



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Christopher Burton

SUBJECT: SEE BELOW

DATE: February 22, 2022

Approved

Date

3/4/2022

COUNCIL DISTRICT: 3

**SUBJECT: ADMINISTRATIVE APPEAL HEARING ON THE CEQA APPEAL OF
THE PLANNING DIRECTOR'S ADOPTION OF THE INITIAL STUDY &
MITIGATED NEGATIVE DECLARATION FOR THE 1660 OLD
BAYSHORE HIGHWAY INDUSTRIAL PROJECT (SITE DEVELOPMENT
PERMIT NO. H20-041)**

RECOMMENDATION

- (a) Conduct an Administrative Hearing to consider the appeal of the Planning Director's adoption of the Initial Study and Mitigated Negative Declaration for the 1660 Old Bayshore Highway Industrial Project in accordance with the California Environmental Quality Act (CEQA) prepared for the Site Development Permit (File No. H20-041), to repurpose the existing 24,486 square foot warehouse building as a "last mile" e-commerce distribution center, construct a new adjoining 3,000 square foot office addition, and a new 17,700 square foot canopy-covered loading area on the south side of the building on the 6.07-acre project site located at 1660, 1720, and 1736 Old Bayshore Highway.
- (b) Adopt a resolution denying the Environmental appeal and upholding the Planning Director's adoption of the 1660 Old Bayshore Highway Industrial Project Mitigated Negative Declaration, associated Mitigation Monitoring and Reporting Program, and Site Development Permit, and finding that:
 - (1) The City Council has read and considered the Initial Study and Mitigated Negative Declaration (IS/MND) for the 1660 Old Bayshore Highway Industrial Project and related administrative record related to Site Development Permit No. H20-041; and
 - (2) The IS/MND for the 1660 Old Bayshore Highway Industrial Project was prepared and completed in full compliance with the CEQA of 1970, as amended, together with state and local implementation guidelines; and
 - (3) Adoption of the IS/MND reflects the independent judgment and analysis of the City of San José; and

- (4) Preparation of a new environmental document is not required because IS/MND thoroughly and adequately analyzed the project and the environmental appeal does not raise any new significant impacts that have not already been analyzed or addressed in the IS/MND in accordance with Public Resources Code (PRC) Section 21083 or CEQA Guidelines Sections 15073 and 15185.

OUTCOME

Denial of the environmental appeal and upholding the Planning Director's adoption on the IS/MND for the 1660 Old Bayshore Highway Industrial Project will allow the project applicant to move forward with the implementation of Site Development Permit No. H20-041, to re-purpose the existing 24,486 square foot warehouse building as a "last mile" e-commerce distribution center, construct a new adjoining 3,000 square foot office addition, and a new 17,700 square foot canopy-covered loading area on the south side of the building on the 6.07-acre project site located at 1660, 1720, and 1736 Old Bayshore Highway.

Upholding the environmental appeal would void both the Planning Director's adoption of the MND and approval of the Site Development Permit. The project applicant would be required to prepare a new or revised environmental document prior to reconsideration of the proposed project. Alternatively, the project may not take place at all.

EXECUTIVE SUMMARY

The City prepared an IS/MND for the proposed project. The IS/MND was publicly circulated for comments from August 30, 2021 to September 20, 2021. During the circulation period, the City of San José received one comment letter from the Santa Clara Valley Transportation Authority and staff responded to the inquiry directly via email.

Another letter was received from Residents and Workers for a Safe San Jose after the close of the public review period but prior to the Director's Hearing on November 17, 2021. It should be noted that the comment letter was emailed to the Planning Division on September 20, 2021, within the public circulation period, but the commenter sent it to the wrong email address. The commenter resent the letter to the correct email after the circulation period closed. Therefore, staff received and accepted the late comment letter on October 27, 2021. While not required under CEQA, City staff responded to the comments and substance of the September 20, 2021 comment letter, in writing, prior to the Director's Hearing of November 17, 2021. The responses were posted on the City website prior to the public hearing on November 9, 2021.

The comment letter expressed concern for the impacts on transportation and air quality. Staff formally responded to the comment letter and posted the response to comments on November 9, 2021, on the Planning Division's website.

On November 17, 2021, Planning, Building, and Code Enforcement (PBCE) Deputy Director-Planning, acting on behalf of the PBCE Director, (“Hearing Officer”) held a public hearing to consider the IS/MND for the 1660 Old Bayshore Highway Industrial Project and Site Development Permit No. H20-041. At the hearing, there was one speaker, Doug Bloch from Teamsters Joint Council No. 7, a logistics union. Doug Bloch is the appellant for this project. The commenter reiterated concerns regarding the adequacy of the CEQA documents and impacts on transportation, air quality, cumulative impacts, and appropriate land use designation. Staff responded verbally to the comments raised by Mr. Block at the public hearing. The Hearing Officer considered all the information in the administrative record including the IS/MND and information presented at the public hearing and determined that the IS/MND was the appropriate environmental clearance under CEQA for the proposed project and approved Site Development Permit No. H20-041.

On November 22, 2021, Teamster Joint Council No. 7 submitted a timely appeal of the adoption of the IS/MND for the 1660 Old Bayshore Highway Industrial Project. The appellant claimed the IS/MND did not fully analyze the project in totality. Specifically, the IS/MND should be viewed and analyzed as just one part of a larger “project” consisting of the whole of the applicant’s logistics operations chain including offsite operations and delivery to and from this site in the region; that the project was inappropriately screened from vehicle miles traveled (VMT) analysis requirements; that the General Plan’s air quality goals have not been met; and that the project is fundamentally different from other industrial/warehouse/distribution uses. A copy of the Teamster Joint Council No. 7 appeal is included as Exhibit A to this memorandum.

As explained in detail below, Teamster Joint Council No. 7 failed to provide substantial evidence in raising a fair argument under CEQA that the proposed project would result in significant, adverse, un-mitigatable impacts. Therefore, Teamster Joint Council No. 7 has not presented substantial evidence that the proposed project required new environmental documents as set forth in California Public Resources Code Section 21166, CEQA Guidelines Sections 15162-15164 and 15168, or any other provisions under CEQA.

BACKGROUND

Site Location

The 6.07-gross acre site is located at 1660, 1720, and 1736 Old Bayshore Highway, north of the intersection of Terminal Avenue and Old Bayshore Highway. The site is currently occupied by five vacant structures, including three industrial buildings and two ancillary steel structures. The site is surrounded by similar heavy industrial land uses to the north, east, and west and light industrial uses to the south.

Proposed Project

The subject Site Development Permit application was filed by Kier & Wright, Civil Engineers and Surveyors, on September 21, 2020. The Site Development Permit would allow the re-purposing of the existing 24,486 square foot warehouse building as a “last mile” e-commerce distribution center, the construction of a new adjoining 3,000 square foot office addition, and a new 17,700 square foot canopy-covered loading area on the south side of the building on the 6.07-acre project site.

The “last mile” e-commerce distribution center (delivery station) would be operated by a single tenant to support order fulfillment processes and help to expedite local deliveries for customers. The project would operate 24 hours per day, with customer deliveries going out between 10 a.m. and 9:30 p.m. and truck delivery packages coming in between 12 a.m. and 7 a.m. There will be approximately 45 employees on-site and 86 delivery drivers operating off-site throughout the day.

The project would resurface the site to provide a total of 228 surface parking spaces, including 69 automobile spaces, 128 van spaces, 12 loading spaces, 12 queueing spaces, three induct truck spaces, and four handicap spaces. The project would provide four driveways along Old Bayshore Highway.

Environmental Review

Pursuant to CEQA, the City prepared an IS/MND for the proposed 1660 Old Bayshore Highway Project. The IS/MND concluded that all the identified potentially significant impacts would be reduced to less than significant with the implementation of mitigation measures and therefore, a MND was the appropriate environmental clearance for the proposed project.

The IS/MND was publicly circulated for comments from August 30, 2021 to September 20, 2021. The Initial Study and technical studies are available at the City’s Planning Division offices located at 200 East Santa Clara Street, Tower 3rd Floor during normal business hours, and on the Planning Division webpage for Environmental Review at <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies/1660-old-bayshore-highway-industrial-project>. One comment letter was received from the Santa Clara Valley Transportation Authority and staff responded to the inquiry directly via email. Comments were received during the public circulation period.

A letter, dated September 20, 2021, from the organization identified as Residents and Workers for a Safe San Jose was received after the close of the public review period and prior to the hearing on November 17, 2021. Staff noted that the comment was required to be submitted during the public circulation, but the commenter sent it to the wrong email address and therefore, staff received the comment on October 27, 2021. Therefore, this comment was considered to be untimely. However, while not required under CEQA, City staff responded to the comments and

substance of the September 20, 2021 comment letter, in writing, prior to the Director's Hearing of November 17, 2021. The responses were posted on the City website prior to the public hearing on November 9, 2021, for the purpose of full disclosure.

Planning Director's Public Hearing

On November 17, 2021, the Hearing Officer held a public hearing to consider the IS/MND and Site Development Permit No. H20-041. At the public hearing, there was one speaker, Doug Bloch from Teamster Joint Council No. 7, who spoke against the project approval citing concerns regarding the project and environmental document including:

- The project should be analyzed as part of a larger chain of projects in the region.
- The canopy loading area is used to store items and should be counted toward the VMT floor area. Therefore, the project should not screen out of VMT requirements and a new VMT analysis should be required.
- A "last mile" delivery station should not be classified as warehouse use.
- The Air Quality review does not look at VMT or transportation-related impacts to vehicle queueing, idling, and frequent stops.

Staff responded verbally to the comments from Teamster Joint Council No. 7 at the request of the Hearing Officer. Staff noted that analyzing the entire supply chain of the project would be like analyzing a single grocery store project impact from farm to store, which is beyond the standard project scope required under CEQA. Staff also reaffirmed that the project's use is consistent with the City's municipal code. Staff explained the covered loading area does not count as part of the gross square footage per City Council Policy 5-1 for VMT, and therefore, the transportation analysis only took into account the square footage of the warehouse space. However, the project completed a Local Transportation Analysis. The Local Transportation Analysis considers transportation-related impacts such as queueing and trip generation. Transportation impacts were included in the Air Quality review and it was determined the project would have no adverse effects.

The Planning Director considered the information presented and determined that the IS/MND was the appropriate environmental clearance under CEQA and approved the Site Development Permit.

The Planning Director's Hearing Agenda of item 3a. including the draft Site Development Permit and all associated documents for the Planning Director's Hearing dated November 17, 2021, can be viewed at

<https://www.sanjoseca.gov/home/showpublisheddocument/80052/637746622259700000>. The audio recording of the meeting is available at https://sanjose.granicus.com/ViewPublisher.php?view_id=54.

Environmental Appeal

Pursuant to Section 21.04.140 of the San José Municipal Code, any interested person can submit a timely request to appeal to the City Council the determination made by the Planning Director, Planning Commission, or non-elected decision making body regarding the appropriate environmental clearance for a project. At the Appeal Hearing, the City Council may uphold the Planning Director's adoption of the IS/MND or require the preparation of new environmental documents in accordance with Title 21 of the Municipal Code.

Teamster Joint Council No. 7

On November 22, 2021, Teamster Joint Council No. 7 submitted a timely appeal of the Hearing Officer's adoption of the IS/MND for the 1660 Old Bayshore Highway Industrial Project. The appeal is based on the comment letter received on October 27, 2021, and the verbal comments provided at the Planning Director's Hearing on November 17, 2021. The basis for the appeal as stated in the Notice of Environmental Appeal are as follows:

1. The canopy loading area is used to store items and should be counted toward the VMT floor area. Therefore, additional VMT analysis should be required.
2. A "last mile" delivery station should not be classified as warehouse use.
3. The Air Quality review does not look at VMT or transportation-related impacts to vehicle queueing, idling, and frequent stops.

ANALYSIS

The document in question is an IS/MND. Exhibit A includes the full Environmental Appeal Letter and Exhibit B includes a detailed response to each item raised in the letter. Staff's responses are summarized below:

Response to the Environmental Appeal

The MND appeal referred to missing analysis related to cumulative impacts, transportation, air quality, and land use. The appeal claimed there was an inadequate analysis of the cumulative impacts of the project analyzed as one part of a larger project of the whole of the applicant's logistic operations, which resulted in inadequate screening of VMT impacts. Additionally, the appeal is concerned that the General Plan Air quality goals have not been met and that the project's classification as an industrial/warehouse use is incorrect.

- **Cumulative Impacts:** While the project may support the applicant's overall operations in the region, this distribution facility is not fundamentally essential to these operations. It is not reasonable to treat all similar operations and facilities as a single "project" as defined by CEQA simply because operations are related. In addition, staff is not aware of similar operations of the applicant in the immediate or general vicinity of the proposed project within the City of San José. The current proposed project is only for additions to an

existing warehouse building, including a 3,000-square foot office addition and a 17,700-square foot canopy to facilitate a distribution center and delivery station. This is consistent with the analysis provided in the IS/MND. CEQA provides a “rule of reason” for environmental review by local agencies. Analyzing an entire supply chain, or an entire life cycle of a product is beyond the reasonable scope of review even if the Lead Agency had access to such information. Nonetheless, the IS/MND analyzed the project’s cumulative impacts in full compliance with CEQA and concluded that such impacts would be less than cumulatively considerable.

- **VTM Analysis:** Based on the scope and operation of this project, the site is a distribution facility that is allowable in the existing Zoning District, and therefore, the proposed project qualifies as an industrial use of under 30,000 square feet. City Council Policy 5-1 includes criteria in which a project would be required a full VTM analysis. Assuming the project meets the screening criteria, the administrative record in support of adopting City Council Policy 5-1 presumed that an addition of 30,000 square feet of industrial gross floor area or less does not result in significant VTM impacts and is consistent with the state regulation. Additionally, warehousing and distribution facilities by function and design include loading areas to facilitate the distribution of goods. The project’s loading area with the canopy would be used exclusively for vehicle loading operations, not storage. The proposed canopy component of the project is not floor area and therefore does not add to the square footage of the project. The canopy is a cover for a large loading area and therefore was analyzed appropriately. The project is an industrial use of less than 30,000 square feet, consistent with Policy 5-1, and therefore, pursuant to the City’s thresholds for determining traffic impacts, does not result in significant impact under CEQA.
- **General Plan Air Quality Goals:** The air quality analysis, including cumulative analysis, was prepared based on the project as appropriately defined by the applicant as submitted in the application package. The City’s air quality goals are presented in the IS/MND beginning on page 27. As described in the detailed analysis beginning on page 28, the project would not exceed Bay Area Air Quality Management District thresholds for construction or operational air quality emissions, and the project’s job generation falls within the growth assumptions of the City’s General Plan. As the buildout of the General Plan was fully analyzed for cumulative air quality impacts within the plan’s Final EIR, the project is therefore consistent with these projections. Furthermore, the IS/MND was sent to the Bay Area Air Quality Management District and the City did not receive comments on the project or its analysis.
- **Industrial/Warehouse Land Use designation:** The proposed use is a last-mile distribution facility, which is classified as a warehousing and distribution use within the City’s Municipal Code. This use is allowed under the City’s Heavy Industrial zoning, which is the zoning for this site. Comments are acknowledged but do not directly address the environmental analysis conducted for the IS/MND.

None of the comments by Teamster Joint Council No. 7’s appeal raised any new issues about the project’s environmental impacts, nor do they provide information indicating the project would

result in new environmental impacts or impacts substantially greater in severity than disclosed in the supporting Initial Study for the MND. Please refer to Exhibit B for additional detailed responses. Therefore, the IS/MND and associated documents are adequate in their analysis of the proposed project.

CONCLUSION

Based on the above analysis, the comments submitted by Teamster Joint Council No. 7 represent an opinion and do not demonstrate with facts and analysis a fair argument that a new environmental document is required pursuant to CEQA Guidelines Sections 15162. Staff recommends the City Council deny the appeal and uphold the Planning Director's adoption of the IS/MND and approval of the Site Development Permit.

EVALUATION AND FOLLOW-UP

If the Council denies the appeal and upholds the Planning Director's adoption on the IS/MND for the Site Development Permit, then the applicant may proceed with the acquisition of the necessary grading and building permits and implement the required mitigation measures to complete the development of the 1660 Old Bayshore Highway Industrial Project.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. The development of the project would:

- Comply with the Greenhouse Gas Reduction Strategy 2030 goals;
- Consistent with the existing Envision General Plan Land Use Designation; and
- Enrolled in San José Clean Energy (SJCE) GreenSource program.

POLICY ALTERNATIVES

For the Environmental Appeal, the Council can either:

- a. Deny the appeal and uphold the adoption of the MND and Site Development Permit, or
- b. Grant the appeal and require that additional environmental review be conducted, resulting in a new or revised environmental document prior to consideration of the Site Development Permit, or the applicant not moving forward with the project.

HONORABLE MAYOR AND CITY COUNCIL

February 22, 2022

Subject: H20-041 Administrative Appeal Hearing on the Initial Study/Mitigated Negative Declaration for the 1660 Old Bayshore Highway Industrial Project.

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Staff recommends that the City Council deny the CEQA appeal, uphold the Planning Director's adoption of the 1660 Old Bayshore Highway Industrial Project MND and associated Mitigation Monitoring and Reporting Program, and the Site Development Permit.

PUBLIC OUTREACH

Staff followed City Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. The Notice of Intent for IS/MND was notified to interested members via email and newflash on the City's website t at the start of the public circulation period, which lasted from August 30, 2021 to September 20, 2021. Notice of the public hearing for this appeal and associated materials were distributed to the appellant, applicant, and adjacent property owner(s). Staff has been available to answer questions from the public.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office.

CEQA

1660 Old Bayshore Highway Industrial Project Focused Initial Study and Mitigated Negative Declaration.

/s/

CHRISTOPHER BURTON, Director
Planning, Building, and Code Enforcement

For questions, please contact Robert Manford, at (408) 535-7900.

Attachments:

Exhibit A: Environmental Appeal from Teamster Joint Council No. 7, dated November 22, 2021

Exhibit B: Response to Environmental Appeal Comments

Exhibit C: Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program Resolution

Exhibit D: Initial Study and Mitigated Negative Declaration for the 1660 Old Bayshore Highway Industrial Project

NOTICE OF ENVIRONMENTAL APPEAL

TO BE COMPLETED BY PLANNING STAFF			
FILE NUMBER		RECEIPT # _____	
TYPE OF ENVIRONMENTAL DETERMINATION (EIR, MND, EX)		AMOUNT _____	
		DATE _____	
		BY _____	
TO BE COMPLETED BY PERSON FILING APPEAL			
PLEASE REFER TO ENVIRONMENTAL APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.			
THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE FOLLOWING ENVIRONMENTAL DETERMINATION:			
<u>File No. H20-041, Adoption of Focused Initial Study & Mitigated Negative Declaration for, 1660, 1720, 1736 Old Bayshore Road, San Jose</u>			
REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):			

<u>See attached letter and exhibit(s).</u>			

PERSON FILING APPEAL			
NAME Travis Sexton		DAYTIME TELEPHONE (415) 990-5227	
ADDRESS 4125 Blackhawk Plaza Circle, Suite 205D		CITY Danville	STATE CA
		ZIP CODE 94506	
SIGNATURE Travis Sexton		DATE 11.22.21	
		Digitally signed by Travis Sexton Date: 2021.11.22 14:50:14 -08'00'	
CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)			
NAME Doug Bloch			
ADDRESS 7750 Pardee Lane		CITY Oakland	STATE CA
		ZIP CODE 94621	
DAYTIME TELEPHONE (510) 333-1179		FAX NUMBER ()	E-MAIL ADDRESS doug@teamjc7.org

TEAMSTERS JOINT COUNCIL No. 7

Affiliated with the International Brotherhood of Teamsters



Grounds for Appeal, Re: File No. H20-041, "1660 Old Bayshore Highway Industrial Project"

The grounds for this appeal of an environmental determination, i.e., File No. H20-041, adoption of a mitigated negative declaration for a proposed warehouse/delivery station project at 1660 Old Bayshore Road, are incorporated from the comments made by myself at the Planning Director hearing on November 17, 2021 and the letter submitted by the Residents and Workers for a Safe San Jose, an unincorporated association of concerned residents of the City of San Jose, on September 21, 2021, attached to this letter as Exhibit 1. The objections and rationales in the spoken comments and in that letter constitute the grounds for this appeal.

In particular, we would note that the City erred in screening the project from a full Vehicle Miles Traveled "VMT" analysis, under the City's own Handbook guidelines. The City's Transportation Analysis Handbook offers an exemption from a full VMT analysis on the premise that a 30,000 square foot industrial use (an "employment use") has predictable trip generation characteristics akin to those of an office use, and that therefore "small infill" projects should not be required to perform a VMT analysis.

The design of the project makes the application of the screen inappropriate. While the physical warehouse/office at 25,000 or so square feet of warehousing is indeed under the 30,000 "infill" threshold. However, the "canopy" area is a hybrid warehouse: importantly, it is not static *parking* space, but rather intended for active storage and delivery activity, the type of activity that generates car trips and vehicle miles traveled. Per the applicant's circulation plan, Figure 3-3, line haul trucks enter and exit from the southeast corner, segregated to two lanes; the employees are one lane over; *the bulk of the site is dedicated to allowing drivers to enter from the south west, and pick*



Organized November 18, 1907
United with JC# 38 January 1, 2010

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Peter Núñez
Recording Secretary

Jason Rabinowitz
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up parcels that have been moved on carts from the warehouse, to sit and await pickup under the canopy. While this is not long-term storage, it is just an extension of the warehouse use inside the four walls.

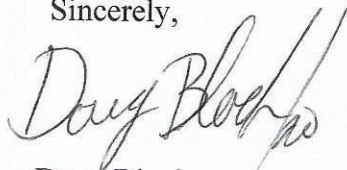
By the terms of the zoning code itself, this is an inappropriate way to calculate the gross square footage dedicated to the use, albeit there is some ambiguity. Nevertheless, this ambiguity should be resolved in favor of further study. The zoning code defines the gross floor area of a use as that part of the structure *not* “used *exclusively* for vehicle parking or loading.”¹ The logic of this definition is that what is relevant for purposes of land use planning (and thus understanding impacts) is that the proportion of a structure dedicated to a particular *use* is what matters, exclusive of where people are simply parking or picking up/dropping people off. In other words, the intent of code, and the Handbook’s screen, is to streamline projects where the VMT is not likely to be impactful, and fairly predictable: where the gross floor area committed to a particular use is under 30,000 square feet.

Here, the proportion of the site dedicated to the use--not exclusively for parking or loading--is evidently greater than the screening threshold, because of the canopied area where cars will be queuing to pick up parcels, and then exiting the site to deliver them. This is not incidental to the use (as is the case for “parking and loading”) it is the *essential for the use itself*.

Therefore, it was erroneous to exclude the canopied square footage from the gross floor area calculation at least for purposes of applying the Handbook’s VMT screen, and adoption of a Mitigated Negative Declaration that relied on the application of that screen is inappropriate.

For this reason, and the reasons in the September 21st letter, incorporated by reference fully into this appeal, we respectfully request that the decision to adopt the Mitigated Negative Declaration be reversed.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Bloch", with a stylized flourish at the end.

Doug Bloch
Political Director

¹ City of San Jose Municipal Code, Section 17.84.108

EXHIBIT 1

September 20, 2021

City of San Jose
Department of Planning, Building & Code Enforcement
200 E Santa Clara Street
3rd Floor
San Jose, CA 95113
Attn: Christopher Burton, Bethlehem Telahun
bethlehem.telahun@sanjoseca.gov

RE: File No. H20-041, "1660 Old Bayshore Highway Industrial Project"

This letter is submitted to provide comment on the proposed Mitigated Negative Declaration, File No. H20-041, for the Amazon "last mile delivery station" proposed at 1660 Old Bayshore Highway. (See "Focused Initial Study" (FIS) Figure 3-3). The proposed project represents a unique type of use, a high-intensity and highly-trafficked hybrid retail and delivery facility, which will operate throughout the day with vehicles circulating and idling consistently. Analysis of this facility presents different challenges from a typical warehouse house in an industrial zone.

The proposed hybrid use and its inherent nature as part of a logistical chain requires additional and specialized review and analysis. We are strongly urging the City to consider this context, without which the environmental impact review will inherently be deficient.

The purpose of CEQA is to involve the public, including their elected representatives, in environmental review as early in a process as possible, to ensure that any reasonably foreseeable and significant environmental impacts are understood, and projects can be contoured and conditioned to lessen or avoid those impacts altogether. In conducting this review, agencies are charged with looking at the relevant "environmental setting," the discretionary project as

City of San Jose
Comment To File No. H20-041
September 20, 2021

EXHIBIT 1

proposed, and reasonably foreseeable consequences and phases of the proposed project.

“Piecemealing” CEQA is inappropriate for that reason: if every local agency is considering only each component part of a project, cumulative or aggregated impacts of the project fail to be taken into consideration and the true environmental impacts are not understood, and in turn projects cannot be contoured or conditioned to avoid potentially significant impacts.

This does not mean that local agencies with finite resources and already over-worked staff are required to infinitely expand the scope of their review and analysis to consider every possible knock-on effect or down-stream impact of a project. Instead, the standards are fairly reasonable: where a particular project is part of a larger project, or a particular phase of a project, or where the approval and operation of a project will have reasonably foreseeable consequences beyond its immediate physical impact, the public and their representatives must have sufficient information gathered for them to make a reasoned decision and implement whatever conditions or limitations necessary to lessen or prevent significant environmental impacts.

The proposed project is intricately and inherently linked with other local and regional projects, and therefore the scope of consideration needs to be at slightly higher level than the one found in the FIS. The proposed use is also unique, and its operation distinct from that which is surmised by the FIS or accounted for by the City’s zoning code. These two factors are interrelated; the unique nature of the project’s use is a function of the project’s role as part of a larger regional project. Therefore both deeper and wider study are necessary, and the FIS is insufficient.

The Proposed Project is Part of a Larger Regional Project with Cumulative Impacts

EXHIBIT 1

There is no “local” or “regional” environment, at least in the sense that is relevant to the potentially significant environmental impacts of this project. There is no dividing line between “Milpitas air” and “Coyote air” and “San Jose air”; political boundaries are not environmental boundaries, particularly when it comes to nonrivalrous goods like air. Political boundaries between local agencies are not dispositive of a need to study impacts.

The proposed Amazon delivery station is one node in a logistical chain, each part interdependent on the other. Unlike the classical concept of a “warehouse,” a last-mile delivery station of the type Amazon proposes for this project is a step in a condensed retail transaction, part of a just-in-time inventory system meant to replicate, as closely as possible, a retail experience. A user purchases an item through Amazon’s website, either directly from Amazon or from a third-part seller; the order is processed by a central hub, and the item is placed into a moving stream of packaged goods that arrives at a fulfillment or sorting center--in this instance, likely the facility at 750 Laurelwood Road, next to Mineta airport, some four miles from the proposed site. The item is then moved to a “last mile” delivery station, where it is further sorted for direct delivery to the consumer by a contract or “FLEX” driver. Amazon’s purpose is to reduce this shipping time as much as possible, as the company’s shift into household consumer goods and groceries suggests. To achieve this, Amazon has frantically been securing and building warehouses for this last mile retail function over the last year and a half--just in 2020 a 100,000+ square foot warehouse was developed in Milpitas; a 140,000 square foot warehouse is being considered for Gilroy; an Amazon Prime Now warehouse in Sunnyvale; and more than a dozen locker and hub locations stretching from San Jose down to Morgan Hill, all of which generate traffic. This logistical system relies on each interdependent part, and adding capacity--in this instance, approximately 45,000 square feet of warehouse and loading canopy--inherently

EXHIBIT 1

suggests that the frequency and gross total mileage of deliveries is meant to change. Presumably this change will be an increase, given that more capacity is being added. This is supported by the fact that a significant proportion of the Amazon hubs in San Jose--of which there are over a dozen--came into being along with the development of the Milpitas warehouses.

The interrelation and moving of goods between sorting facilities (the local “fulfillment centers”), the existing (and planned) last-mile delivery stations, and the numerous Amazon hubs and locker spaces are all part of an interconnected “project” for purposes of CEQA. All of these elements need to be studied together to adequately analyze the potential impacts of approval of the project, both for transportation and air quality impacts.

This is not conjecture, but based on Amazon’s own analysis. In a traffic study submitted to the City of Gilroy in support of their application for a 140,000 square foot warehouse there, the traffic engineer stated that the warehouse was necessary because, currently, delivery drivers in the “South County area” including Gilroy have to travel up from Gilroy to the Milpitas delivery station and bring them back south to consumers in Gilroy and the surrounding area.¹ As Amazon expands this network, in other words, existing facilities serve as existing nodes for deliveries in further flung communities.

The scope of the environmental review conducted for an initial study must include the entire project. Specifically, “[a]ll phases of project planning, implementation, *and operation* must be considered in the initial study of the project.” (see CEQA Guidelines, § 15063, subd. (a)(1).) (emphasis added). The operations of the project include (1) sending vehicles--including trucks--into residential neighborhoods, where they will make frequent stops, idle, and take up

¹ See City of Gilroy Planning Commission Meeting, September 9, 2021

EXHIBIT 1

curbside space to make deliveries, (2) moving packages between existing and potentially planned facilities in this and other political jurisdictions; and (3) directly and indirectly result in development of other traffic-generating facilities, including other delivery stations, hubs and lockers. The potential impacts of these parts of the operation were not studied, nor has the applicant disclosed how this unique facility fits into a larger local and regional plan. This has implications both for air quality and transportation impacts.

The Transportation Analysis Should Not be “Screened” From VMT Analysis

The applicant relies on the size of the existing warehouse structure, at approximately 25,000 square feet, to avoid a vehicle miles traveled (VMT) analysis. The city of San Jose’s Transportation Analysis handbook, dated April 2020, indicates that “industrial infill” projects of less than 30,000 square feet of gross floor area may be “screened” from having to conduct a VMT analysis. (See Appendix C, Transportation Analysis). This exemption is based on an analogy drawn from the Institute for Transportation Engineers (ITE) Trip General Manual, 10th Edition: “An office project of this size typically generates the same number of daily trips – around 110 daily trips – as an industrial project of 30,000 square feet. [Fn4]: Based on vehicle-trip rates obtained from the ITE Trip Generation Handbook [*sic*], 10th Edition.”

This is an erroneous and misleading application of the “screen.” First, the ITE’s Trip Generation Manual 10th Edition does *not* include an industrial classification for delivery stations of the type proposed here--something else that was expressly acknowledged in the transportation analysis submitted for the Gilroy project (and reviewed by NV5, the same traffic engineers used

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for this project).² The lack of this classification in the ITE Manual was a serious enough issue in the Gilroy application to compel the traffic engineers to resort to a bespoke in-house study conducted at various Amazon facilities, a study that ended up being “inconclusive.” As discussed further below, the proposed facility is a unique use, and relying on an exemption evaluating traditional (or at least, *classifiable* industrial uses) is an error. The City’s Transportation Analysis Handbook offers this exemption on the premise stated above: that a 30,000 square foot industrial use (and “employment use”) has predictable trip generation characteristics and that therefore “small infill” projects should not be required to perform a VMT analysis. As the Trip Generation Manual does not contain any trip generation analysis for a last-mile delivery station of the type being proposed, application of the Handbook screen is inappropriate.

Secondly, the design of the project makes the application of the screen inappropriate. While the project proposed 25,000 or so square feet of warehousing, the “canopy” area is a hybrid warehouse: per the applicant’s circulation plan, Figure 3-3, line haul trucks enter and exit from the south east corner, segregated to two lanes; the employees are one lane over; the bulk of the site is dedicated to allowing drivers to enter from the south west, and pick up parcels that have been moved on carts from the warehouse, to sit and await pickup under the canopy. While this is a creative exploitation of San Jose’s year-round above-freezing temperatures and 17 inches of annual rainfall on only about 60 days on average, it does not alter the actual *use and operation* of the site, which is what CEQA, and the VMT analysis, is meant to study.

The 30,000 square feet of *gross floor area* makes sense insofar as gross floor area is written to exclude “area used *exclusively* for vehicle parking or loading.”³ But the project here is

² *Id.*

³ City of San Jose Municipal Code, Section 17.84.108

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using semi-covered space not exclusively for “vehicle parking or loading” but for storage, even if it is temporary storage, of packages under the canopies; circulation of employees to assist or facilitate storage and staging of deliveries.

Under this canopy, which is 3/4s of the size of the warehouse facility, trucks, seemingly four abreast and three deep, will be loaded up either by the delivery drivers themselves from the carts, or by warehouse employees. In any case, the truck queue is located approximately 45 feet from the building. There is a continuation of work from the warehouse throughout the canopy.

This is why the applicant will need to secure a special use permit for the “outdoor” use: in essence, a special use permit will allow space to be used for activity that will generate vehicle miles and trips by increasing the capacity of the site, while at the same time using the fact that this “use” falls outside of the gross floor area of the warehouse structure to avoid an adequate traffic study.

The purpose of “trip generation characteristics” is to evaluate the likely vehicle trips based on square footage of actual use on the property; excluding the canopy area subverts the purpose of CEQA.

The General Plan’s Air Quality Goals Have Not Been Met Because of Inadequate Study

For many of the reasons stated above, the air quality analysis has been insufficient. In particular, Policy M.S.-10.2, which requires consideration of “cumulative air quality impacts from proposed developments.” The nature of approving a node in a logistical system, which will have knowable, much less reasonably foreseeable, impacts, requires a higher level of analysis than is available here. The MND does not study the impact of “last mile” delivery despite this known impact from approval of the site. Last mile delivery includes vehicle queuing, but also

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making of frequent stops, idling, and parking in residential areas. The knock-on effect of development of a node that will service potentially other delivery stations and hubs and locker spaces, which will themselves generate vehicle miles, are known quantities that should be studied for their cumulative impact.

Importantly, this is also something that should be studied under CEQA on its own: that is, while there is a conflict between the adoption of the MND and the General Plan objectives, there is also a failure to study cumulative impacts, which is a requirement of CEQA itself.

The Proposed Use is Fundamentally Different from a Typical Warehouse Use and Requires Different Analysis

The term “*last mile*” is sufficient to make clear that this project is not a standalone entity akin to a typical industrial-use warehouse whose impacts--particularly its transportation and air quality impacts--can be understood in isolation. The proverbial last mile is the distance from the delivery station either to hubs or to consumer’s homes. The purpose of the development is (1) to generate vehicle trips not only along arterial roads between set points, but from the facility into residential communities along variable routes and (2) decrease the delivery time from order to delivery, and thus increase the volume of sales.

As a threshold issue the City must decide whether the proposed Amazon last mile delivery station is distinct from a typical warehouse use. The foregoing information provides an answer: it clearly is. Warehouses, even warehouse that serve as modal hubs in a logistical network, are points in a fairly static and predictable chain; deliveries made from large regional facilities to retail outlets or delivering inputs to manufacturers. A “last mile” delivery station in a rapidly-expanding and interlocking network intended to send trucks and cars throughout

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residential neighborhoods, make frequent stops, take up curbside space, etc., is of a different character from an industrial use warehouse.

The municipal code's definition of a warehouse does not contemplate the sort of "retail/industrial" hybrid use of this facility. Its impacts, in other words, are inherently unique. It is not akin to a warehouse, where there will be long-term storage; if this were the case, the structure would require different design to accommodate fire code provisions specific to warehousing. Nor is it akin to a "warehouse retail" use like a Sam's Club, where individual consumers shop at a large structure and take large quantities of goods home for themselves. Instead, the warehouse works as a logistical node where delivery drivers take requests from buyers in their home, and as quickly as the logistical system will allow, circulate constantly throughout the city to bring the *small* quantities of goods to homes. This hybrid industrial/use has a variety of impacts that need to be considered distinctly, and in order to do so, the City needs further information regarding how this facility will be situated within the larger "project" of Amazon retail delivery services.

Conclusion

For the foregoing reasons, we urge the City to require further study or, alternatively, to deny the mitigated negative declaration. Failure to adequately evaluate the regional logistical links, and the hybrid nature of the use, will not give a full picture of the cumulative impacts or the traffic impacts; constitutes improper piecemealing of the project; and subverts the purpose of CEQA.

Sincerely,

City of San Jose
Comment To File No. H20-041
September 20, 2021

EXHIBIT 1

Residents and Workers for a Safe San Jose

**Response to Appeal of the November 17, 2021
Planning Director's Approval of the CEQA
Document for 1660 Old Bayshore Highway
Industrial Project
File No.: H20-041**

Prepared by



February 2022

SECTION 1.0 SUMMARY OF COMMENTS

The 1660 Old Bayshore Road Industrial Project Focused Initial Study/Mitigated Negative Declaration (IS/MND), dated August 2021, was circulated for public review for a 21-day review period from August 30, 2021, through September 20, 2021. The Notice of Intent for the adoption of the IS/MND was sent via email to applicable public agencies, public members who have requested notices on all CEQA documents, and public members interested in the project. During the circulation period, the City of San José received one comment letter from the Santa Clara Valley Transportation Authority (VTA) and staff responded to the inquiry directly via email.

A letter from the organization identified as Residents and Workers for a Safe San Jose, dated September 20, 2021, was not received by City staff due to a spelling error until after the close of the public review period, and just prior to the Director's Hearing. The comment letter was included as Exhibit 1 of an appeal of the project's environmental determination. Therefore, staff received and accepted the late comment letter on October 27, 2021. Therefore, this comment was considered to be untimely. While not required under CEQA, City staff responded to the comments and substance of the September 20, 2021, comment letter, in writing, prior to the Director's Hearing of November 17, 2021. The responses were posted on the City website prior to the public hearing on November 9, 2021.

The project and IS/MND was heard at City of San Jose Director's Hearing on November 17, 2022 and was approved. An environmental appeal was filed November 22, 2021, by Mr. Doug Bloch, on behalf of Teamsters Joint Council No. 7 and Residents and Workers for a Safe San Jose. The appeal consists of an undated cover letter, together with the comment letter on the Initial Study/Mitigated Negative Declaration (IS/MND) dated September 20, 2021.

The comments raised in the appeal, similar to the comments on the IS/MND, focus on the following issues and arguments: that the project should be viewed and analyzed as just one part of a larger "project" consisting of the whole of the applicant's logistics operations chain including offsite operations and delivery to and from this site in the region; that the project should have prepared more a detail vehicle miles travelled (VMT) analysis; that the General Plan's air quality goals have not been met; and, that the project is fundamentally different from other industrial/warehouse/distribution uses.

The comments received on the IS/MND through the appeal did not raise any new issues about the project's environmental impacts, or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND. CEQA does not require formal responses to comments on an IS/MND, only that the Lead Agency consider the comments received [CEQA Guidelines §15074(b)]. Nevertheless, responses to the comments are included in this document to provide a complete environmental record and to support the City's position that the project's CEQA review is adequate.

SECTION 2.0 RESPONSES TO COMMENTS RECEIVED THROUGH APPEAL

This document includes written responses to the environmental appeal received by the City of San José on the IS/MND. The specific comments from each of the letters are presented with each response to that specific comment directly following. The complete appeal is included as an attachment to this document.

Response to Appeal of the November 17, 2021 Director's Approval of the CEQA Document for H20-041, 1660 Old Bayshore Highway Industrial Project

Response to Cover Letter (undated) Submitted with Appeal Filed November 22, 2021 (Teamster's Joint Council No. 7, Doug Bloch, Political Director)

Comment 1: The grounds for this appeal of an environmental determination, i.e., File No. H20-041, adoption of a mitigated negative declaration for a proposed warehouse/delivery station project at 1660 Old Bayshore Road, are incorporated from the comments made by myself [Mr. Bloch] at the Planning Director hearing on November 17, 2021 and the letter submitted by the Residents and Workers for a Safe San Jose, an unincorporated association of concerned residents of the City of San Jose, on September 21, 2021, attached to this letter as Exhibit 1. The objections and rationales in the spoken comments and in that letter constitute the grounds for this appeal.

Response 1: The appellant's letter states that the grounds for appeal of the environmental determination are incorporated from oral comments made by the appellant at the Director's Hearing and the letter submitted by Residents and Workers for a Safe San Jose, included as Exhibit 1. Furthermore, the letter submitted by commenter dated September 21, 2021 was not received by staff until November 3, 2021 as the commenter misspelled staff's email address.

As the letter summarizes Exhibit 1 and the appellant's oral comments, the issues raised are addressed in the responses below and responses to Exhibit 1.

Comment 2: In particular, we would note that the City erred in screening the project from a full Vehicle Miles Traveled "VMT" analysis, under the City's own Handbook guidelines. The City's Transportation Analysis Handbook offers an exemption from a full VMT analysis on the premise that a 30,000 square foot industrial use (an "employment use") has predictable trip generation characteristics akin to those of an office use, and that therefore "small infill" projects should not be required to perform a VMT analysis.

Response 2: City Council Policy 5-1 was adopted in February 27, 2018, and includes VMT screening criteria, which is the basis for CEQA impact analysis using the best available regulatory framework and methodology. Based on the scope and operation of this project, the site is a distribution facility that is allowable in the existing Zoning District (HI Heavy Industrial) and therefore, the proposed project qualifies as an industrial use of under 30,000 square feet. When City Council Policy 5-1 was adopted, the policy assumed that an addition of 15 single-family detached dwelling units, 25 attached dwelling units, 10,000 square feet of gross office floor area, or 30,000 square feet of industrial gross floor area, or less, does not result in significant VMT impacts and is consistent with the State regulation. The project is an industrial use of less than 30,000 square feet, consistent with this policy, and therefore does not result in a significant VMT impact under CEQA. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

Comment 3: The design of the project makes the application of the screen inappropriate. While the physical warehouse/office at 25,000 or so square feet of warehousing is indeed under the 30,000 "infill" threshold. [sic] However, the "canopy" area is a hybrid warehouse: importantly, it is not static *parking* space, but rather intended for active storage and delivery activity, the type of activity that generates car trips and vehicle miles traveled. Per the applicant's circulation plan, Figure 3-3, line haul trucks enter and exit from the southeast corner, segregated to two lanes; the employees are one lane over; *the bulk of the site is dedicated to allowing drivers to enter from the south west; and pick up parcels that have been moved on carts from the warehouse, to sit and await pickup under the canopy.* While this is not long-term storage, it is just an extension of the warehouse use inside the four walls.

By the terms of the zoning code itself, this is an inappropriate way to calculate the gross square footage dedicated to the use, albeit there is some ambiguity. Nevertheless, this ambiguity should be resolved in favor of further study. The zoning code defines the gross floor area of a use as that part of the structure *not "used exclusively for vehicle parking or loading."*¹ The logic of this definition is that what is relevant for purposes of land use planning (and thus understanding impacts) is that the proportion of a structure dedicated to a particular *use* is what matters, exclusive of where people are simply parking or picking up/dropping people off. In other words, the intent of code, and the Handbook's screen, is to streamline projects where the VMT is not likely to be impactful, and fairly predictable: where the gross floor area committed to a particular use is under 30,000 square feet.

Here, the proportion of the site dedicated to the use--not exclusively for parking or loading--is evidently greater than the screening threshold, because of the canopied area where cars will be queuing to pick up parcels, and then exiting the site to deliver them. This is not incidental to the use (as is the case for "parking and loading") it is the essential for the use itself.

Therefore, it was erroneous to exclude the canopied square footage from the gross floor area calculation at least for purposes of applying the Handbook's VMT screen, and adoption of a Mitigated Negative Declaration that relied on the application of that screen is inappropriate.

Response 3: See response to Comment 2 above regarding the City's VMT screening policy. The project under review is an application to redevelop, repurpose and operate a single 24,486 square foot warehouse with a 3,000 square foot office addition. The proposed use is a last-mile distribution facility. Warehousing and distribution are allowed uses for sites located in the City's HI Heavy Industrial Zoning District. Warehousing and distribution facilities by function and design include loading areas to facilitate the distribution of goods. The project's loading area with canopy would be used exclusively for vehicle loading operations, not storage. The proposed canopy component of the project is not floor area and therefore does not add to the square footage of the project. The canopy is simply a cover for a large loading area, and therefore was analyzed appropriately. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

Comment 4: For this reason, and the reasons in the September 21st letter, incorporated by reference fully into this appeal, we respectfully request that the decision to adopt the Mitigated Negative Declaration be reversed.

Response 4: Closing comments for the cover letter are included for the record. The comment does not address any new environmental issues specific to the Initial Study.

Response to Exhibit 1 of Appeal, Letter from Residents and Workers for a Safe San Jose

Comment 5: This letter is submitted to provide comment on the proposed Mitigated Negative Declaration, File No. H20-041, for the Amazon "last mile delivery station" proposed at 1660 Old Bayshore Highway. (See "Focused Initial Study" (FIS) Figure 3-3). The proposed project represents a unique type of use, a high-intensity and highly-trafficked hybrid retail and delivery facility, which will operate throughout the day with vehicles circulating and idling consistently. Analysis of this facility presents different challenges from a typical warehouse house in an industrial zone.

The proposed hybrid use and its inherent nature as part of a logistical chain requires additional and specialized review and analysis. We are strongly urging the City to consider this context, without which the environmental impact review will inherently be deficient.

Response 5: The exhibit provides introductory comments regarding the type of project and its description. Please see response to Comment 6 below regarding the project description and environmental review requirements under CEQA.

Comment 6: The purpose of CEQA is to involve the public, including their elected representatives, in environmental review as early in a process as possible, to ensure that any reasonably foreseeable and significant environmental impacts are understood, and projects can be contoured and conditioned to lessen or avoid those impacts altogether. In conducting this review, agencies are charged with looking at the relevant "environmental setting," the discretionary project as proposed, and reasonably foreseeable consequences and phases of the proposed project. "Piecemealing" CEQA is inappropriate for that reason: if every local agency is considering only each component part of a project, cumulative or aggregated impacts of the project fail to be taken into consideration and the true environmental impacts are not understood, and in turn projects cannot be contoured or conditioned to avoid potentially significant impacts.

This does not mean that local agencies with finite resources and already over-worked staff are required to infinitely expand the scope of their review and analysis to consider every possible knock-on effect or down-stream impact of a project. Instead, the standards are fairly reasonable: where a particular project is part of a larger project, or a particular phase of a project, or where the approval and operation of a project will have reasonably foreseeable consequences beyond its immediate physical impact, the public and their representatives must have sufficient information gathered for them to make a reasoned decision and implement whatever conditions or limitations necessary to lessen or prevent significant environmental impacts.

The proposed project is intricately and inherently linked with other local and regional projects, and therefore the scope of consideration needs to be at slightly higher level than the the [sic] one found in

the FIS. The proposed use is also unique, and its operation distinct from that which is surmised by the FIS or accounted for by the City's zoning code. These two factors are interrelated; the unique nature of the project's use is a function of the project's role as part of a larger regional project. Therefore both deeper and wider study are necessary, and the FIS is insufficient.

Response 6: General comments regarding the purpose of CEQA and standards of review are included here for the record. No response to these general comments is necessary since the comment does not raise any specific issue with the environmental analysis of the IS/MND.

In response to the scope and definition of the project, the project under review is an application to redevelop, repurpose and operate a single 24,486 square foot warehouse with a 3,000 square foot office addition. The proposed use is a last-mile distribution facility. Warehousing and distribution are allowed uses sites located within the City's HI Heavy Industrial Zoning District.

Based on the tenant operations narrative provided with the application and described in the Focused Initial Study (IS), the facility is intended to expedite order fulfillment and delivery to local customers. While the distribution center may support the owner's overall business operations to more efficiently move and deliver goods to local customers, the facility is not fundamentally essential to these operations. It is unreasonable and speculative to treat all operations and facilities as a single "project" as defined by CEQA simply because operations are related. If such an approach was the standard of review, similar uses that involve complex logistics – such as an individual grocery store, for example – would require an analysis not only of that grocery store, but also that brand's warehouse and distribution facilities, and perhaps even the growing of food that is delivered to the warehouses. The current proposed project is only for additions to an existing warehouse building, including a 3,000-square foot office addition and 17,700-square foot canopy to facilitate a distribution center and delivery station. This is consistent with the analysis provided in the IS/MND. As the comment itself implies, CEQA provides a "rule of reason" for environmental review by local agencies. Analyzing an entire supply chain, or an entire life cycle of a product, is beyond the reasonable scope of review even if the Lead Agency had access to such information.

According to Section 15151 of the CEQA Guidelines, an EIR (or in this case, a Mitigated Negative Declaration) should include "a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." The Guidelines continue to state that "an evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." According to Title 14 California Code of Regulations Section 15204(a), "adequacy of an EIR is determined in terms of what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters."

As the court held in *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011), 52 Cal. 4th 155, although the area affected by a project may reach beyond the project boundaries, "[t]his does not mean, however, that an agency is required to conduct an exhaustive analysis of all conceivable impacts a project may have in areas outside its geographical boundaries...(l)ess detail, for example, would be required where those effects are more indirect than effects felt within the project area, or where it [would] be difficult to predict them with any accuracy." Furthermore, please note that cumulative vehicle miles

travelled (VMT) impacts are analyzed if a project proposes a General Plan Amendment, which could constitute a change to existing VMT assumptions. This project does not propose a General Plan Amendment.

The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

The Proposed Project is Part of a Larger Regional Project with Cumulative Impacts

Comment 7: There is no "local" or "regional" environment, at least in the sense that is relevant to the potentially significant environmental impacts of this project. There is no dividing line between "Milpitas air" and "Coyote air" and "San Jose air"; political boundaries are not environmental boundaries, particularly when it comes to nonrivalrous goods like air. Political boundaries between local agencies are not dispositive of a need to study impacts.

The proposed Amazon delivery station is one node in a logistical chain, each part interdependent on the other. Unlike the classical concept of a "warehouse," a last-mile delivery station of the type Amazon proposes for this project is a step in a condensed retail transaction, part of a just-in-time inventory system meant to replicate, as closely as possible, a retail experience. A user purchases an item through Amazon's website, either directly from Amazon or from a third-part seller; the order is processed by a central hub, and the item is placed into a moving stream of packaged goods that arrives at a fulfillment or sorting center--in this instance, likely the facility at 750 Laurelwood Road, next to Mineta airport, some four miles from the proposed site. The item is then moved to a "last mile" delivery station, where it is further sorted for direct delivery to the consumer by a contract or "FLEX" driver. Amazon's purpose is to reduce this shipping time as much as possible, as the company's shift into household consumer goods and groceries suggests. To achieve this, Amazon has frantically been securing and building warehouses for this last mile retail function over the last year and a half--just in 2020 a 100,000+ square foot warehouse was developed in Milpitas; a 140,000 square foot warehouse is being considered for Gilroy; an Amazon Prime Now warehouse in Sunnyvale; and more than a dozen locker and hub locations stretching from San Jose down to Morgan Hill, all of which generate traffic. This logistical system relies on each interdependent part, and adding capacity--in this instance, approximately 45,000 square feet of warehouse and loading canopy--inherently suggests that the frequency and gross total mileage of deliveries is meant to change. Presumably this change will be an increase, given that more capacity is being added. This is supported by the fact that a significant proportion of the Amazon hubs in San Jose--of which there are over a dozen--came into being along with the development of the Milpitas warehouses.

The interrelation and moving of goods between sorting facilities (the local "fulfillment centers"), the existing (and planned) last-mile delivery stations, and the numerous Amazon hubs and locker spaces are all part of an interconnected "project" for purposes of CEQA. All of these elements need to be studied together to adequately analyze the potential impacts of approval of the project, both for transportation and air quality impacts.

This is not conjecture, but based on Amazon's own analysis. In a traffic study submitted to the City of Gilroy in support of their application for a 140,000 square foot warehouse there, the traffic engineer

stated that the warehouse was necessary because, currently, delivery drivers in the "South County area" including Gilroy have to travel up from Gilroy to the Milpitas delivery station and bring them back south to consumers in Gilroy and the surrounding area. As Amazon expands this network, in other words, existing facilities serve as existing nodes for deliveries in further flung communities.

The scope of the environmental review conducted for an initial study must include the entire project. Specifically, "[a]ll phases of project planning, implementation, *and operation* must be considered in the initial study of the project." (see CEQA Guidelines, § 15063, subd. (a)(1).) (emphasis added). The operations of the project include (1) sending vehicles—including trucks—into residential neighborhoods, where they will make frequent stops, idle, and take up curbside space to make deliveries, (2) moving packages between existing and potentially planned facilities in this and other political jurisdictions; and (3) directly and indirectly result in development of other traffic-generating facilities, including other delivery stations, hubs and lockers. The potential impacts of these parts of the operation were not studied, nor has the applicant disclosed how this unique facility fits into a larger local and regional plan. This has implications both for air quality and transportation impacts.

Response 7: The comments state that a delivery station is one node in a logical chain, that these nodes are interdependent, and therefore the entirety of this supply chain should be analyzed together as one project, particularly with respect to transportation and air quality. Please see response to Comment 6 above regarding the scope of the environmental review for the project and the reasonable analysis requirements under CEQA. The Initial Study analyzed the effects of the project related to transportation and air quality based on CEQA thresholds and local CEQA standards. As stated in the IS/MND and applicable technical reports, the project would not have significant unavoidable impacts to construction or operation of the proposed project. The project would have mitigation measures required for hazardous materials to require oversight from the Santa Clara County Department of Environmental Health (SCCDEH) prior to issuance of any grading permits. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

The Transportation Analysis Should Not be "Screened" From VMT Analysis

Comment 8: The applicant relies on the size of the existing warehouse structure, at approximately 25,000 square feet, to avoid a detail vehicle miles traveled (VMT) analysis. The city of San Jose's Transportation Analysis handbook, dated April 2020, indicates that "industrial infill" projects of less than 30,000 square feet of gross floor area may be "screened" from having to conduct a detail VMT analysis. (See Appendix C, Transportation Analysis). This exemption is based on an analogy drawn from the Institute for Transportation Engineers (ITE) Trip General Manual, 10th Edition: "An office project of this size typically generates the same number of daily trips - around 110 daily trips - as an industrial project of 30,000 square feet. [Fn4]: Based on vehicle- trip rates obtained from the ITE Trip Generation Handbook [sic], 10th Edition."

This is an erroneous and misleading application of the "screen." First, the ITE's Trip Generation Manual 10th Edition does not include an industrial classification for delivery stations of the type proposed here--

something else that was expressly acknowledged in the transportation analysis submitted for the Gilroy project (and reviewed by NV5, the same traffic engineers used for this project). The lack of this classification in the ITE Manual was a serious enough issue in the Gilroy application to compel the traffic engineers to resort to a bespoke in-house study conducted at various Amazon facilities, a study that ended up being "inconclusive." As discussed further below, the proposed facility is a unique use, and relying on an exemption evaluating traditional (or at least, classifiable industrial uses) is an error. The City's Transportation Analysis Handbook offers this exemption on the premise stated above: that a 30,000 square foot industrial use (and "employment use") has predictable trip generation characteristics and that therefore "small infill" projects should not be required to perform a VMT analysis. As the Trip Generation Manual does not contain any trip generation analysis for a last-mile delivery station of the type being proposed, application of the Handbook screen is inappropriate.

Response 8: Please see response to Comment 2 above regarding application of City of San Jose VMT policy. Comments regarding another jurisdiction's analysis methods and conclusions regarding CEQA compliance are included here for the record but do not require a response. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

Comment 9: Secondly, the design of the project makes the application of the screen inappropriate. While the project proposed 25,000 or so square feet of warehousing, the "canopy" area is a hybrid warehouse: per the applicant's circulation plan, Figure 3-3, line haul trucks enter and exit from the south east corner, segregated to two lanes; the employees are one lane over; the bulk of the site is dedicated to allowing drivers to enter from the south west, and pick up parcels that have been moved on carts from the warehouse, to sit and await pickup under the canopy. While this is a creative exploitation of San Jose's year-round above-freezing temperatures and 17 inches of annual rainfall on only about 60 days on average, it does not alter the actual *use and operation* of the site, which is what CEQA, and the VMT analysis, is meant to study.

The 30,000 square feet of gross floor area makes sense insofar as gross floor area is written to exclude "area used exclusively for vehicle parking or loading." But the project here is using semi-covered space not exclusively for "vehicle parking or loading" but for storage, even if it is temporary storage, of packages under the canopies; circulation of employees to assist or facilitate storage and staging of deliveries.

Under this canopy, which is 3/4s of the size of the warehouse facility, trucks, seemingly four abreast and three deep, will be loaded up either by the delivery drivers themselves from the carts, or by warehouse employees. In any case, the truck queue is located approximately 45 feet from the building. There is a continuation of work from the warehouse throughout the canopy.

This is why the applicant will need to secure a special use permit for the "outdoor" use: in essence, a special use permit will allow space to be used for activity that will generate vehicle miles and trips by increasing the capacity of the site, while at the same time using the fact that this "use" falls outside of the gross floor area of the warehouse structure to avoid an adequate traffic study.

The purpose of "trip generation characteristics" is to evaluate the likely vehicle trips based on square footage of actual use on the property; excluding the canopy area subverts the purpose of CEQA.

Response 9: Please see response to Comment 3 above regarding the characterization of the canopy over the loading area. The proposed canopy component of the project is not floor area and therefore does not add to the square footage of the project. The canopy is simply a cover for a loading area. Therefore, the project would not require a special use permit for an "outdoor" use. The permit being processed by the City is a Site Development Permit (H20-041). The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

The General Plan's Air Quality Goals Have Not Been Met Because of Inadequate Study.

Comment 10: For many of the reasons stated above, the air quality analysis has been insufficient. In particular, Policy M.S.-10.2, which requires consideration of "cumulative air quality impacts from proposed developments." The nature of approving a node in a logistical system, which will have knowable, much less reasonably foreseeable, impacts, requires a higher level of analysis than is available here. The MND does not study the impact of "last mile" delivery despite this known impact from approval of the site. Last mile delivery includes vehicle queuing, but also making of frequent stops, idling, and parking in residential areas. The knock-on effect of development of a node that will service potentially other delivery stations and hubs and locker spaces, which will themselves generate vehicle miles, are known quantities that should be studied for their cumulative impact.

Importantly, this is also something that should be studied under CEQA on its own: that is, while there is a conflict between the adoption of the MND and the General Plan objectives, there is also a failure to study cumulative impacts, which is a requirement of CEQA itself.

Response 10: Please see response to Comment 6 above regarding the scope of the project description. The air quality analysis, including cumulative analysis, was prepared based on the project as appropriately defined by the application which is a proposal for additions to an existing warehouse building, including a 3,000-square foot office addition and 17,700-square foot canopy to facilitate a distribution center and delivery station. The operation defined by the proposal is also disclosed in Section 3.3 of the IS/MND. The City's air quality goals are presented in the Initial Study beginning on page 27. As described in the detailed analysis beginning on page 28, the project would not exceed BAAQMD thresholds for construction or operational air quality emissions, and the project's job generation falls within the growth assumptions of the City's General Plan. As buildout of the General Plan was fully analyzed for cumulative air quality impacts within the plan's Final EIR, the project is therefore consistent with these projections.. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

The Proposed Use is Fundamentally Different from a Typical Warehouse Use and Requires Different Analysis

Comment 11: The term "*last mile*" is sufficient to make clear that this project is not a standalone entity akin to a typical industrial-use warehouse whose impacts--particularly its transportation and air quality impacts--can be understood in isolation. The proverbial last mile is the distance from the delivery station either to hubs or to consumer's homes. The purpose of the development is (1) to generate vehicle trips not only along arterial roads between set points, but from the facility into residential communities along variable routes and (2) decrease the delivery time from order to delivery, and thus increase the volume of sales.

As a threshold issue the City must decide whether the proposed Amazon last mile delivery station is distinct from a typical warehouse use. The foregoing information provides an answer: it clearly is. Warehouses, even warehouse that serve as modal hubs in a logistical network, are points in a fairly static and predictable chain; deliveries made from large regional facilities to retail outlets or delivering inputs to manufacturers. A "*last mile*" delivery station in a rapidly-expanding and interlocking network intended to send trucks and cars throughout residential neighborhoods, make frequent stops, take up curbside space, etc., is of a different character from an industrial use warehouse.

The municipal code's definition of a warehouse does not contemplate the sort of "*retail/industrial*" hybrid use of this facility. Its impacts, in other words, are inherently unique. It is not akin to a warehouse, where there will be long-term storage; if this were the case, the structure would require different design to accommodate fire code provisions specific to warehousing. Nor is it akin to a "*warehouse retail*" use like a Sam's Club, where individual consumers shop at a large structure and take large quantities of goods homes [sic] for themselves. Instead, the warehouse works as a logistical node where delivery drivers take requests from buyers in their home, and as quickly as the logistical system will allow, circulate constantly throughout the city to bring the small quantities of goods to homes. This hybrid industrial/use has a variety of impacts that need to be considered distinctly, and in orde [sic] to do so, the City needs further information regarding how this facility will be situated within the larger "*project*" of Amazon retail delivery services.

Response 11: Please see response to Comment 6 above regarding the scope of the project description. Comments do not directly address the analysis conducted for the Initial Study. The reasoning for last mile distribution facilities is to concentrate shipped products into smaller delivery subregions, which in turn may result in shorter delivery trips to individual destinations than would occur from a larger, more remote regional facility. Local trips of shorter distance translate to fewer overall vehicle miles travelled for product delivery. The comment does not provide new information that would change the project's impact, provide new information that would require additional analysis or result in new significant impacts or mitigation measures than those analyzed and disclosed in the IS/MND and associated appendices, or present new information that would require recirculation of the IS/MND pursuant of CEQA Guideline Section 15073.5. In addition, the comment does not constitute substantial evidence in light of the whole record that the project will result in a significant impact to the environment which cannot be mitigated or avoided.

Comment 12: Conclusion For the foregoing reasons, we urge the City to require further study or, alternatively, to deny the mitigated negative declaration. Failure to adequately evaluate the regional logistical links, and the hybrid nature of the use, will not give a full picture of the cumulative impacts or the traffic impacts; constitutes improper piecemealing of the project; and subverts the purpose of CEQA.

Response 12: Please see specific responses to Comments above. The IS/MND for the proposed project has been prepared in full compliance with CEQA and its implementing guidelines. The analysis in the staff response is detailed, thorough, and the conclusions are based on facts and substantial evidence in the record. Based upon the analysis disclosed in the IS/MND, associated technical reports, and all other hearing materials for the project, the IS/MND is a legally adequate environmental document; as discussed above, the comments do not present a fair argument that the project will result in a significant and unavoidable impact requiring the preparation of an EIR. The IS/MND is consistent with CEQA statutes, guidelines, City's policies, and requirements for CEQA compliance.

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING AN ENVIRONMENTAL APPEAL OF AND UPHOLDING THE PLANNING DIRECTOR'S ADOPTION OF THE 1660 OLD BAYSHORE HIGHWAY INDUSTRIAL PROJECT MITIGATED NEGATIVE DECLARATION AND ASSOCIATED MITIGATION MONITORING AND REPORTING PROGRAM, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND SITE DEVELOPMENT PERMIT

WHEREAS, prior to the adoption of this Resolution, the Director of Planning, Building and Code Enforcement of the City of San José (sometimes referred to herein as “Planning Director”) prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the 1660 Old Bayshore Highway Industrial Project under Planning File No. H20-041 (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 1660 Old Bayshore Highway Industrial Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a Site Development Permit to re-purpose the existing 24,486 square foot warehouse building as a “last mile” e-commerce distribution center, construct a new adjoining 3,000 square foot office addition and a new 17,000 square foot canopy-covered loading area on a 6.07-gross acre site located at 1660, 1720, and 1746 Old Bayshore Highway (Assessor’s Parcel Numbers 237-12-098, 237-12-101, 237-12-118, and 237-12-117), 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 Director of Planning, Building and Code Enforcement of the City of San José (sometimes referred to herein as “Planning Director”), adopted the Mitigated Negative Declaration with the Site Development Permit (H21-049) on November 17, 2021, and adopted a related mitigation monitoring and report program, all pursuant to the provisions of CEQA; and

WHEREAS, on November 22, 2021, Doug Bloch of Teamster Joint Council No. 7 submitted a timely appeal of the Planning Director’s adoption of the Mitigated Negative Declaration for the 1660 Old Bayshore Highway Industrial Project, concerning the

adequacy of the CEQA documents and impacts on transportation, air quality, cumulative impacts, and appropriate land use designation; and

WHEREAS, notice of the date, time, and place of the hearing before the City Council on the appeal was duly and properly given pursuant to and in compliance with the provisions and requirements of Title 21 of the San José Municipal Code; and

WHEREAS, at the date, time, and place provided in said notice, or the date to which such hearing was deferred or continued by the City Council, the City Council of the City of San José conducted a public hearing *de novo* on the appeal and provided all persons with an opportunity to be heard and provide testimony or evidence on the matter of the appeal to the City Council;

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 denying the appeal and upholding the Planning Director's adoption of the Mitigated Negative Declaration and the Site Development Permit for 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 deny the environmental appeal and uphold the Planning Director's adoption of the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File No. H20-041). 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 electronically on the City of San José's Department of Planning, Building and Code Enforcement website, 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

MITIGATION MONITORING AND REPORTING PROGRAM

1660 Old Bayshore Highway Industrial Project
File No. H20-041
August 2021



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 1660 Old Bayshore Highway Industrial 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, Bill Rose, the applicant, on the behalf of Prologis, 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 Bill Rose

Date February 16, 2022

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	Monitoring Timing or Schedule
Hazard and Hazardous Material					
Impact HAZ-1: The Project site is on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and is located approximately 850 feet west of the Lorentz Barrel & Drum Co. Superfund site, which has a history of contamination associated with the Project site. Project construction may encounter residual concentrations of contaminants in soil and groundwater due to the site's past uses that exceed environmental screening levels and could expose construction workers, neighboring uses, and the environment to hazardous materials.					
MM HAZ-1: Prior to the issuance of any grading permits, the project applicant shall obtain regulatory oversight from the Santa Clara County Department of Environmental Health (SCCDEH) under their Site Cleanup Program or other appropriate agency (Regional Water Quality Control Board, Department of Toxic Substance Control) and provide the completed Phase I with limited soil sampling completed by Langan from January 2020 for their review. Any further investigation and remedial actions must be performed under regulatory oversight to mitigate the contamination and make the site suitable for the proposed development. The project applicant shall provide the City with proof that SCCDEH or other appropriate agency has reviewed the proposed project and has determined that the SMP will ensure the project is safe for the public, construction workers, and the environment. Proof must consist of a letter or email from the regulatory agency case worker and be submitted to the Supervising Environmental Planner of the City of San José Department of Planning,		Submit the completed Phase I with limited soil sampling completed by Lagan from January 2020 to the City for their review. Submit the SMP or equivalent document to the Water Board and provide the City with proof that the Water Board has reviewed the proposed project and determined that the remedial actions proposed will ensure the project is safe.	Prior to the issuance of any grading permits.	Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department	Receive proof of agency compliance. Prior to the issuance of any grading permits.

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
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.					

Source: 1660 Old Bayshore Highway Industrial Project Initial Study/Mitigated Negative Declaration. (August 2021).

Exhibit D:

Initial Study, Mitigated Negative Declaration, technical reports, and
Responses to Comments

The Initial Study, Mitigated Negative Declaration, technical reports, and
Responses to Comments for the 1660 Old Bayshore Highway Industrial
Project (H20-041) are available here at

www.san Joseca.gov/negativedeclarations