

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE SOUTH BASCOM GATEWAY 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 South Bascom Gateway Station Project under Planning File Nos. PDC17-047 and PD18-015 (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 South Bascom Gateway Station Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a Planned Development Rezoning (Signature Project) from the CP Commercial Pedestrian Zoning District to the CP (PD) Planned Development Zoning District to allow up to 600 residential units and a minimum of 200,000 square feet (maximum 300,000 square feet) of commercial/retail uses and Planned Development Permit to allow the demolition of approximately 76,894 square feet of existing commercial buildings, and the construction of an approximately 200,000-square foot office building, 590 residential units, an alternative parking arrangement (tandem parking), and the removal of 17 on-site ordinance sized trees, two on-site non-ordinance sized trees, and three ordinance sized street trees on a 6.98-gross acre site located at the northeast corner of South Bascom Avenue and Southwest Expressway, at 1330, 1388, and 1410 South Bascom Avenue in the City of San José (Assessor’s Parcel Numbers: 282-26-007, 282-26-011 and 282-26-012); 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. PDC17-047 and PD18-015). 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 \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

SAM LICCARDO  
Mayor

ATTEST:

---

TONI J. TABER, CMC  
City Clerk

# **MITIGATION MONITORING AND REPORTING PROGRAM**

## **South Bascom Gateway Station**

**File Nos. PDC17-047 and PD18-015**

**July 2019**



## **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 South Bascom Gateway 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, **Peter Beritzhoff**, the applicant, on the behalf of **Bascom Station Owner 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.

Project Applicant's Signature 

Date 07/23/19

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
<b>Impact AIR-1:</b> Construction activities associated with the proposed project would exceed infant cancer risk and PM <sub>2.5</sub> emissions of acceptable thresholds near the project site.					
<p><b>MM AIR-1a:</b> Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant and/or construction contractor shall prepare a construction operations plan that, during construction activities, requires all off-road equipment with engines greater than 50 horsepower to meet either EPA particulate matter emissions standards for Tier 4 Interim engines or include ARB-certified Level 3 Diesel Particulate Filters. The construction contractor shall maintain records documenting its efforts to comply with this requirement, including equipment lists. Off-road equipment descriptions and information shall include, but are not limited to, equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, and engine serial number.</p> <p>The project applicant and/or construction contractor shall submit the construction operations plan and records of compliance to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement.</p>	Prepare and submit the construction operations plan and other records of compliance (e.g., equipment lists).	Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).	Supervising Environmental Planner of Department of Planning, Building, and Code Enforcement	Review and approve the construction operations plan and records of compliance.	Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).
<p><b>MM AIR-1b:</b> Alternatively, in lieu of the Tier 4 Interim engines identified in MM AIR-1a, the construction contractor may use other measures to minimize DPM emissions to reduce the estimated cancer risk below the thresholds. If any of these alternative measures are</p>	Retain an air quality specialist to provide a signed letter to accompany the construction operations	Prior to the issuance of any demolition, grading, and/or building permits	Supervising Environmental Planner of Department of Planning, Building,	Review the proposed construction operations plan and associated letter	Prior to the issuance of any demolition, grading, and/or

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
<p>proposed, the project applicant and/or construction contractor shall include them in the construction operations plans that include specifications of the equipment to be used during construction. Furthermore, a signed letter by a qualified air quality specialist shall accompany the construction operations plan, which verifies that the equipment included in the plan meets the health risk standards set forth in this mitigation measure.</p> <p>Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant and/or construction contractor shall submit the construction operations plan and signed letter by a qualified air quality specialist to the Supervising Environmental Planner of Department of Planning, Building, and Code Enforcement.</p>	<p>plan, verifying the equipment included in the plan meets the standards set forth in this mitigation measure.</p>	<p>(whichever occurs earliest).</p>	<p>and Code Enforcement</p>		<p>building permits (whichever occurs earliest)</p>
<b>BIOLOGICAL RESOURCES</b>					
<b>Impact BIO-1:</b> Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.					
<p><b>MM BIO-1:</b> Construction activities 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 1<sup>st</sup> through August 31<sup>st</sup> (inclusive).</p> <p>If demolition and construction cannot be scheduled between September 1<sup>st</sup> and January 31<sup>st</sup> (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</p>	<p>Avoid construction activities during nesting seasons</p> <p>If construction activities do occur during the nesting season, retain a qualified ornithologist to prepare a report indicating the results</p>	<p>Prior to the issuance of any tree removal, demolition, grading, and/or building permits (whichever occurs earliest).</p>	<p>Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement</p>	<p>Confirm if construction activities are/are not scheduled outside of nesting season.</p> <p>If applicable, review the report indicating the results of the</p>	<p>Prior to the issuance of any tree removal, demolition, grading, and/or building permits (whichever occurs earliest)</p>



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
<p>completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1<sup>st</sup> through April 30<sup>th</sup>) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1<sup>st</sup> through August 31<sup>st</sup>). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the CDFW, 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.</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 Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement prior to issuance of any tree removal, demolition permits, or grading permits (whichever occurs earliest).</p>	<p>of the preconstruction survey and any designated buffer zones</p>			<p>preconstruction survey and any designated buffer zones.</p>	
<b>HAZARDS AND HAZARDOUS MATERIALS</b>					
<p><b>Impact HAZ-1:</b> Ground-disturbance activities can release petroleum contamination from underground storage tanks on the project site, which could expose construction workers, future employees, and/or the environment to a significant health risk.</p>					
<p><b>MM HAZ-1:</b> The project applicant shall retain a qualified professional to perform a Phase II soil and groundwater investigation to evaluate the underground tanks that were closed in-place in 1975. The applicant</p>	<p>Retain a qualified hazardous materials professional to perform and prepare a Phase II soil</p>	<p>Prior to issuance of any grading permits.</p>	<p>Supervising Environmental Planner of the Department of Planning, Building,</p>	<p>Review the report of findings.</p>	<p>Prior to the issuance of any grading permits.</p>

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
<p>shall obtain permits under the direction of the regulatory oversight agency (Santa Clara County Department of Environmental Health [SCCDEH]) to remove the underground tanks that were closed in-place and perform soil sampling beneath the tanks after removal.</p> <p>If petroleum contamination is found from the closed underground tanks, then a fuel leak case must be opened with the regulatory oversight agency with the SCCDEH to investigate the extent of contamination and perform remediation, if required. This process will ensure construction worker safety, as well as protecting public health and the environment.</p> <p>Depending upon the findings of the Phase II soil and groundwater investigation and regulatory response, a Site Management Plan (SMP), Health and Safety Plan, or similar document may need to be in-place prior to and during construction to protect construction worker safety, the public, and the environment. A copy of the Phase II investigation report and evidence of regulatory oversight shall be provided to the Supervising Environmental Planner of the City of San José Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José’s Environmental Services Department prior to issuance of any grading permits.</p>	<p>and groundwater investigation and prepare a report of the findings.</p> <p>Depending upon the findings of the Phase II and the regulatory response, prepare a SMP or similar document.</p>		<p>and Code Enforcement</p> <p>Environmental Compliance Officer in the Environmental Services Department</p> <p>Santa Clara County Department of Environmental Health (SCCDEH)</p>		

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
<b>Noise and Vibration</b>					
<b>Impact NOI-1:</b> Construction of the proposed project would last more than 12 months and would result in potential construction noise impacts in the vicinity of sensitive residential land uses.					
<p><b>MM NOI-1:</b> The project applicant shall retain a qualified professional to prepare a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who shall respond to neighborhood complaints. Measures from this plan shall be included on all approved grading and building permit plans. Measures to be included in the plan shall include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Notifying the neighborhood of the construction activities and construction schedule (including estimated dates of various construction phases) at least one week and no more than three weeks prior to the start of construction.</li> <li>• Prohibit unnecessary idling of internal combustion engines. Equipment shall be shut off when not in use and the maximum idling time shall be limited to five minutes.</li> <li>• In order to minimize construction noise impacts, best available noise control practices and equipment (including mufflers, intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds) shall be used for all heavy earthmoving</li> </ul>	<p>Retain a qualified professional to prepare and submit a construction noise and vibration logistics plan.</p> <p>All measures shall be printed on all construction documents, contracts, and project plans.</p>	<p>Prior to issuance of any grading permits and/or building permits.</p>	<p>Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement</p>	<p>Review the construction noise and vibration logistics plan.</p> <p>Ensure that all measures are printed on all construction documents, contracts, and project plans.</p>	<p>Prior to issuance of any grading permits and/or building permits.</p>

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
<p>equipment, impact tools, compressors, engine generators, and diesel-fueled trucks. A letter from a qualified acoustic specialist shall be attached to the plan along with a list of proposed construction equipment, certifying that the proposed construction equipment includes the best available noise attenuating technologies.</p> <ul style="list-style-type: none"> <li>• Prohibit the use of impact pile driving as a foundation construction method. Require alternate methods of construction such as pre-drilling and auger case piles, if needed.</li> <li>• If impact equipment (e.g., jack hammers, pavement breakers, or rock drills) is needed during construction, hydraulically or electric-powered equipment shall be used wherever feasible to avoid the noise associated with compressed-air exhaust from pneumatically powered tools. However, where use of pneumatically powered tools is unavoidable, an exhaust muffler on the compressed-air exhaust shall be used. External jackets on the tools themselves shall also be used if available and feasible.</li> <li>• Locate equipment at the work area as far away from the nearby residential areas as possible to maximize the distance to noise-sensitive receptors and to take advantage of any shielding that may be provided by other on-site equipment.</li> <li>• Designate a “noise disturbance coordinator” who shall be responsible for responding to any local complaints</li> </ul>					

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
<p>about construction noise. The disturbance coordinator shall determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site.</p> <p>The construction noise logistics plan shall be reviewed and approved by the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement prior to issuance of any grading permit and/or building permits.</p>					

Source: City of San José. South Bascom Gateway Station Project Initial Study/Mitigated Negative Declaration. June 2019.