

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE BERRYESSA-JACKSON COMMERCIAL 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 Berryessa-Jackson Commercial Project under Planning File Nos. C19-011, H19-020, and ET19-003, (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 Berryessa-Jackson Commercial Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a Conforming Rezoning from the PD Planned Development Zoning District to the CP Commercial Pedestrian Zoning District; Site Development Permit to allow the construction of a 47,000-square foot, retail plaza consisting of two buildings; and a release of a Covenant of Easement to remove parking, emergency access, and storm easements on an approximately 2.7-gross acre site located at the Southeastern corner of Jackson Avenue and Berryessa Road, in the City of San José (Assessor’s Parcel Numbers 254-80-021, -022, -023); 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;

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. C19-011, H19-020, and ET19-003). 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.

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ADOPTED this ____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Berryessa-Jackson Commercial Project **File No. H19-020** **November 2022**



PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) 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.

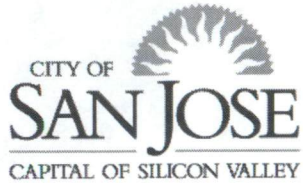
The Initial Study/Mitigated Negative Declaration prepared for the Berryessa-Jackson Commercial Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This MMRP 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, William Chan, the applicant, on the behalf of Berryessa Property LLC hereby agree to 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.

Project Applicant's Signature Will Chan

Date 11/30/22



Planning, Building and Code Enforcement

CHRISTOPHER BURTON, DIRECTOR

Berryessa-Jackson Commercial Project
File Nos. H19-020

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
AIR QUALITY					
Impact AIR-1: Construction of the proposed project would generate fugitive dust and particulate matter during site preparation and grading.					
<p>MM AIR-1.1 Prior to the issuance of any grading, demolition, or building permits, the project applicant shall prepare a construction operations plan including the following dust control measures which would be implemented during all applicable phases of construction:</p> <ul style="list-style-type: none"> All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph and visible dust extends beyond site boundaries. Wind breaks (e.g., trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction adjacent to sensitive receptors. Wind breaks should have at maximum 50 percent air porosity. The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time. Avoid tracking of visible soil material on to public roadways by employing the following measures if necessary: (1) Site accesses to a distance of 100 feet from public paved roads shall be treated with a six to 12-inch compacted layer of wood chips, mulch, or gravel and (2) washing truck tires and 	Prepare a construction operations plan, Implement dust control measures	During soil disturbing activities of construction	Director of Planning, Building and Code Enforcement or Director's designee	Review construction operations plan and oversee compliance with proposed measures	Prior to the issuance of any grading, demolition, or building permits, During soil disturbing activities of construction

<p>construction equipment of prior to leaving the site.</p> <p>This plan will be reviewed by the Director of Planning, Building and Code Enforcement or Director's designee prior to issuance of any grading, demolition or buildings permits.</p>					
<p>Impact AIR-2: Construction activities associated with the proposed project would result in nearby sensitive receptors being exposed to toxic air contaminant emissions for cancer risk of 82.7 cases per one million persons and annual PM_{2.5} concentration of 0.51, which are in excess of the BAAQMD thresholds for cancer risk, 10 case per one million persons, and annual PM_{2.5} concentrations, 0.3.</p>					
<p>MM AIR-2.1 Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan to the Director of Planning, Building and Code Enforcement or Director's designee that includes specifications of the equipment to be used during construction to achieve a fleet-wide average 88 percent reduction in DPM exhaust emissions or greater. The plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.</p> <ul style="list-style-type: none"> • All diesel-powered off-road equipment (larger than 25 horsepower) operating on-site for more than two days continuously shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) Tier 4 emission standards for particulate matter. • Where Tier 4 equipment is not available, equipment larger than 25 horsepower used at the site for more than two continuous days shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieves an 88 percent reduction in particulate matter exhaust. • Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment, such as generators. • Cranes shall be powered by electricity or alternative fuel. 	<p>Prepare and implement a construction operations plan.</p> <p>Submit the plan to Director of Planning, Building and Code Enforcement or Director's designee for review and approval.</p>	<p>Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest)</p>	<p>Director of Planning, Building and Code Enforcement or Director's designee</p>	<p>Review and approve construction operations plan.</p>	<p>Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest)</p>

<p>With implementation of the Standard Permit Conditions for dust control and Mitigation Measure AIR-2.1, the infant residential cancer risk would be reduced to 3.2 cases per one million which would be below the BAAQMD significance threshold of 10 per one million cases for cancer risk. The annual PM_{2.5} concentration would be reduced to 0.03, which is also below the significance threshold.</p>					
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BIOLOGICAL RESOURCES

Impact BIO-1: Construction activities could disrupt adult nesting raptors, or other birds, resulting in abandonment of nests and loss of fertile eggs.

<p>MM BIO-1.1: Tree removal and construction shall be scheduled 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 tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.</p> <p>Prior to any tree or vegetation removal, or approval of any grading or demolition permits, the applicant shall submit a report indicating the results of the survey and</p>	<p>Avoid construction activities during nesting season.</p> <p>If construction cannot be scheduled to occur outside of nesting season, complete pre-construction surveys for nesting birds.</p> <p>In consultation with CDFW, determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction</p>	<p>No more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st inclusive).</p> <p>In the event that an active nest is found sufficiently close to work areas to be disturbed by construction</p>	<p>Director of Planning, Building and Code Enforcement or the Director's designee</p> <p>City's Director of Planning, Building and Code Enforcement or the Director's designee.</p>	<p>Confirm execution of surveys</p> <p>Confirm Buffer</p>	<p>Prior to issuance of any grading, demolition, or building permits.</p> <p>In the event that an active nest is found sufficiently close to work areas to be disturbed by construction</p>
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any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.	Qualified ornithologist shall submit a report indicating the results of the survey and any designated buffer zones	Prior to any tree or vegetation removal or approval of any grading or demolition permits (whichever occurs first)		Review report	Prior to any tree or vegetation removal or approval of any grading or demolition permits (whichever occurs first)
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HAZARDS AND HAZARDOUS MATERIALS

Impact HAZ-1 The presence of soil with elevated levels of pesticides at depths greater than four feet below the ground surface and illegally dumped debris piles could present a hazard to construction workers during site redevelopment.

<p>MM HAZ-1 Prior to issuance of any grading permits, the project applicant shall retain a qualified environmental professional to complete a Site Management Plan (SMP) that documents the site conditions and includes procedures to follow during construction. The SMP shall describe the geomembrane barrier located at four feet below the ground surface and the elevated levels of pesticides in the soil below the geomembrane. The SMP must include standard conditions and procedures such as dust control measures, health and safety practices and soil management. The SMP shall contain procedures for sampling, testing and appropriate disposal of the soil and debris stockpiles that have been illegally dumped on the property. The SMP shall be submitted to the Director of Planning, Building and Code Enforcement, or Director's designee, and the Environmental Compliance Officer of the City of San José's Environmental Services Department prior to issuance of any grading permits.</p> <p>Implementation of MM HAZ-1 would reduce hazards/hazardous materials impacts to workers and the public at the project site.</p>	Retain a qualified environmental professional to complete a Site Management Plan (SMP)	Prior to issuance of any grading permits	Director of Planning, Building and Code Enforcement, or Director's designee, and the Environmental Compliance Officer of the City of San José's Environmental Services Department	Review report	Prior to issuance of any grading permits
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NOISE AND VIBRATION

Impact NOI-1 The proposed project would result in substantial construction noise for a period greater than 12 months which would result in impacts to residents near the project site.

<p>MM NOI-1.1 Prior to the issuance of any grading, demolition, or building permits the project shall, pursuant to General Plan Policy EC-1.7, prepare a construction noise logistics plan, specifying the hours</p>	Comply with all standard measures per General Plan Policy EC-1.7 and prepare a	Prior to the issuance of any grading, demolition, or building permits	Director of Planning, Building and Code Enforcement, or Director's designee,	Review noise report	Prior to the issuance of any grading,
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<p>of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints. The logistics plan shall be implemented prior to the start of construction and during construction to reduce noise impacts on neighboring residents and other adjacent uses.</p> <ul style="list-style-type: none"> • The following best management practices shall be implemented during project construction: <ul style="list-style-type: none"> ○ Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use. ○ Construct solid plywood fences around construction sites adjacent to operational business, residences, or other noise-sensitive land uses. ○ Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. ○ Prohibit unnecessary idling of internal combustion engines. ○ Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. Temporary noise barriers could 	<p>construction noise logistics plan</p>		<p>and the City of San José Environmental Compliance Officer</p>		<p>demolition, or building permits</p>
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<p>reduce construction noise levels by five dBA.</p> <ul style="list-style-type: none"> ○ Utilize “quiet” air compressors and other stationary noise sources where technology exists. ○ Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site. <ul style="list-style-type: none"> ● Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to adjacent land uses and nearby residences. <ul style="list-style-type: none"> ○ If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites. ○ Designate a “disturbance coordinator” who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule. <p>Implementation of NOI-1.1 would reduce extended noise impacts to below 65 dBA, below the City’s noise standard.</p>					
<p>Impact NOI-2 The proposed project may result in ambient noise exceeding 55 dBA DNL during project operations as a result of rooftop machinery functions.</p>					
<p>MM NOI-2.1 Prior to the issuance of any building permits and during building design, in accordance with the General Plan Policy EC-1.7, the following</p>	<p>Comply with all standard measures per General Plan</p>	<p>Prior to the issuance of any building</p>	<p>Director of Planning, Building and Code Enforcement, or</p>	<p>Review study</p>	<p>Prior to the issuance of any building permits</p>

<p>mitigation measure would be implemented to minimize potential ambient noise increases as a result of project operation:</p> <ul style="list-style-type: none"> A detailed acoustical study shall be prepared during building design to evaluate the potential noise generated by building mechanical equipment and to identify the necessary noise controls that are included in the design to meet the City's 55 dBA DNL noise limit at the shared property line. The study shall evaluate the noise from the equipment and predict noise levels at noise-sensitive locations. Noise control features, such as sound attenuators, baffles, and barriers, shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations, such as residences. The study shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee and the City of San José Environmental Compliance Officer for review and approval prior to the issuance of any building permits. <p>Mechanical equipment shall be selected and designed to reduce noise levels to meet the City's 55 dBA DNL noise level requirement at the shared property line of nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's General Plan and Municipal Code noise level requirements.</p> <p>Implementation of MM NOI-2.1 would reduce noise levels by more than three dBA to achieve compliance with the City's noise standards.</p>	<p>Policy EC-1.7 and detailed acoustical study</p>	<p>permits and during building design</p>	<p>Director's designee, and the City of San José Environmental Compliance Officer</p>		<p>and during construction</p>
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<p>Impact NOI-3 The proposed project would exceed the vibration threshold (0.354 in/sec) of 0.2 in/sec PPV during construction at residential structures within 30 feet of the project site.</p>					
<p>MM NOI-3.1: Prior to issuance of any demolition, grading, or building permits, whichever occurs earliest, the project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval.</p> <p>The Plan shall include, but not be limited to, the following measures where vibration levels due to construction activities would exceed 0.2 in/sec PPV at nearby buildings:</p> <ul style="list-style-type: none"> • Prohibit the use of heavy vibration-generating construction equipment within 30 feet of adjacent residential buildings. • Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted at the construction site. <p>Implementation of MM NOI-3.1 would reduce vibration impacts to nearby residential structures below 0.2 in/sec PPV within 30 feet.</p>	<p>Prepare and implement a Construction Vibration Monitoring Plan. Submit the plan to the Director of Planning, Building, and Code Enforcement, or Director's designee.</p>	<p>Prior to issuance of any demolition, grading, or building permits, whichever occurs earliest, and during construction</p>	<p>Director of Planning, Building and Code Enforcement, or Director's designee, and the Environmental Compliance Officer</p>	<p>Review and approve Construction Vibration Monitoring Plan.</p>	<p>Prior to issuance of any demolition, grading, or building permits, whichever occurs earliest, and during construction</p>

Source: City of San José. Initial Study. Berryessa-Jackson Commercial Project. November 2022.