

## CLASS 32 CHECKLIST FOR FILE NO. 2020-7525 166 E FREMONT AVE – MIXED USE PROJECT

Project Title	166-176 E Fremont Avenue – Mixed Use Project
Permit Number	2020-7525
Lead Agency Name and Address	City of Sunnyvale 456 W Olive Avenue, P.O. Box 3707 Sunnyvale, CA 94088-3707
Contact Person/Project Planner	Shétal Divatia (408) 730-7637 sdivatia@sunnyvale.ca.gov
Project Location and Address	166 – 176 E Fremont Avenue
Project Applicant	The True Life Companies
General Plan Designation	Village Center Mixed Use (VMU)
Zoning	C-1 (Neighborhood Commercial)/PD (Planned Development Combining District)
Other Public Agencies whose Approval is Required	None

### BRIEF PROJECT DESCRIPTION

The project consists of the following permit request:

- SPECIAL DEVELOPMENT PERMIT: To redevelop a portion (easterly portion) of an existing shopping center (Fremont Corners) into a mixed-use project with approximately 8,094 square feet (6.7% FAR) of commercial space, 10% commercial lot coverage and 50, 4-story townhome-style condominiums (18.09 du/ac) with associated surface parking (199 spaces) and site improvements including common open space (13,375 square feet). The project requests eight waivers of development standards pursuant to the Density Bonus Law and one incentive/concession from Sunnyvale's development standards to accommodate the proposed residential project.
- TENTATIVE MAP: To create 6 lots and 50 residential condominium units

### DETAILED PROJECT DESCRIPTION

The project is located on a 2.7-acre site, at the easterly portion of the four-parcel 7.8-acre shopping center at the southeast corner of Sunnyvale-Saratoga Avenue Road and Fremont Avenue. The site is currently developed with two commercial buildings and surface parking. The project proposes to demolish the existing 10,500 square foot commercial building located on the southerly portion of the site; and renovate the existing 8,094-square foot commercial building. The site will be served by a 13,375-square foot common open space located between the commercial and residential buildings. The site improvements including the removal of 16 on-site trees, preserving 15 trees, and planting 18 trees. The project includes constructing four new four-story multi-family residential buildings that provide a total of 50 townhome-style condominiums with enclosed garage parking for each unit and living units on the upper floors. Associated site improvements include new landscaping and fencing, community open space, surface parking, access driveways and walkways, and a new masonry trash enclosure. The Sunnyvale General Plan – Land Use and Transportation designates the project site as Village Center Mixed-Use to encourage mixed use redevelopment.

### CEQA EXEMPTION:

Article 19 of the California Environmental Quality Act (CEQA) Guidelines, Section 15300 to 15333, identifies classes of projects that do not have a significant effect on the environment and, therefore, are exempt from review under CEQA.

### **CLASS 32 (INFILL DEVELOPMENT)**

Among the classes of projects that are exempt from CEQA review are those that are specifically identified as urban infill development. CEQA Guidelines Section 15332 states that the term *infill development* (or the Class 32 exemption) is applicable to projects that meet the following conditions:

- a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as applicable zoning designations and regulations.
- b. The proposed development occurs within the city limits, on a project site that is no more than 5 acres and surrounded by urban uses.
- c. The project site has no value as habitat for endangered, rare, or threatened species.
- d. Approval of the project would not result in any significant effects related to traffic, noise, air quality, or water quality.
- e. The site can be adequately served by all required utilities and public services.

The analysis presented herein provides substantial evidence that the Project qualifies for an exemption under CEQA Guidelines Section 15332, as a Class 32 urban infill development, and would not have a significant impact on the environment.

### **EXCEPTIONS**

Even if a project is ordinarily exempt under the potential categorical exemptions, CEQA Guidelines Section 15300.2 provides specific instances where exceptions to otherwise applicable exemptions apply. Exceptions to a categorical exemption apply in the following circumstances, effectively nullifying a CEQA categorical exemption:

- a. Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located. A project that is ordinarily insignificant in its impact on the environment may, in a particularly sensitive environment, be significant. Therefore, these classes are considered to apply in all instances, except that the project may affect an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, State, or local agencies.
- b. Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type and in the same place over time is significant.
- c. Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
- d. Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.
- e. Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.
- f. Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

The following analysis presents substantial evidence that there are no exceptions that apply to the Project or its site, that the Project would not have a significant effect on the environment, and that the Class 32 exemption remains applicable.

### **CITY OF SUNNYVALE – STANDARD CONDITIONS OF APPROVAL**

As stated above, the Project site is within the Sunnyvale General Plan area. Therefore, the Project is subject to the Standard Conditions of Approval (SCA), which apply to all projects within the General Plan area. These conditions incorporate development policies and standards from several adopted plans and policies (such as the Sunnyvale Municipal Code, City General Plan, and other requirements of jurisdictional agencies). These conditions are included in the discussion and analysis of subsequent environmental review for all development projects within the General Plan area.

In reviewing project applications, the City determines which SCAs apply, depending on the specific characteristics of the project type and/or project site. Because these SCAs are mandatory City requirements, this analysis assumes that the SCAs would be imposed and implemented by the Project and not imposed as mitigation measures under CEQA. If a project is determined to have a significant environmental impact, even with implementation of these conditions, other feasible mitigation measures would be developed.

### **CEQA EXEMPTION CHECKLIST:**

The following analysis provides substantial evidence to support a conclusion that the Project qualifies for an exemption under CEQA Guidelines Section 15332 as a Class 32 urban infill development and would not have a significant effect on the environment.

#### **CRITERION SECTION 15332(A): GENERAL PLAN AND ZONING CONSISTENCY**

The project is consistent with the applicable general plan designation and all applicable ☒ Yes ☐ No general plan policies as well as with applicable zoning designation and regulations.

The Sunnyvale General Plan and Zoning designates the site as a Village Center Mixed Use site that allows for Medium Density Residential (average density of 18 du/ac) and 10% Floor Area Ratio (FAR) for commercial uses. Townhomes, apartments, and condominiums are typical within this residential designation. The Sunnyvale General Plan – Land Use and Transportation Element encourages redevelopment of older shopping centers such as the subject site with mixed use development to provide close-in services and residential diversity in existing residential areas. The project proposes 8,094 square feet of commercial (6.7% FAR), 10% commercial lot coverage and a 50-unit townhome style condominium development (18.09 du/ac). The project generally complies with the prescribed development standards in the General Plan and Zoning, and requests waivers and incentives/concessions from nine development standards granted by the Density Bonus Law (Government Code 65915). The proposed development is considered compatible with the surrounding residential and commercial uses and neighborhood character.

#### **CRITERION SECTION 15332(B): PROJECT LOCATION, SIZE, AND CONTEXT**

The proposed development occurs within city limits on the project site of no more ☒ Yes ☐ No than 5 acres substantially surrounded by urban uses.

The project site is within the City limits and is located on a 2.7-acre site. The project site is within a developed, urban area of Sunnyvale and is surrounded by other residential and commercial buildings.

**CRITERION SECTION 15332(C): ENDANGERED, RARE, OR THREATENED SPECIES**

The project site has no value as habitat for endangered, rare, or threatened species.    ☒ Yes    ☐ No

The project site is urbanized with existing improvements and buildings and is not an active habitat for known special status biological resources or wildlife. The Biological Study was prepared by FirstCarbon Solutions, in July 2020. The study concludes that it the site is unlikely to support special-status plant or wildlife species; however the ornamental trees and the existing buildings present within the site and immediate vicinity may support both non-special status and special-status nest birds and bats. The Study recommends a pre-construction surveys to establish their presence or absence prior to removal of their habitat.

An Arborist Report dated May 2020 was prepared by HortScience for the project. The report surveyed a total of 31 on-site trees, of which 23 trees are deemed “protected” under SMC Chapter 19.94. A protected tree is defined as having a trunk size of at least 38 inches in circumference, as measured 4.5 feet from the ground. The proposed project includes removal of 16 trees, 9 are protected trees, of which 6 trees are in fair condition and 2 trees are in poor condition and 1 tree is in good condition. A majority of the trees proposed to being removed are in conflict with the location of the proposed buildings. Of the 15 trees proposed to be saved, 14 trees are protected trees. A total of nine protected trees are proposed to be saved, four trees (Raywood Ash and Australian Willow) are along the Fremont frontage of the site and the other five occur along the east and southern property lines shared with residential neighbors. A large Monterey Pine tree is located at the southeast corner of the site which is proposed to be saved and is recommended to be pruned. Project proposes to plant 181 24-inch box sized trees.

The existing trees and buildings can be habitat for nesting birds and bat habitat. The City of Sunnyvale is required to comply with all local, state and federal regulations pertaining species and habitat protection. In addition, Sunnyvale’s standard conditions of approval will include the following:

1. Avoidance. Demolition and construction activities should be scheduled between September 1 and January 31 to avoid the nesting bird season. If construction activities are scheduled to take place outside the nesting season, all impacts on nesting birds protected under the MBTA and California Fish and Game Code will be avoided.
2. Preconstruction/Pre-disturbance Surveys. If it is not possible to schedule demolition and construction activities between September 1 and January 31 then preconstruction surveys for nesting birds should be conducted by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. We recommend that these surveys be conducted no more than 14 days prior to the initiation of demolition/construction activities. During this survey, the ornithologist will inspect all trees and other potential nesting habitats (e.g., trees, shrubs, grasslands, buildings) in and immediately adjacent to the impact areas for nests.
3. Buffers. If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist will determine the extent of a construction-free buffer zone to be established around the nest (typically 300 ft for raptors and 100 ft for other species), to ensure that no nests of species protected by the MBTA and California Fish and Game Code will be disturbed during project implementation.
4. Inhibition of Nesting. If construction activities will not be initiated until after the start of the nesting season, all potential nesting substrates (e.g., bushes, trees, grasses, and other vegetation) that are scheduled to be removed by the project may be removed prior to the start of the nesting season

(e.g., prior to February 1). This will preclude the initiation of nests in this vegetation and prevent the potential delay of the project due to the presence of active nests in these substrates.

### **CRITERION SECTION 15332(D): TRAFFIC**

Approval of the project would not result in any significant effects related to traffic.      ✓ Yes      ☐ No

#### **VMT Analysis Background:**

Per Council Policy 1.2.8 Transportation Analysis Policy, Vehicles Miles Traveled (VMT) is now used to identify potential transportation impacts of a proposed land use project to comply with California Environmental Quality Act (CEQA).

#### **Council Policy 1.2.8 – 1. Land Use Projects:**

For residential and employment projects, projects shall use the Countywide Average VMT as the baseline with a VMT reduction threshold set at 15% below the baseline to identify potential transportation impacts and propose mitigations. For residential land use projects, the countywide average baseline VMT is 13.33 VMT/capita, and the VMT threshold with 15% reduction is 11.33 VMT/capita. For employment land use projects, the countywide average baseline VMT is 16.64 VMT/employee, and the VMT threshold with 15% reduction is 14.14 VMT/employee.

#### **Council Policy 1.2.8 – 2. Exemption:**

A project is deemed to be exempted from VMT analysis if it meets at least one of the six criteria as identified under Council Policy 1.2.8 2. Exemption. Each land use type within the proposed project would be analyzed separately. Table 1 presents the VMT Analysis Exemption Screening Checklist for the proposed project.

#### Residential Land-use

The proposed residential land use component of the project is not exempted from VMT Analysis. However, per the *Residential VMT Heat Map for Countywide VMT Average* (Attachment 11 of RTC 20-0640), the project is located in the area where the average VMT/capita is 15% below the Countywide VMT Baseline Average, therefore the residential component of the project does not trigger any transportation related impacts per CEQA. Therefore, a VMT analysis is not required.

#### Commercial/Retail Land-use

The proposed commercial/retail component of the project is exempted from VMT Analysis under 2.B Neighborhood-Serving Retail/Service Development, as the proposed commercial/retail component meets the following criteria:

- a) Neighborhood serving retail – the proposed project consists of a sit-down restaurant and general retail
- b) Commercial Retail that has a square footage less than 100,000 SF – the proposed commercial and retail is 26,000 SF

Therefore, a VMT analysis is not required and no further analysis is required.

### **CRITERION SECTION 15332(D): NOISE**

Approval of the project would not result in any significant effects related to noise.      ✓ Yes      ☐ No

An Environmental Noise Study for the project was prepared by Salter Associates Inc., in July 2020. The study concludes that noise from project operation (mechanical equipment and traffic) is not expected to significantly increase noise to the surrounding properties. The study notes that project construction can produce higher levels of noise for the neighboring properties and provides measures that will be adopted by the contractor to reduce noise impact on the neighbors. These standard measures are

consistent with the City's LUTE standard conditions of approval (see below). The assessment concludes the project operation would not result in a significant increase and the site will continue to meet Sunnyvale standards. The Study recommends that depending on the final placement of the mechanical equipment on the commercial building, noise levels can vary at the property line and that an acoustical engineer should review the design as it is developed to confirm noise levels and determine if additional noise-reducing measures are required. Staff has included this requirement as a Condition of Approval to be addressed prior to issuance of a Building Permit.

The project would generate temporary noise during construction that shall be included in the Construction Management Plan (CMP), a standard requirement to address noise and construction impacts. The following LUTE standard conditions would apply to the project, when approved.

- New development and public projects shall employ site-specific noise attenuation measures during construction to reduce the generation of construction noise and vibration. These measures shall be included in a Noise Control Plan that shall be submitted for review and approval by the City. Measures specified in the Noise Control Plan and implemented during construction shall include, at a minimum, the following noise control strategies:
  - Equipment and trucks used for construction shall use the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds;
  - Impact tools (e.g., jackhammers, pavement breakers, and rock drills) used for construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools; and
  - Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or include other measures.
- Noise and vibration reducing pile-driving techniques shall be employed during construction and will be monitored to ensure no damage to nearby structures occurs (i.e., vibrations above peak particle velocity (PPVs) of 0.25 inches per second at nearby structures). These techniques shall include:
  - Installing intake and exhaust mufflers on pile-driving equipment;
  - Vibrating piles into place when feasible, and installing shrouds around the pile-driving hammer where feasible;
  - Implementing "quiet" pile-driving technology (such as pre-drilling of piles and the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
  - Use cushion blocks to dampen impact noise, if feasible based on soil conditions. Cushion blocks are blocks of material that are used with impact hammer pile drivers. They consist of blocks of material placed atop a piling during installation to minimize noise generated when driving the pile. Materials typically used for cushion blocks include wood, nylon and micarta (a composite material); and
  - At least 48 hours prior to pile-driving activities, notifying building owners and occupants within 600 feet of the project area of the dates, hours, and expected duration of such activities.

#### **CRITERION SECTION 15332(D): AIR QUALITY**

Approval of the project would not result in any significant effects related to air quality. ☒ Yes ☐ No

The Bay Area Air Quality Management District (BAAQMD) developed screening criteria to provide lead agencies and project applicants with a conservative indication of whether a proposed project could result in potentially significant air quality impacts. If all of the screening criteria are met by a proposed project, then the lead agency or applicant would not need to perform a detailed air quality assessment of their project's air pollutant emissions. These conservative screening levels are generally representative of new development on greenfield sites without any form of mitigation measures taken into consideration. For projects that are mixed-use, infill, and/or proximate to transit service and local services, emissions would be less than the greenfield type project that these screening criteria are based on. The proposed 50-unit residential development is below the screening criteria for Operational-Related Criteria Air Pollutant and Precursor Screening Level Sizes and therefore no further analysis is needed.

Furthermore, the project would not include any development beyond that assumed and analyzed in the LUTE EIR. The project proposes to remove 10,500 square feet of commercial space and construct 50-townhome style condominium units, which is within the residential density analyzed in the LUTE EIR. Therefore, the findings of the certified LUTE EIR concerning consistency with air quality plans remain valid and no further analysis is required.

Standard conditions required in the LUTE EIR require construction projects to implement BAAQMD's basic construction mitigation measures, which include the following dust control measures:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day;
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered;
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited;
- All vehicle speeds on unpaved roads shall be limited to 15 mph;
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used; and;
- Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours.

#### **CRITERION SECTION 15332(E): UTILITIES AND PUBLIC SERVICES**

The site can be adequately served by all required utilities and public services. ☒ Yes ☐ No

The Project will result in redevelopment of the site that is consistent with the Land Use and Transportation Element and evaluation in the LUTE-EIR. The impact on utilities and service systems would be less than significant as noted in the LUTE EIR. The project site is already served by water, sewer and other municipal services. Furthermore, the project is consistent with the development assumptions analyzed in the LUTE Draft EIR.

#### **EXCEPTIONS TO CATEGORICAL EXEMPTIONS CHECKLIST:**

In addition to investigating the applicability of CEQA Guidelines Section 15332 (Class 32), this CEQA document also assesses whether any of the exemptions to qualifying for the Class 32 categorical exemption for an Infill Project are present. The following analysis compares the criteria of CEQA Guidelines Section 15300.2 (Exceptions) to the Project.

**CRITERION SECTION 15300.2(A): LOCATION**

Is there an exception to the Class 32 exemption for the project due to its location in a particularly sensitive environment, such that the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, State, or local agencies? ☐ Yes ☒ No

The project is not located with a mapped hazard zone. A Phase I Environmental Site Assessment (ESA) was prepared for the project site by Geologica, Inc in May 2020. The Phase I ESA investigation revealed no evidence of recognized environmental conditions (RECs), and historical (HRECs) for the subject property. The study notes that based on the time at which the buildings were constructed in 1959 and subsequent utilization of these spaces, it is possible that Asbestos (ACM) could exist at the site:

Asbestos (ACM) – any disturbance/removal requires a comprehensive survey to be performed – noted as a Condition of Approval for the project

No hazardous materials were observed at the site nor is hazardous material(s) generated at the site. As with all properties in the vicinity, residual low levels of fertilizers and/or pesticides could be present beneath pavement in shallow site soils related to the historic orchard/agricultural use of the site prior to the development of the shopping center in 1959. There are no ASTs or USTs at the site and does not require a Phase II study.

The project is required to comply with all local, state and federal regulations. Furthermore, with implementation of standard requirements and conditions of approval impacts would be less than significant.

**CRITERION SECTION 15300.2(B): CUMULATIVE IMPACT**

Is there an exception to the Class 32 exemption for the project due to significant cumulative impacts of successive projects of the same type and in the same place, over time? ☐ Yes ☒ No

The Project would not result in cumulative impacts considering the land use and development intensity is consistent with what was analyzed in the LUTE Draft EIR.

**CRITERION SECTION 15300.2(C): SIGNIFICANT EFFECT**

Is there an exception to the Class 32 exemption for the project because there is a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances? ☐ Yes ☒ No

The Project would not result in significant impacts considering the land use and development intensity is consistent with what was analyzed in the LUTE EIR.

**CRITERION SECTION 15300.2(D): SCENIC HIGHWAY**

Is there an exception to the Class 32 exemption for the project because project may result in damage to scenic resources, including but not limited to trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a State scenic highway? ☐ Yes ☒ No



The project is located within an existing developed commercial area that does not have any scenic resources, features, or any scenic vistas. The City of Sunnyvale does not have any designated scenic highways.

The project proposes to redevelop a portion of the site with 50 new townhome style residential condominium units and renovate 8,094 square feet of commercial space. The proposed contemporary style architectural design of the four-story residential and one-story commercial buildings consists of stucco, fiber cement horizontal, vinyl windows, metal awnings and railings that would be consistent with contemporary architectural style in the area. The project design and landscaping would enhance the existing visual character of the street frontage. The sidewalks would be widened to meet City standards and new street trees would be planted.

#### **CRITERION SECTION 15300.2(E): LOCATION**

Is there an exception to the Class 32 exemption for the project because the project is ☐ Yes ☒ No located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code?

The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

#### **CRITERION SECTION 15300.2(F): HISTORICAL RESOURCES**

Is there an exception to the Class 32 exemption for the project because the project ☐ Yes ☒ No may cause a substantial adverse change in the significance of a historical resource?

The cultural resource investigation report prepared by PALEOWEST Archaeology in July 2020 for the project site notes that the site does not include any known archaeological or historic resources. The project site or structures are not on Sunnyvale's Heritage Resources list. A records search by the California Historical Resources Information System/Northwest Information Center of Sonoma State University (CHRIS/NWIC) was conducted for the project area in March 2019. The project area contains no previously recorded archaeological resources. The State Office of Historic Preservation Historic Property Directory (OHP HPD) (which includes listings of the California Register of Historical Resources, California State Historical Landmarks, California State Points of Historical Interest, and the National Register of Historic Places) lists no recorded buildings or structures within the proposed project area.

Based on an evaluation of the environmental setting and features associated with known sites, Native American resources in this part of Santa Clara county have been found along the general margin of the bay and its associated wetland areas. The following standard conditions of approval are included to reduce the potential impact to less than significant level:

- If archaeological resources are encountered during construction, work shall be temporarily halted in the vicinity of the discovered materials and workers shall not alter the materials and their context until a qualified professional archaeologist has evaluated the situation and provided appropriate recommendations.
- Project personnel shall not collect cultural resources. Native American resources include chert or obsidian flakes, projectile points, mortars, and pestles; and dark friable soil containing shell and bone dietary debris, heat-affected rock, or human burials. Historic-period resources include stone or adobe foundations or walls; structures and remains with square nails; and refuse deposits or bottle dumps, often located in old wells or privies.

- Any identified cultural resources shall be recorded on DPR 523 historic resource recordation forms. The conditions will become valid when the Use Permit is approved and prior to building permit issuance.

## **CONCLUSIONS**

On the basis of the evidence provided above, the Project is eligible for a Class 32 categorical exemption, in accordance with Section 15332, Infill Development Projects, of the CEQA Guidelines. Based on the above analysis, no substantial adverse impacts are anticipated. Because the Project meets the criteria for categorically exempt infill development projects, and because it would not have a significant effect on the environment, this analysis finds that a Notice of Exemption may be prepared for the Project. No further review is needed.