



Memorandum

TO: TRANSPORTATION AND ENVIRONMENT COMMITTEE

FROM: Christopher Burton

SUBJECT: SEE BELOW

DATE: April 10, 2023

Approved

Date

4/18/23

**SUBJECT: CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
MITIGATION MONITORING AND REPORTING PROGRAM SEMI-ANNUAL STATUS REPORT**

RECOMMENDATION

Accept the semi-annual status report on the California Environmental Quality Act (CEQA) Mitigation Monitoring and Reporting Program for the period of October 2022 through March 2023.

BACKGROUND

The purpose of this semi-annual report is to provide the Transportation and Environment Committee with an update on the mitigation compliance program and conformance to CEQA's requirements for mitigation monitoring under CEQA Guidelines Section 15097. CEQA requires that when the City identifies a significant impact from a project during environmental review, feasible mitigation measures that reduce or eliminate the impact are identified. These mitigation measures are based on the environmental analyses prepared for the project, typically in the form of a Mitigated Negative Declaration, Environmental Impact Report, or an Addendum to a previously adopted Mitigated Negative Declaration or Environmental Impact Report.

At the time of project approval, if the City's environmental review identifies impacts requiring mitigation, the decision-making body is required to adopt a Mitigation Monitoring and Reporting Program (MMRP) for the project. The MMRP establishes a framework to ensure that the mitigation measures are implemented to ensure compliance with CEQA. The timing for mitigation measure implementation and compliance reporting is triggered at different phases of project construction and operation, including prior to ground disturbance and/or demolition; during construction, prior to occupancy, and on-going monitoring during project operation. Most mitigation measures are required to be implemented prior to the issuance of the grading permit.

Mitigation measures are required to be fully enforceable with an expectation that there will be consequences to the project proponent for non-compliance. These consequences can include modification, suspension, or revocation of the Planning permit pursuant to Title 20 of the Municipal Code; Code Enforcement action including issuance of a compliance order and potential payment of administrative penalties pursuant to Title 1 of the Municipal Code; and Court action for specific performance, injunctive relief, and other reliefs, including financial penalties.

Mitigation Compliance Reporting

This report fulfills the mitigation monitoring reporting requirements of CEQA Guidelines Section 15097. It highlights projects that have completed required mitigation measures and projects under review for conformance with adopted mitigation measures during the last six-month reporting period. The Committee's attention to this Program has assisted with compliance and fulfillment of the City's environmental mitigation commitments and obligations pursuant to CEQA.

This is the 27th progress report on the status of the implementation and improvements to the City's Mitigation Monitoring and Reporting Program. Over the past few years, staff has been working to improve the City's MMRP implementation to better conform to the requirements of CEQA and to further the City's goals for stewardship of the natural environment. The Transportation and Environment Committee has been an active participant in this process, reviewing staff progress and making recommendations on a periodic basis, for purposes of informed decision-making.

ANALYSIS

This part of the report focuses on mitigation compliance for projects during the grading permitting process as the timing for most compliance is triggered with grading. The Department of Planning, Building, and Code Enforcement Environmental Review team leads the review of required mitigation compliance associated with projects that include approval of grading permits. Planning, Building, and Code Enforcement efforts are coordinated with applicants, the Department of Public Works, the Environmental Services Department, Fire Department, Police Department, and other city departments as applicable.

Mitigation Monitoring Report Card

Approved Projects

In the reporting period from October 2022 through March 2023, three (3) projects completed the mitigation compliance requirements in accordance with their Mitigation Monitoring Reporting Program adopted as part of the entitlement review under CEQA. One of the projects (1861 Alum Rock Affordable Apartments) also completed mitigation monitoring for compliance with the National Environmental Policy Act (NEPA). The current reporting period's completed project

list is summarized in Attachment A of this report with the project name, project description, completed mitigation requirements, and review completion dates.

The number of projects completing mitigation compliance during this reporting period is significantly less than in the last two reporting periods, possibly due to the rainy winter that prevented many projects from starting construction. Eight (8) projects completed mitigation compliance review in the last reporting period between April 2022 and September 2022 and eight (8) projects completed mitigation compliance review between October 2021 and March 2022. The approved projects include mitigation monitoring pursuant to CEQA and NEPA.

Some of the projects that completed mitigation compliance review in this reporting period include the Equinix Data Center on Great Oaks Boulevard, a hotel, a commercial retail project on Lincoln Avenue, and an affordable housing project. Typical mitigation compliance requirements for these projects include demonstration of compliance with measures to reduce construction air quality, preconstruction bird surveys, archaeological resources management, confirmation of approved site management plans for residual soil contamination, and compliance with construction noise and vibration mitigation.

Projects Under Review

The Environmental Review team is currently reviewing 64 projects for compliance with the adopted Mitigation Monitoring and Reporting Programs. This includes 27 projects that have been inactive since the last reporting period and nine (9) new projects since the end of the last reporting period in September 2022. Projects under review also include portions of phased projects, such as Downtown West, Avenues – The World School, Communications Hill, and Cityview Plaza. Attachment B of this report lists these projects by their project name, project description, grading permit description, and pending mitigation requirements.

Since the start of the current reporting period in October 2022, an additional ten (10) projects started the MMRP compliance review process. This is a decrease from the 22 new projects in the previous reporting period from April to September 2022, but is similar to the twelve new projects submitted for mitigation compliance review in the prior reporting period from October 2021 to March 2022.

EVALUATION AND FOLLOW-UP

In the next report to the Transportation and Environment Committee, staff will provide updates to the monitoring activity between April 2023 and September 2023. The next report to the Committee is scheduled for November 6, 2023.

April 10, 2023

Subject: CEQA Mitigation Monitoring and Reporting Program Semi-Annual Status Report

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COORDINATION

PBCE staff coordinated the preparation of this status memorandum with the Department of Public Works.

/s/

CHRISTOPHER BURTON, DIRECTOR
Planning, Building and Code Enforcement

The principal author of this memorandum is David Keyon, Principal Planner. For questions, please contact david.keyon@sanjoseca.gov or (408) 535-7898.

ATTACHMENTS

- Attachment A: Approved Mitigation Compliance for Grading Permits from October 2022 through March 2023.
- Attachment B: On-going Mitigation Compliance for Grading Permits under Review as of March 2023.