

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE 645 HORNING STREET GAS STATION, FOOD, AND STORAGE 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 645 Horning Street Gas Station, Food, and Storage Project under Planning File Nos. PDC16-041, PD16-027, and PT16-037 (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 645 Horning Street Gas Station, Food, and Storage Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a rezoning from the LI Light Industrial Zoning District to the Combined Industrial/Commercial CIC(PD) Zoning District and approval of a Tentative Map to demolish six existing buildings and remove all associated pavement, landscaping, and fencing; and to construct a mix of new commercial buildings including an approximately 3,814-square foot convenience store, six fueling stations (12 total fuel dispensers), an approximately 1,341-square foot automatic carwash, an approximately 2,494-square foot fast-food restaurant with a drive-through, and a self-storage facility with three buildings totaling approximately 92,116 square feet on an approximately 3.26-gross acre site located at 645 Horning Street, which is situated on the north side of Horning

Street at the intersection of Oakland Road, in the City of San José (Assessor's Parcel Number 235-18-001), 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. PDC16-041, PD16-027, and PT16-037). 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

645 Horning Street Gas Station, Food, & Storage Project

File Numbers: PDC16-041, PD16-027, PT16-037

September 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 645 Horning Gas Station, Food, and Storage 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.

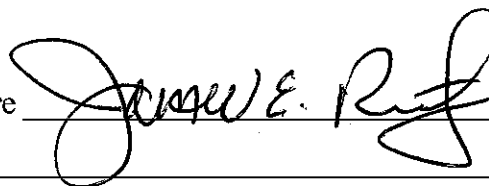
This document does *not* discuss those subjects for which the Initial Study/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant.

I, Jim Rubatz, the applicant, on the behalf of Horning S. 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, where feasible.

Project Applicant's Signature

Date

2/28/18





Planning, Building and Code Enforcement
 ROSALYNN HUGHEY, INTERIM DIRECTOR

645 Horning Street Gas Station, Food, and Storage Project
 File Numbers: PDC16-041, PD16-027, PT16-037, and

Adopted Mitigation Measures	MONITORING AND REPORTING PROGRAM					
	Documentation of Compliance (Applicant/Proponent Responsibility)			Documentation of Compliance (Lead Agency Responsibility)		
	Responsibility for Implementation	Method of Compliance or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
Air Quality						
Impact AIR-1: Cancer risk from construction activities would exceed both the single-source and cumulative-source significance thresholds at the residence with the maximum impact, assuming an infant at the receptor site.						
MM AIR-1.1: The project shall ensure construction equipment be selected to minimize emissions to achieve a minimum fleet-wide average 77 percent reduction in particulate matter (PM2.5) exhaust emissions, compared to uncontrolled aggregate statewide emission rates for similar equipment. Such equipment selection shall include, but is not limited to, the following requirements: <ul style="list-style-type: none"> • Mobile diesel-powered off-road equipment larger than 25 horsepower and operating on the site for more than two days continuously (or 20 hours in total) shall meet, at a minimum, one of the following: <ul style="list-style-type: none"> ○ Engines meeting United States Environmental Protection Agency particulate matter emissions standards for Tier 4 engines or equivalent; 	Project applicant and contractors.	Submit a construction operations plan, including equipment specifications and verification that the equipment selected will meet the standard set forth in the mitigation measures AIR-1.1.	Prior to issuance of any grading, demolition, and/or building permit and during construction activities	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement	Review construction operations plan.	Prior to issuance of grading, demolition, and/or building permit and during construction activities



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<ul style="list-style-type: none"> ○ Tier 2 Engines equipped with California Air Resources Board-certified Level 3 Diesel Particulate Filters;¹ ○ Use of alternatively-fueled equipment (i.e., non-diesel) would meet this requirement; or ○ Other measures may be the use of added exhaust devices, or a combination of measures, provided that these measures are demonstrated to reduce community risk impacts to less than significant. ● The project applicant shall prepare a construction operations plan that includes specifications for equipment to be used during construction. The plan shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement prior to the issuance of any grading permit. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth in this mitigation measure. 						

¹ See <http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm>.



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Biological Resources						
Impact BIO-1: Construction and demolition activities, including the removal of trees from the project site, could impact nesting 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.</p> <p>If it is not possible to schedule demolition and construction between September 1st and January 31st 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 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>	Project applicant and contractors.	<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 around any discovered nest.</p> <p>Following completion of the preconstruction</p>	Prior to issuance of grading, demolition, and/or building permits, as necessary.	Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement, CDFW.	<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 designated buffer-zones.</p>	Prior to issuance of grading, demolition, and/or building permits.



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<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, 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>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 grading, demolition, and/or building permit.</p>		<p>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>				



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Hazards and Hazardous Materials						
Impact HAZ-1: Hazardous materials contamination on the site, if discovered in soil or groundwater, could pose a risk to construction workers and others on or around the project site.						
<p>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 Code Enforcement and Municipal Compliance Officer of the City of San Jose Environmental</p>	Project applicant and contractors.	Preparation of the SMP and implementation of the SMP measures.	Prior to issuance of any grading permit; during construction.	Santa Clara County Department of Environmental Health or equivalent agency. Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement, Environmental Services Department	Review and approve of the SMP	Prior to issuance of any grading permits.



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<p>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. • 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 						



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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.						

Source: City of San José. Initial Study/Mitigated Negative Declaration for 645 Horning Street Gas Station, Food, and Storage Project. August 2017.