

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN JOSE ADOPTING THE 1705 BERRYESSA ROAD
GAS STATION PROJECT MITIGATED NEGATIVE
DECLARATION, FOR WHICH AN INITIAL STUDY WAS
PREPARED, ALL IN ACCORDANCE WITH THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS
AMENDED, AND ADOPTING A RELATED MITIGATION
MONITORING AND REPORTING PROGRAM**

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the 1705 Berryessa Road Gas Station Project under Planning File No. PDC15-027 (the “Initial Study/Mitigated Negative Declaration”), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

WHEREAS, the 1705 Berryessa Road Gas Station Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a rezoning from the A(PD) Planned Development Zoning District to the CP(PD) Commercial Pedestrian Planned Development Zoning District to allow for the demolition of the existing kiosk and car wash buildings, and the construction of an approximately 3,212-square foot new convenience store, a new 2,490-square foot retail/deli building, and a new 1,086-square foot car wash tunnel that includes a noise-reduction package, an acoustical baffle at the exit of the car wash tunnel, and installation of eight-foot tall to ten-foot tall noise barrier sections along the existing property line constructed in accordance with the approved development plans, all to meet the City of San José standard of 55 decibels (dB) or less at the nearest residential property line, on the subject 1.04-gross acre site, located on

the northwest corner of Berryessa Road and Lundy Avenue (Assessor's Parcel Number 241-21-068), San José, California; and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the "Mitigation Monitoring and Reporting Program"); and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File No. PDC17-027). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/Mitigated Negative Declaration and

Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

1705 Berryessa Road Gas Station Project

File Nos.: PDC15-027

CITY OF SAN JOSE

February 2017





Department of Planning, Building and Code Enforcement

HARRY FREITAS, DIRECTOR

1705 Berryessa Road Gas Station Project
File No.: PDC15-027

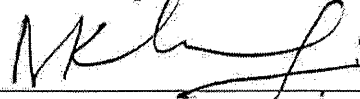
P R E F A C E

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration prepared for the 1705 Berryessa Road Gas Station Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the Initial Study/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant.

I, NARESH GOYAL, the applicant, on the behalf of AK Energy, LLC, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of an Initial Study/Mitigated Negative Declaration for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level, where feasible.

Project Applicant's Signature  Managing Member
Date 4/14/2017

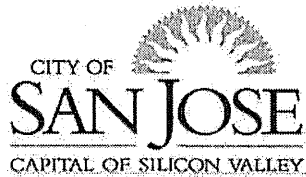


Department of Planning, Building and Code Enforcement

HARRY FREITAS, DIRECTOR

1705 Berryessa Road Gas Station Project
File No.: PDC15-027

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
Adopted Mitigation Measures	Documentation of Compliance [Project Applicant/Proponent Responsibility]	Documentation of Compliance [Lead Agency Responsibility]			
	Method of Compliance or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
Air Quality					
Impact AQ-1: The use of various diesel-powered vehicles and equipment during project construction could expose adjacent sensitive receptors to substantial toxic air contaminants.					
MM-AQ-1.1: Diesel-fueled construction equipment used onsite for more than two days shall meet EPA Tier 2 emission standards. The project applicant shall submit, for review and approval, a construction operations plan that includes a list of equipment to be used more than two days during construction, specifications of the equipment to be used during construction and a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth in this mitigation measure to the Director of the Department of Planning, Building, and Code Enforcement prior to issuance of a grading or demolition permit. The plan shall demonstrate compliance with the Tier 2 emissions standards.	The project applicant shall submit a construction operations plan that includes specifications of the equipment to be used during construction and a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth in this mitigation measure.	Prior to issuance of any grading or demolition permit.	Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement	Review construction operations plan and ensure a qualified air quality specialist has confirmed equipment included in the plan meets the standards set forth in this mitigation measure	Prior to issuance of any grading or demolition permit.
Biological Resources					
Impact BIO-1: Demolition and construction activities, including the removal of trees from the project site, could impact nesting migratory birds.					

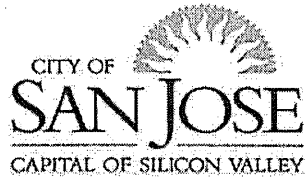


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<p>MM-BIO-1.1 If feasible, construction shall be scheduled between September 1 and January 31 (inclusive) to avoid the nesting season. If this is not feasible, pre-construction surveys for nesting raptors and other migratory breeding birds (including yellow warblers) shall be conducted by a qualified ornithologist to identify active nests that may be disturbed during project implementation on-site and within 250 feet of the site. Between February 1 and April 30 (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to initiation of construction activities (including any ground-disturbing activities) or tree removal. Between May 1 and August 31 (inclusive), pre-construction surveys shall be conducted no more than 30 days prior to initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent (within 250 feet) to the construction area for nests.</p> <p>If an active nest is found in or close enough to the construction area to be disturbed by these activities,</p>	<p>Avoidance of construction activities during nesting seasons</p> <p>If avoidance of construction activities during nesting seasons is not feasible, a pre-construction nesting bird survey shall be conducted by a qualified biologist and construction-free buffer zones shall be designated around any discovered nest.</p> <p>Following completion of the preconstruction survey, the project applicant shall prepare a report to document the results of the survey and any designated</p>	<p>Prior to issuance of any grading, demolition, and/or building permit.</p>	<p>Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement.</p>	<p>Confirm that demolition and construction activities are scheduled outside of the avian nesting season.</p> <p>Review the preconstruction survey report indicating the results of the survey and any designated buffer-zones.</p>	<p>Prior to issuance of any grading, demolition, and/or building permit.</p>



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<p>the ornithologist shall, in consultation with the California Department of Fish and Wildlife, designate a construction-free buffer zone (typically 250 feet for raptors and 100 feet for other birds) around the nest, which shall be maintained until after the breeding season has ended and/or a qualified ornithologist has determined that the young birds have fledged.</p> <p>The project applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building, and Code Enforcement prior to issuance of any grading permits.</p>	construction-free buffer zones.				
Hazards and Hazardous Materials					
Impact HAZ-1: Hazardous materials contamination on the site, if discovered in soil or groundwater, could pose a risk to construction workers and others on or around the project site.					
MM HAZ-1.1: Prior to the issuance of a demolition or grading permit, a site management plan (SMP) shall be prepared and submitted to the Santa Clara County Department of Environmental Health Hazardous Materials Compliance Division to	The project applicant shall submit the SMP to the Santa Clara County Department of Environmental Health	Prior to issuance of any grading or demolition permit.	Santa Clara County Department of Environmental Health	Confirm that project applicant has implemented the SMP.	Prior to issuance of any grading or demolition permit.



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<p>address the impact of disturbance of any residual soil or groundwater contamination. Appropriate soil testing, characterization, storage, transportation, and disposal procedures shall be specified in the SMP. Contaminated soils shall be disposed of at a licensed facility in accordance with all applicable local, state, and federal regulations. The SMP shall be prepared by a qualified hazardous materials consultant and include the following:</p> <ul style="list-style-type: none"> • Management practices for handling contaminated soil or other materials if encountered during construction or cleanup activities and measures to minimize dust generation, stormwater runoff, and tracking of soil off-site. • Preliminary Remediation Goals for environmental contaminants of concern to evaluate the site conditions following SMP implementation. • A health and safety plan (HSP) for each contractor working at the site that addresses the safety and health hazards of each site operation 	<p>Hazardous Materials Compliance Division for review and approval. An approved copy shall then be submitted to the City of San José Department of Planning, Building, and Code Enforcement.</p>		<p>Hazardous Materials Compliance Division and Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement.</p>		



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<p>phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to minimize work and public exposure to hazardous materials during construction.</p> <p>The SMP shall be reviewed and approved by the County of Santa Clara Department of Environmental Health and submitted to the City of San José Department of Planning, Building, and Code Enforcement prior to issuance of grading or building permits.</p>					

Source: *City of San José. 1705 Berryessa Road Gas Station Project Initial Study. February 2017.*