of established protocols for quantifying and issuing the offset credits. Credits issued based on protocols approved by the California Air Resources Board should be prioritized. Examples of such registries include the Climate Action Reserve, American Carbon Registry, and Vierra.
- The carbon offset credits should be generated from projects developed in the United States. Credits from projects developed internationally should not be used unless the applicant demonstrates with substantial evidence that sufficient carbon offsets from projects in the United States are unavailable. International offsets must be quantified and issued using established protocols that are recognized in the United States and that are issued by recognized, reputable and accredited registries.
- All carbon offset credits purchased to reduce GHG emissions, must meet the criteria of being real, quantifiable, permanent, verifiable, enforceable, and additional, consistent with the standards set forth in Health and Safety Code section 38562, subdivisions (d)(1) and (d)(2).

Prior to the City issuing a building permit for the fast food use, the applicant shall submit the GHG Reduction Plan for review and approval of the City of Gilroy. If carbon offsets are proposed, prior to approval of a building permit, the applicant shall provide an executed contract or other certification to the City Planner that the requisite volume carbon offset credits have been purchased.

- b. The planned fast food use shall include all electricity pre-wiring necessary so that the building is ready for a future retrofit to all-electric supply infrastructure sufficient to replace natural gas use in the future. Prior to issuing a building

permit for the fast food use, the City shall verify that project improvement plans meet the pre-wiring requirement.

### **Hydrology and Water Quality**

- HYDRO-1 All stormwater on the project site must be treated aboveground in an approved low-impact development treatment device prior to entering stormwater chambers. The proposed project must show proof of compliance with this requirement on the project plans prior to issuance of a grading permit with approval by the City of Gilroy Public Works Department.
- HYDRO-2 The project proponent shall prepare and submit Erosion Control Plans to the City of Gilroy Public Works Department prior to the issuance of a grading permit. The Erosion Control Plans shall illustrate how the project's grading phases would prevent or minimize erosion and siltation on- and off-site, such as the inclusion of Best Management Practices.
- HYDRO-3 The project proponent shall prepare and submit a Storm Water Pollution Prevention Plan for review and approval by the City of Gilroy Public Works Department prior to issuance of a grading permit. The Storm Water Pollution Prevention Plan shall identify construction and post-construction Best Management Practices to prevent water pollution at the source

### **Noise**

- N-1 Prior to issuance of a building permit for the two proposed hotels, the building plans shall include air conditioning or mechanical ventilation, subject to review and approval by the building department.

Date Prepared: March 2023

Review Period: January 27, 2023 – February 27, 2023

Date Adopted by City Council:

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