

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE ROTTEN ROBBIE #67 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

File Nos. GP16-011, C17-008, and CP17-015

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 Rotten Robbie #67 Gas Station Project under Planning File Nos. GP16-011, C17-008, and CP17-015 (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 Rotten Robbie #67 Gas Station Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of 1) a General Plan Amendment request to change the Land Use/Transportation Diagram land use designation from Heavy Industrial to Combined Industrial/Commercial, 2) a conforming Rezoning from Heavy Industrial (HI) to Combined Industrial/Commercial (CIC), and 3) a Conditional Use Permit to allow the demolition of existing structures on site and construction of an approximately 3,750 square foot one-story convenience store, six fuel stations for automobile dispensers (12 pumps), 12 fuel stations for cardlock system fueling dispensers (24 pumps), a 3,432 square foot canopy over the automobile fueling area, and a 4,813 square foot canopy over the cardlock fueling area on an approximate 1.54 gross acre site located at 1202 Oakland Road, which is situated on the northeast

corner of Commercial Street and Oakland Road (Assessor's Parcel Number 241-11-014, -020, -021, -022), 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 Nos. GP16-011, C17-008, CP17-015). 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

Rotten Robbie #67 Gas Station
File Numbers: GP16-011, C17-008, CP17-015
October 2017



PREFACE

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 Rotten Robbie #67 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.

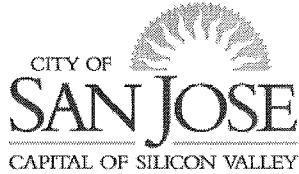
This document does *not* discuss those subjects for which the Initial Study/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant.

DAVID MORDICK

I, _____, the applicant, on the behalf of Robinson Oil Corp. 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 David Mordick

Date 11/13/17



Planning, Building and Code Enforcement

ROSALYNN HUGHEY, INTERIM DIRECTOR

Rotten Robbie #67 Gas Station Project
File Numbers: GP16-011, C17-008, CP17-015

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	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
BIOLOGICAL RESOURCES					
Impact BIO-1: Construction of the project could result in impacts to nesting migratory birds.					
<p>MM BIO-1: The project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.</p> <p>If it is not possible to schedule demolition and construction between September 1st and January 31st (inclusive) to avoid the nesting season, pre-construction surveys for nesting raptors and other migratory nesting birds 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. Projects that commence demolition and/or construction activities between February</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 ornithologist and construction-free buffer zones shall be designated</p>	<p>Prior to issuance of any grading, demolition, and/or building permits.</p>	<p>Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement, CDFW.</p>	<p>Confirm that demolition and construction activities are scheduled outside of the nesting season.</p> <p>Review the preconstruction survey report indicating the results of the survey and any</p>	<p>Prior to issuance of any grading, demolition, and/or building permits.</p>

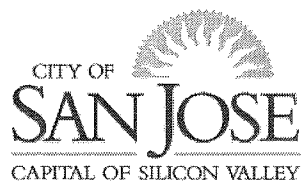


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<p>1st and April 30th, shall conduct a pre-construction survey for nesting birds no more than 14 days prior to initiation of construction, demolition activities, or tree removal. Between May 1st and August 31st, the pre-construction survey shall be conducted no more than 30 days prior to initiation of construction, demolition, or tree removal activities.</p> <p>If an active nest is found in or close enough to the project area to be disturbed by construction activities, a qualified ornithologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction-free buffer zone (typically 250 feet for raptors and 100 feet for other birds) around the nest, to ensure that raptor or migratory bird nests would not be disturbed during ground disturbing activities. The construction-free buffer zones shall be maintained until after the nesting season has ended and/or the ornithologist has determined that the nest is no longer active.</p>	<p>around any discovered nest.</p> <p>Following completion of the preconstruction survey, the project applicant shall submit a report prepared by a qualified ornithologist to document the results of the survey and any designated construction-free buffer zones.</p>			<p>designated buffer-zones.</p>	

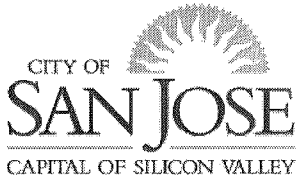


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The ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement prior to any demolition, grading and/or building permit.					
HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-1: Hazardous materials contamination on the site, if discovered in soil, could pose a risk to construction workers and others on or around the project site during excavation and grading, subsurface utility installation, maintenance, or landscaping.					
MM HAZ-1.1: Prior to the issuance of any grading permits, the project applicant shall collect shallow soil samples. The samples shall be analyzed for organochlorine pesticides (OCPs) and pesticide based metals (arsenic and lead). The soil sampling report indicating the results of the sampling shall be submitted to the City of San José Department of Planning, Building and Code Enforcement, and the Environmental Services Department (ESD) for approval. If results of the soil samples are over the screening levels, the applicant shall include conditions and procedure for clean-up as part of HAZ-1.2.	Applicant shall collect shallow soil samples.	Prior to the issuance of any grading permits.	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement and Environmental Services Specialist of the Environmental Services Department	Review the results/report of the shallow samples.	Prior to the issuance of any grading permits.



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<p>MM HAZ-1.2: Separate from the results found in MM HAZ-1.1, prior to the issuance of a demolition or grading permit, a Site Management Plan (SMP) shall be prepared by a qualified hazardous materials consultant to establish management practices for handling contaminated soil or other materials encountered during construction activities. Appropriate soil testing, characterization, storage, transportation, and disposal procedures shall be specified in the SMP. The sampling results shall be compared to appropriate risk-based screening levels in the SMP. The SMP shall identify potential health, safety, and environmental exposure considerations associated with redevelopment activities and shall identify appropriate mitigation measures.</p> <p>The SMP shall be submitted to the Santa Clara County Department of Environmental Health (or equivalent agency) for review and approval. A copy of the approved SMP shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and</p>	<p>Preparation of the SMP and implementation of the SMP measures.</p>	<p>Prior to issuance of any grading permit; during construction.</p>	<p>Santa Clara County Department of Environmental Health or equivalent agency.</p> <p>Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement and Environmental Services Specialist of the Environmental Services Department</p>	<p>Review and approve of the SMP</p>	<p>Prior to issuance of any grading permits.</p>



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<p>Code Enforcement and Municipal Compliance Officer of the City of San José Environmental Services Department for approval prior to the issuance of any grading permits. The SMP shall include, but is not limited to, the following:</p> <ul style="list-style-type: none"> • A detailed discussion of the site background; • Proper mitigation as needed for demolition of existing structures; • Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program; • Management of underground structures encountered, including utilities and/or underground storage tanks; • Procedures to follow if evidence of an unknown historic release of hazardous materials (e.g., underground storage tanks, polychlorinated biphenyls [PCBs], asbestos containing materials, lead-based paint, etc.) is discovered during excavation or demolition activities. 					

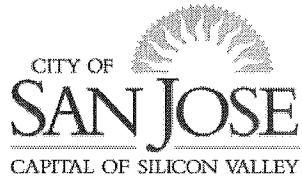


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<ul style="list-style-type: none"> Removal of underground storage tanks (USTs) requirements and guidelines. Installation of new underground storage tanks (USTs) requirements and guidelines. A health and safety plan (HSP) for each contractor working at the site that addresses the safety and health hazards of each site operation 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. 					
NOISE AND VIBRATION					
Impact NOI-1: Construction noise and vibration generated by the proposed project could impact nearby sensitive receptors.					
MM NOI-1.1: <u>Construction Noise and Vibration Plan:</u> The project applicant shall develop and implement a construction noise and vibration logistics plan (Plan) that will be in effect during all phases of construction on the project site. The Plan shall be included as part of the contractors	Submit a Construction Noise and Vibration Plan	Prior to the issuance of any demolition, grading, or building permit.	Supervising Environmental Planner of the Department of Planning, Building,	Review the Construction Noise and Vibration Plan	Prior to the issuance of any demolition, grading, or building permit.



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<p>for construction workers and applicable supervisors. All measures shall be printed on all approved construction documents, contracts, and/or project plans. The applicant shall submit a copy of all approved plans, construction documents, contracts, and/or project plans to the Supervising Environmental Planner prior to the issuance of any demolition, grading, or building permits. The Plan shall include, but is not limited to, the following:</p> <ul style="list-style-type: none"> • A list of all potential equipment (including specs) that will be used during all earthmoving activities. • A schedule of all earthmoving activities. • Responsibilities of personnel on the site. • Outreach strategies to inform nearby residences of construction hours and phase. • Best management practices to reduce construction noise such as, but is not limited to, the following: <ul style="list-style-type: none"> ○ Construct solid plywood fences around construction sites 			and Code Enforcement		

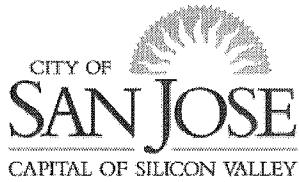


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adjacent to operational businesses, residences, or noise-sensitive land uses. <ul style="list-style-type: none"> ○ Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. ○ Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment. ○ Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from adjoining noise-sensitive land uses. ○ Prohibit all unnecessary idling of internal combustion engines. ○ Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, 					



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<p>and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.</p> <ul style="list-style-type: none"> The name and contact information (i.e. telephone number and email address) of the disturbance coordinator, who would be responsible for responding to complaints about construction noise, shall be posted at the construction site and included in the notice sent to neighboring noise-sensitive land uses regarding the construction schedule. 					
<p>MM NOI-1.2: Construction Equipment: The project applicant shall ensure that the following measures are printed on all approved construction documents, contracts, and/or project plans:</p> <ul style="list-style-type: none"> The contractor shall alert heavy equipment operators to the proximity of the adjacent structures so they can exercise care. The contractor shall retain a qualified firm to complete a pre- and post- 	<p>Print all measures on construction documents, contracts, and/or project plans for review.</p>	<p>Prior to the issuance of any demolition, grading, or building permit.</p>	<p>Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement</p>	<p>Review construction documents, contracts, and/or project plans prior to the issuance of any demolition, grading, or building permits.</p>	<p>Prior to the issuance of any demolition, grading, or building permit.</p>



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construction cosmetic crack survey of the buildings adjacent to the southern boundary and shall repair any cosmetic cracking. <ul style="list-style-type: none"> Limit the use of heavy vibration-generating construction equipment within 30 feet of the northern and southern site boundaries. 					

Source: Rotten Robbie #67 Project Initial Study/Mitigated Negative Declaration, October 2017.