

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE EMPIRE LUMBER MIXED-USE 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 Director of Planning, Building and Code Enforcement of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the Empire Lumber Mixed-Use Project under Planning File Nos. PDC15-067 and ER20-102 (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 Planned Development Rezoning from CG Commercial General Zoning District and LI Light Industrial Zoning District to CP(PD) Commercial Pedestrian Planned Development Zoning District to allow the demolition of all existing one-story commercial building and surface parking lot and to allow the construction of a seven-story mixed-use building with 60,330 square feet of commercial space and up to 408 residential units, as well as one-level below-grade parking and two levels of above grade parking, on the 2.77-acre project site located at 1260 East Santa Clara Street (Assessor’s Parcel Number 467-33-001, -002, -003, -004, -006, -007, and -008.), 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, Building and Code Enforcement, 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 on the Planning Department website (www.sanjoseca.gov/Planning) 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, Building and Code Enforcement 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. PDC15-067 and ER20-102). 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, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and at www.sanjoseca.gov/Planning, and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT "A"
(File Nos. PCD15-067; ER20-102)

MITIGATION MONITORING AND REPORTING PROGRAM

Empire Lumber Mixed-Use Project
File No. PDC15-067 and ER20-102
December 2020



EXHIBIT "A"
(File Nos. PCD15-067; ER20-102)

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 (IS) prepared for the Empire Lumber Mixed-Use 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 IS concluded that the impacts from implementation of the project would be less than significant.

I, Joe Burch, the applicant, on the behalf of Pacific States Industries Development, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of an IS 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 
Date 10-18-21

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(File Nos. PCD15-067; ER20-102)



Planning, Building and Code Enforcement
CHRISTOPHER BURTON, DIRECTOR

Empire Lumber Mixed-Use Project
File No. PDC15-067 and ER20-102

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 activities associated with the proposed project would expose children near the project site to temporary TAC emissions in excess of acceptable risk thresholds.					
<p>MM AIR-1.1: All diesel-powered off-road equipment larger than 50 horsepower and operating at the site for more than two days continuously shall meet U.S. EPA particulate matter emissions standards for Tier 2 engines or equivalent.</p> <p>MM AIR-1.2: All diesel-powered portable equipment (i.e., air compressors, concrete saws, and generators) operating on the site for more than two days shall meet U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent.</p> <p>MM AIR-1.3: All forklifts shall meet Tier 4 requirements or use alternative fuels such as propane.</p> <p>MM AIR-1.4: Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs first), the project applicant shall submit to the Director of Planning or Director's designee a construction operations plan that includes specifications of the equipment to be used during construction prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest). 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 in Mitigation Measure AIR-1.1 to 1.3.</p>	<p>The applicant shall submit a construction operations plan that includes specifications of the equipment to be used during construction. 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 in these mitigation measures.</p>	<p>Prior to issuance of a grading, demolition, and/or building permit.</p>	<p>Department of Planning, Building and Code Enforcement.</p>	<p>Lead agency shall review the construction operations plan that includes specifications of the equipment to be used.</p>	<p>Prior to and during demolition and construction activities.</p>

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

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BIOLOGICAL RESOURCES					
Impact BIO-1: Construction activities associated with the proposed project would remove 41 trees which could provide nesting and/or foraging habitat for migratory birds.					
<p>MM BIO-1.1: 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), as amended.</p> <p>MM BIO-1.2: If it is not possible to schedule demolition and construction between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed 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 last part of the breeding season (May 1st through August 31st inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.</p> <p>MM BIO-1.3: If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife, shall 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. The no-disturbance buffer shall remain in place until the biologist determines the nest is no longer active or the nesting season ends. If construction ceases for two days or more then resumes again during the nesting season, an additional survey shall be necessary to avoid impacts to active bird nests that may be present.</p> <p>MM BIO-1.4: Prior to any tree removal, or approval of any grading permits (whichever comes first), the project applicant shall submit the ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of</p>	<p>Avoidance of construction activities during nesting seasons. If not possible, pre-construction surveys shall be conducted by a qualified ornithologist and construction-free buffer zones shall be designated around discovered nest.</p>	<p>Prior to any tree removal or issuance of any grading permits (whichever occurs first).</p>	<p>Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement .</p>	<p>A report indicating the results of the survey (or any other environmental investigation reports, if applicable) and any designated buffer zones.</p>	<p>Prior to demolition and construction activities.</p>

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<p>Planning, Building and Code Enforcement or the Director's designee, prior to issuance of any grading or building permits.</p>					
HAZARDS AND HAZARDOUS MATERIALS					
<p>Impact HAZ-1: Construction activities associated with the proposed project could expose construction workers and nearby land uses to hazardous materials.</p>					
<p>MM HAZ-1.1: Prior to issuance of grading permits, shallow soil samples shall be taken on-site to determine the location of any contaminated soils with concentrations above worker safety thresholds established by the Regional Water Quality Control Board (RWQCB). Once the soil sampling analysis is complete, a report of the findings shall be provided to the Director of Planning, Building and Code Enforcement for review and approval.</p> <p>MM HAZ-1.2: Any soils with residual chemicals exceeding the RWQCB Environmental Screening Levels (ESLs) for commercial uses or hazardous waste limits would be characterized, removed, and disposed of off-site at a licensed hazardous materials disposal site.</p> <p>MM HAZ-1.3: All measures will be printed on all construction documents, contracts, and project plans prior to issuance of grading permits.</p> <p>MM HAZ-1.4: If contaminated soils are found in concentrations above established thresholds, 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. 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. The SMP shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement and Santa Clara County Department of Environmental Health (or equivalent regulatory agency) for approval prior to commencing construction activities. The SMP shall include, but is not limited to, the following:</p>	<p>Site Management Plan shall be completed by a qualified hazardous materials specialist if contaminated soils are found.</p>	<p>Prior to issuance of a grading permit.</p>	<p>Santa Clara County Department of Environmental Health or appropriate regulatory agency, shall review and approve the Site Management Plan.</p>	<p>Santa Clara County Department of Environmental Health or other appropriate regulatory agency, shall review and approve the Site Management Plan.</p> <p>A copy of the final Site Management Plan shall be submitted to the Supervising Environmental Planner of Planning, Building and Code Enforcement.</p>	<p>The Site Management Plan shall be submitted and approved prior to construction and issuance of a grading permit.</p>

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<ul style="list-style-type: none"> • 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; • Traffic control site improvements; • Noise, work hours, and other relevant City regulations; • Mitigation of soil vapors (if required); • Procedures for proper disposal of contaminated materials (if required); and monitoring, reporting, and regulatory oversight arrangements. 					
NOISE AND VIBRATION					
Impact NOI-1: Nearby land uses would be exposed to increased noise levels for a period of more than 12 months during project construction.					
<p>MM NOI-1.1: A construction noise logistics plan, in accordance with General Plan Policy EC-1.7, shall be required prior to issuance of a grading permit. A typical construction noise logistics plan will include, but not be limited to, the following measures to reduce construction noise levels:</p> <ul style="list-style-type: none"> • Consistent with the Standard Permit Conditions, temporary noise barriers will be constructed to screen stationary noise-generating equipment when located within 200 feet of adjoining sensitive land uses. Temporary noise barrier fences will provide a five dBA noise reduction if the noise barrier interrupts the line-of-sight between the noise sources and receptor and if the barrier is constructed in a manner that eliminates any cracks or gaps. • Locate cranes as far from adjoining noise-sensitive receptors as possible. 	A construction noise logistics plan will be prepared.	Prior to the issuance of grading permit.	Supervising Environmental Planner of Planning, Building and Code Enforcement.	The construction noise logistics plan shall be submitted to the Supervising Environmental Planner of Planning, Building and Code Enforcement.	The construction noise logistics plan shall be submitted to the City prior to construction. The measures included in the plan will be implemented during construction with oversight by the applicant.

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<ul style="list-style-type: none"> • During final grading, substitute graders for bulldozers, where feasible. Wheeled heavy equipment are quieter than track equipment and shall be used where feasible. • Substitute nail guns for manual hammering, where feasible. • Substitute electrically powered tools for noisier pneumatic tools, where feasible. • The contractor shall prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance. 					
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Source: City of San José. Initial Study. Empire Lumber Mixed-Use Project. December 2020.