

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN JOSE CERTIFYING THE WAT KHMER KAMPUCHEA
KROM TEMPLE PROJECT ENVIRONMENTAL IMPACT
REPORT AND MAKING CERTAIN FINDINGS
CONCERNING SIGNIFICANT IMPACTS, MITIGATION
MEASURES, AND ALTERNATIVES, AND ADOPTING A
RELATED MITIGATION MONITORING AND REPORTING
PROGRAM, ALL IN ACCORDANCE WITH THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS
AMENDED**

WHEREAS, the City of San José (“City”) acting as lead agency under the California Environmental Quality Act of 1970, together with State and local guidelines implementing said Act, all as amended to date (collectively “CEQA”), prepared the Environmental Impact Report (EIR) for the Wat Khmer Kampuchea Krom Temple Project (File No. SP20-024); and

WHEREAS, the EIR analyzed the environmental impacts of constructing an approximately 13,902-square foot Wat Khmer Kampuchea Krom Buddhist Temple including a residence hall for monks on the approximately 1.86-gross acre site located at 2740 Ruby Avenue in the City of San José, California (referred to herein as the “Project”); and

WHEREAS, the EIR concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce those significant effects to a less-than-significant level; and

WHEREAS, the City is the lead agency for the Project and has prepared a Final Environmental Impact Report (“FEIR”) for the Project pursuant to and in accordance with CEQA, which the Final EIR is comprised of the Draft EIR and the First Amendment to the Draft EIR (collectively, the “FEIR”); and

WHEREAS, the Final EIR concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce all of those significant impacts 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, on February 22, 2023, the Planning Commission of the City of San José reviewed the FEIR prepared for the Wat Khmer Kampuchea Krom Temple Project and recommended to the City Council that it finds the environmental clearance for the proposed Project was completed in accordance with the requirements of CEQA and further recommended the City Council adopt a resolution certifying the FEIR; and

WHEREAS, CEQA requires that, in connection with approval of a project for which an environmental impact report has been prepared that identifies one or more significant environmental effects of the project, the decision-making body of a public agency make certain findings regarding those effects and adopt mitigation measures to minimize impacts consistent with City policies and requirements and a statement of overriding considerations for any impact that may not be reduced to a less than significant level;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

1. That the above recitals are true and correct and incorporated herein as if fully set forth in the body of this Resolution; and

2. That the City Council does hereby find and certify that the FEIR has been prepared and completed in compliance with CEQA; and
3. The City Council was presented with, and has independently reviewed and analyzed the FEIR and other information in the record and has considered the information contained therein, including the written and oral comments received at the public hearings on the FEIR and the Project, prior to acting upon or approving the Project, and has found that the FEIR represents the independent judgement of the City of San José (“City”) as lead agency for the Project, and designated 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 record of proceedings on which the decision of the City is based; and
4. That the City Council does hereby find and recognize that the FEIR contains additions, clarifications, modifications, and other information in its response to comments on the Draft EIR or obtained by the City after the Draft EIR was issued and circulated for public review and does hereby find that such changes and additional information are not significant new information as that phrase is described under CEQA because such changes and additional information do not indicate that any of the following would result from approval and implementation of the Project: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft EIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented, or (iii) any feasible alternative considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented; and
5. That the City Council does hereby find and determine that recirculation of the FEIR for further public review and comment is not warranted or required under the provisions of CEQA; and
6. That the City Council does hereby make the following findings with respect to the significant effects of the environment of the Project, as identified in the FEIR with the understanding that all of the information in this Resolution is intended as a summary of the full administrative record supporting the FEIR; which full administrative record should be consulted for the full details supporting these findings.

**WAT KHMER KAMPUCHEA KROM TEMPLE PROJECT
SIGNIFICANT ENVIRONMENTAL IMPACTS**

Air Quality

Impact: **Impact AIR-1:** The construction of the proposed project would result in nearby sensitive receptors being exposed to toxic air contaminant emissions of 77.22 cases per million people and 1.45 µg/m³, which is in excess of BAAQMD threshold for cancer risk and annual PM_{2.5} of 10 cases per million people and 0.3 µg/m³ respectively.

Mitigation: **MM AIR-1.1:** Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit construction operations plan to the Director of Planning, Building and Code Enforcement Department or Director's designee that includes specifications of the equipment to be used during construction and that outlines how the mitigation measure shall be achieved. The plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.

All diesel-powered off-road equipment (larger than 25 horsepower) operating on-site for more than two days continuously (or 20 hours total) shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) Tier 4 emission standards for particulate matter. If this is not feasible, the following measures shall apply:

- If Tier 4 equipment is not commercially available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieves an 88 percent reduction in particulate matter exhaust.
- Provide line power to the site to minimize the use of diesel-powered stationary equipment, such as generators.
- Stationary cranes shall be powered by electricity.
- Install electric line power during early construction phases to avoid use of diesel portable equipment, such as air compressors, concrete saws, and welders.

Finding: With implementation of MM AIR-1.1, the mitigated risk and hazard values would be reduced to 4.09 cases per million and 0.25 µg/m³, respectively, which is below the BAAQMD single-source significance thresholds. (**Less than Significant Impact with Mitigation**)

Facts in Support of the Finding: Construction equipment and associated heavy-duty trucks generate diesel exhaust which is a known toxic air contaminant

(TAC). These exhaust air pollutant emissions would not be considered to contribute substantially to existing or projected air quality violations; however, construction exhaust emissions may still pose health risks for sensitive receptors such as surrounding residents. The primary community risk impact issue associated with construction emissions are cancer risk and exposure to particulate matter 2.5 microns in size (PM 2.5). Diesel exhaust poses both a potential health and nuisance impact to nearby receptors. A health risk assessment of the project construction activities was conducted that evaluated potential health effects to nearby sensitive receptors from construction emissions of DPM and PM 2.5. The health risk assessment included dispersion modeling to predict the offsite and onsite concentrations resulting from project construction, so that increased cancer risks and non-cancer health effects could be evaluated. The increased cancer risk calculations were based on applying the BAAQMD recommended age sensitivity factors to the TAC concentrations. Age-sensitivity factors reflect the greater sensitivity of infants and small children to cancer-causing TACs. Third trimester, infant, child, and adult exposures were assumed to occur at all residences during the entire construction period. The project impact is computed by adding the construction cancer risk for an infant/child to the increased cancer risk for the project operational conditions for the generator at the maximally exposed individual (MEI) over a 30-year period. The maximum modeled annual DPM and PM2.5 concentrations, which include both the DPM and fugitive PM2.5 concentrations, were identified at nearby sensitive receptors to find the maximally exposed individuals (MEI). Results of the model indicated that the total PM2.5 concentration and the cancer risk MEI are located at the adjacent single-family home southeast of the construction project site. The project was found to result in an exceedance with respect to community risk caused by project construction and operation activities, for nearby sensitive receptors being exposed to toxic air contaminant emissions of 77.22 cases per million people and 1.45 µg/m³, which is in excess of BAAQMD threshold for cancer risk and annual PM2.5 of 10 cases per million people and 0.3 µg/m³ respectively.

As stated above, with the implementation of best management practices to control dust and exhaust during construction and implementation of MM-AQ-1.1, the mitigated risk and hazard values would be reduced to 4.09 cases per million and 0.25 µg/m³, respectively. Project cancer risk of 77.22 cancer cases per million would not exceed the cumulative risk threshold of 100 cases per million, but would nonetheless be mitigated to 4.09 cases per million given the project emissions exceed the single-source threshold of ten cases per million. The unmitigated annual PM2.5 concentration would exceed their cumulative thresholds of 0.8 µg/m³ for PM2.5 concentration. The incorporation of the standard permit conditions and mitigation measure

MM-AIR-1.1 would reduce these levels to below the cumulative and single source significance thresholds.

Biological Resources

Impact: **Impact BIO-1:** Development of the proposed project would result in impacts to nesting birds, if present on or near the site at the time of construction.

Mitigation: **MM BIO-1.1:** The project applicant shall schedule any construction activities, including tree removals, to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive).

If demolition and construction cannot be scheduled between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife ("CDFW"), shall determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction.

Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement Department or Director's designee.

Finding: With implementation of MM BIO-1.1, the project's impact to nesting birds would be less than significant. (**Less than Significant Impact with Mitigation**)

Facts in Support of the Finding: Development of the project would result in the removal of 20 trees, out of which 14 are on-site and 6 are off-site that are being removed for sidewalk/public improvements. Trees could provide nesting

habitat for birds, including migratory protected species under provisions of the MBTA and CDFW code. Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes abandonment and/or removal and site grading that disturbs a nesting bird on-site or immediately adjacent to the construction zone would constitute a significant impact. The mitigation measure would require pre-construction surveys and appropriate buffers to ensure nesting birds are not impacted during construction.

Hazards and Hazardous Materials

Impact: **Impact HAZ-1:** Development of the proposed project could result in impacts to construction workers, neighboring properties, future site occupants and the environment from exposure to hazardous soil containing pesticides from prior land uses.

Mitigation: **MM HAZ-1.1:** Prior to issuance of any grading permits, the project applicant shall complete a site cleanup program with an oversight agency such as the Santa Clara County Department of Environmental Health (SCCDEH), or equivalent (i.e. Department of Toxic Substance Control [DTSC]). The project applicant shall meet with the oversight agency and may be required to perform additional soil, soil gas and/or groundwater sampling and testing to adequately define the known and suspected contamination from past agricultural use and any other past uses of concern. A Site Management Plan (SMP), Corrective Action Plan, Remedial Action Plan, or other equivalent plan shall be prepared and submitted to the SCCDEH for their approval. The Plan shall include a Health & Safety Plan (HASP) and shall establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors. The Plan and evidence of regulatory oversight shall be provided to the Supervising Environmental Planner of the City of San José Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

Finding: Implementation of MM HAZ-1.1 will avoid or reduce the potential environmental impact stated above to a less than significant level. **(Less than Significant Impact with Mitigation)**

Facts in Support of the Finding: As discussed in Section 3.9 of the Draft EIR, and Phase I Assessment (Appendix F of the Draft EIR) prepared for the Project, the project site is not located on the State's Department of Toxic Substances Control's Hazardous Waste and Substances Sites (also known as the Cortese List). Based on the age of previous structures at the site,

Lead Based Paint and termiticides (pesticides) may have been used leaving residual concentrations in soil. Soil samples from sampling detected concentrations of 4,4'-DDD, 4,4'-DDE, 4,4'-DDT, alpha-chlordane, technical chlordane, arsenic, and/or lead above their respective residential and/or commercial human health risk environmental screening criteria. The source of the contamination is likely associated with the project site's prior history of agricultural use, application of lead-based paint to structures, and/or the application of termiticides to foundations of the wood-framed structures. Greater contaminant concentrations were detected in the soil samples collected near the former on-site structures and may be limited to the upper few feet of soil around the building footprint. Therefore, the presence of hazardous materials in soil would represent a risk to construction workers on-site and nearby residents. With implementation of MM HAZ-1.1 and compliance with existing regulations such as compliance with State-mandated and City-enforced protocols and treatment of asbestos containing materials and/or lead-based paint, the Project would not create a significant hazard to the public or environment from hazardous materials. Therefore, the impacts of the Project related to hazardous materials would be less than significant.

Noise

Impact: **Impact NOI-1:** Construction noise levels would potentially exceed the General Plan thresholds and result in substantial noise generation at adjacent conventional buildings within 25 feet of the project site for more than 12 months.

Mitigation: **MM NOI-1.1:** Construction-related Noise: Prior to issuance of any grading, building or demolition permits, the project applicant shall submit a copy of the noise logistic plan to the Director of Planning, Building and Code Enforcement. Documentation showing compliance with noise logistic plan shall be provided to the Director of Planning, Building and Code Enforcement monthly during the construction phase. Noise minimization measures include, but are not limited to, the following:

- Pursuant to General Plan Policy EC-1.7, project construction operations shall use best available noise suppression devices and techniques including, but not limited to the following:
 - Pile driving is prohibited.
 - Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be

approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.

- Construct solid plywood fences around ground level construction sites adjacent to operational business, residences, or other noise-sensitive land uses.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Prohibit unnecessary idling of internal combustion engines.
- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to adjacent land uses and nearby residences.
- If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

Finding: With implementation of MM NOI-1.1 and standard permit conditions, the Project would have a less than significant construction noise impact. **(Less than Significant Impact with Mitigation Incorporated)**

Facts in Support of the Finding: As discussed in Section 3.13 of the Draft EIR and the supporting Noise and Vibration Assessment prepared for the Project (Appendix G of the Draft EIR), the Project is located within 100 feet of existing residences. Construction of the Project within 500 feet of any residential unit is limited to the hours of 7:00 a.m. and 7:00 p.m. Construction-related noise would exceed ambient noise levels by five dBA for a period of more than 12 months, which exceeds City thresholds defined in General Plan Policy EC-1.7 which considers significant construction impacts to occur if a project is located within 500 feet of residential uses or 200 feet of commercial or office uses and involves substantial noise generating activities continuing for more than 12 months. Implementation of the mitigation measure is not meant to reduce the construction noise to specific threshold; however, because the mitigation measure language includes use of eleven standard noise reduction controls, including noise shielding and muffling devices for construction equipment and staging construction areas as far away as possible from adjacent land uses, the construction noise would inevitably be reduced below unmitigated levels. The mitigation measure also includes preparation and implementation of a construction noise logistics plan which would manage any noise complaints for the duration of construction. With inclusion of the City's standard permit conditions and implementation of the measures included in MM NOI-1.1, construction-related noise impacts would be less than significant.

Impact: **Impact NOI-2:** Construction vibration levels would exceed the General Plan threshold of 0.2 in/sec PPV for adjacent residential buildings within 25 feet of the project site.

Mitigation: **MM NOI-2.1:** Prior to the issuance of any grading or demolition permits, whichever occurs first, the project applicant shall submit and implement a Construction Vibration Monitoring, Treatment, and Reporting Plan to document conditions prior to, during, and after vibration generating construction activities. The plan shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The vibration monitoring, treatment, and reporting plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits for review and approval.

As part of the construction vibration monitoring, treatment, and reporting plan, construction activities for the proposed project shall include, but are not limited to, the following measures:

- The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.
- A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. The contractor shall phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period.
- Prohibit pile driving.
- Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 20 feet of any adjacent building.
- Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits.
- At a minimum, vibration monitoring shall be conducted during demolition and excavation activities.
- If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures.
- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
- Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. The survey shall be submitted to the Director of the Department of Planning, Building, and Code Enforcement.

Finding: Implementation of MM NOI-2.1, consistent with General Plan Policy EC-2.3, would reduce construction vibration impacts to a less than significant level.
(Less than Significant Impact with Mitigation Incorporated)

Facts in Support of the Finding: As discussed in Section 3.13 of the Draft EIR and supporting Noise and Vibration Assessment prepared for the Project (Appendix G of the Draft EIR), construction of the Project would use heavy vibration-generating construction equipment with the potential to generate vibration levels exceeding the General Plan threshold of 0.2 in/sec PPV or more at buildings of conventional construction located within 5 feet of the project site. By use of administrative controls such as notifying neighbors of scheduled construction activities and scheduling construction activities with the highest potential to produce perceptible vibration during hours with the least potential to affect nearby residences and businesses, included in MM NOI-2.1, perceptible vibration can be kept to a minimum. The requirement for the applicant making appropriate repairs or providing compensation where damage has occurred further mitigates construction-related vibration impacts. Consistent with the General Plan and in addition to required standard construction noise reduction measures impact to nearby structures would be less than significant.

FINDINGS CONCERNING ALTERNATIVES

To comply with the purposes of CEQA, it is important to identify alternatives that reduce the significant impacts that are anticipated to occur if the project is implemented and to try to meet as many of the project's objectives as possible. The CEQA Guidelines emphasize a commonsense approach -- the alternatives should be reasonable, should "foster informed decision making and public participation," and should focus on alternatives that avoid or substantially lessen the significant impacts.

The alternatives analyzed in the DEIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects. The following are evaluated as alternatives to the proposed Project:

1. No Project – No Development Alternative
2. No Project – Redevelopment with Currently Allowed Uses
3. Operational Adjustment Alternative

Project Objectives

The proposed Project would result in development of a public religious facility for the community. Specifically, the objectives of the proposed Project are as follows:

1. Develop a traditional Cambodian Buddhist Temple to serve the existing local Khmer Krom religious community.
2. Provide a new and adequate facility in size for religious observances, religious study, meditation services, and events by the Khmer Krom community which serves approximately 300 congregants.
3. Develop an adequately sized Community building comprised of a community hall, finishing kitchen, library/classroom, administrative offices, and restrooms on the first floor, and a monks' residence hall for eight full-time resident monks on the partial second floor.
4. Design and organize the new structures and site plan to conform with established Khmer religious principles and sacred elements while maximizing the functionality of the site.
5. Provide adequate surface parking on-site for routine temple activities, consistent with the requirements contained in Title 20 of the City of San José Municipal Code.
6. Provide outdoor gathering spaces for religious events, meditation, and reflection in accordance with Khmer religious principles.
7. Replace an underutilized site with a private religious assembly facility that serves the community of San José.

Selection of Alternatives

CEQA, the CEQA Guidelines, and case law on the subject have found that feasibility can be based on a wide range of factors and influences. The CEQA Guidelines advise that such factors can include (but are not necessarily limited to) the suitability of an alternative site, economic viability, availability of infrastructure, consistency with the general plan or other plans or regulatory limitations, jurisdictional boundaries, and whether the project proponent can “reasonably acquire, control or otherwise have access to the alternative site” (Section 15126.6[f][1]).

1. No Project – No Development Alternative

- A. **Description of Alternative:** The No Project – No Development Alternative would retain the existing land uses on-site as is, a vacant site with numerous trees and an impervious driveway. If the project site were to remain undeveloped as is, the significant impacts resulting during construction and operation of the proposed project would not occur.
- B. **Comparison of Environmental Impacts:** Implementation of the No Project – No Development Alternative would avoid all the significant environmental impacts of the Project in the areas of air quality (construction TACs), biological resources (nesting birds), hazardous materials, and construction vibration, and would not require any mitigation measures.

- C. **Finding:** This alternative would largely maintain the baseline conditions described throughout this EIR and avoid the significant impacts resulting during construction and operation of the proposed project. However, this alternative would not meet any of the project objectives. Therefore, because this alternative would not meet the Project objectives, this alternative is rejected.

2. No Project – Redevelopment with Currently Allowed Uses

- A. **Description of Alternative:** Under this alternative, the project site would be developed consistent with existing plans and policies applicable to the site and considering available infrastructure. The Residential Neighborhood General Plan land use designation allows eight detached homes per acre, which for the 1.86-acre site would allow for up to 14 lots with each lot capable of accommodating a single-family detached unit and potentially an accessory dwelling unit. If the project site was developed with average sized single-family houses, the average size of each single-family detached structure would range from 1,500 to 2,500 square-feet of floor area. Therefore, development of the project site with potentially 14 of these single-family detached structures would cover approximately 21,000 to 35,000 square feet of building area on the site, plus the potential of additional building area for accessory dwelling units. Accessory dwelling units are typically 250-650 square feet each. The proposed project building area of approximately 13,902 square feet is roughly equivalent to six new single-family detached units, assuming those single-family detached units are typically 2,500 square feet each, common for new two-story home construction.

Other potential principally permitted development alternatives on the project site could include an alternative community serving use such as a public school (elementary or secondary), public museum, library, or community center, although the feasibility of accommodating some of those uses, e.g. a school, on a 1.86 acre site is unknown.

- B. **Comparison of Environmental Impacts:** The No Project – Redevelopment with Currently Allowed Uses alternative would result in similar construction air quality impacts and construction noise during, because similar parts of the site would require clearing and preparation and the scale of construction would be similar. The soils on-site were also determined to contain lead and pesticides which would require clean up regardless of the type of development on the project site. Additionally, the trees that would be removed under the proposed project would still require removal or relocation to construct other structures on-site. Therefore, the biological resource impacts would not be substantially different because the trees and nesting bird species would still be potentially impacted. The need for tree removal under a future subdivision with up to 14 SFD units would be similar to the subject project, depending on the lot pattern and grading for street access. A potential SFD subdivision of up to 14 units could be screened out as a Small Infill

Development project of less than 15 units. Trips generated by the SFD units would be similar because each unit would generate approximately 10 trips resulting in a similar total daily trip generation. Therefore, alternative development on site would not result in significantly different transportation impacts.

- C. **Finding:** This alternative development option would result in similar construction and operational impacts as the proposed project. This alternative would not meet any of the project objectives, because it would not construct a Buddhist temple and would not include project aspects which are included in the project objectives above. Furthermore, the currently proposed project would not result in any significant unavoidable impacts because implementation of the required mitigation measures discussed above would reduce all potential impacts to a less-than-significant level. Therefore, because this alternative would not meet the Project objectives, this alternative is rejected.

3. Operational Adjustment Alternative

- A. **Description of Alternative:** The Operational Adjustment Alternative would implement changes in the non-essential operations of the proposed project to reduce impacts associated with the proposed project. The proposed project objectives include providing religious services for local participants. The two proposed activities which do not directly serve religious services are the flower fundraiser and wedding receptions on-site. These are secondary uses that would help provide revenues to fund temple operations and therefore would not be eliminated altogether. These activities are identified to produce approximately 150 visitors on average which would increase traffic around the site, similar to other planned events. Event noise and traffic would still occur during adjusted operation hours.
- B. **Comparison of Environmental Impacts:** The Operational Adjustment Alternative would result in a reduction of activities at the site and would reduce the frequency of on-site event noise and traffic generated by attendees. Additionally, the changes in operations could move certain temple events to alternative portions of the site, such as relocating certain ceremonies inside the on-site buildings, to potentially reduce already less than significant noise impacts on surrounding residential uses. These changes to the proposed project would still meet most of the project objectives because they would not affect the base operations of the temple or compromise the proposed design elements described in the project objectives. The operational adjustments would result in incrementally reduced noise and traffic-related impacts on the neighborhood, due to fewer high noise events. This operational alternative would be better than the project in regard to the noise environment.

- C. **Finding:** Although this alternative would meet most of the project objectives, this would not be necessary to reduce the proposed project's CEQA impacts related to noise and traffic, which are already at less than significant per the Acoustical Assessment prepared for the project and LTA prepared for the project, nor would it satisfy the project objective of creating space for outdoor gatherings such as wedding receptions in accordance with Khmer religious principles. Therefore, because this alternative would not meet all of the Project objectives, this alternative is rejected.

Environmentally Superior Alternative

The CEQA Guidelines mandate that an EIR identify an environmentally superior alternative if the project would result in one or more significant unavoidable impact. Based on the foregoing, the environmentally superior alternative is the No Project – No Development Alternative. When that is the case, the CEQA Guidelines require that an additional alternative be identified that is also an environmentally superior alternative. (Section 15126.6(e)(2).) The Operational Adjustment Alternative would be environmentally superior to the proposed project, while attaining most of the project objectives, with the exception of Objective #7.

MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution as Exhibit “A” and incorporated and adopted as part of this Resolution herein is the Mitigation Monitoring and Reporting Program (MMRP) for the Project required under Section 21081.6 of the CEQA Statute and Section 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

LOCATION AND CUSTODIAN OF RECORDS

The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the Project are located at the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, Third Floor Tower, San José, CA 95113.

ADOPTED this ____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Wat Khmer Kampuchea Krom Temple Project File No. SP20-024 August 2022



PREFACE

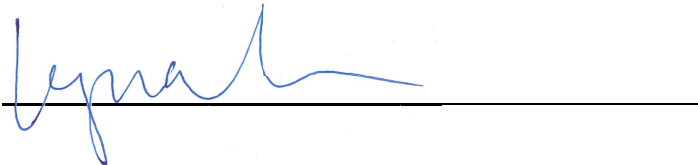
Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Environmental Impact Report (EIR) prepared for the Wat Khmer Kampuchea Krom (WKKK) Temple Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This MMRP addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the EIR concluded that the impacts from implementation of the project would be less than significant.

I, Lyna Lam, the applicant, on the behalf of A Khmer Buddhist Foundation, hereby agree to implement the mitigation measures described below which have been developed in conjunction with the preparation of an EIR for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level.

Project Applicant's Signature



Date Feb 14, 2023

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
AIR QUALITY					
Impact AIR-1: The construction of the proposed project would result in nearby sensitive receptors being exposed to toxic air contaminant emissions of 77.22 cases per million people and 1.45 µg/m ₃ , which is in excess of BAAQMD threshold for cancer risk and annual PM _{2.5} of 10 cases per million people and 0.3 µg/m ₃ respectively.					
MM AIR-1.1: Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan to the Director of Planning, Building and Code Enforcement or Director's designee that includes specifications of the equipment to be used during construction and that outlines how the mitigation measure shall be achieved. The plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards set forth below. All diesel-powered off-road equipment (larger than 25 horsepower) operating on-site for more than two days continuously (or 20 hours total) shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) Tier 4 emission standards for particulate matter. If this is not feasible, the following measures would apply: If Tier 4 equipment is not commercially available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices	Submit a construction operations plan to the Director of Planning, Building and Code Enforcement or Director's designee Submit a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards set to the Director of Planning, Building and Code Enforcement or Director's designee	Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest)	Director of Planning, Building and Code Enforcement or Director's designee	Review construction operations plan and equipment letter	Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest)

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that altogether achieves an 88 percent reduction in particulate matter exhaust. • Provide line power to the site to minimize the use of diesel-powered stationary equipment, such as generators. • Stationary cranes shall be powered by electricity. • Install electric line power during early construction phases to avoid use of diesel portable equipment, such as air compressors, concrete saws, and welders. Implementation of the above mitigation measure(s) will avoid or reduce the potential environmental impact stated above to a less than significant level.					
BIOLOGICAL RESOURCES					
Impact BIO-1: Development of the proposed project would result in impacts to nesting birds, if present on or near the site at the time of construction.					
MM BIO-1.1: The project applicant shall schedule any construction activities, including tree removals, to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive). If demolition and construction cannot be scheduled between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation.	Avoid construction during nesting season Or A qualified ornithologist shall complete bird surveys and submit a report indicating the results of the survey and any designated buffer zones	Prior to any tree removal, or approval of any grading or demolition permits; during Construction Or Prior to any tree removal, or	Director of Planning, Building and Code Enforcement or Director's designee CDFW	Review report indicating the results of the survey and any designated buffer zones	Prior to any tree removal, or approval of any grading or demolition permits.

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This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction. Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement Department or Director's designee. Implementation of the above mitigation measure(s) will avoid or reduce the potential environmental impact stated above to a less than significant level.		approval of any grading or demolition permits. Surveys shall be no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive)			

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HAZARDOUS MATERIALS					
Impact HAZ-1: Development of the proposed project could result in impacts to construction workers, neighboring properties, future site occupants and the environment from exposure to hazardous soil containing pesticides from prior land uses.					
MM HAZ-1.1: Prior to issuance of any grading permits, the project applicant shall complete a site cleanup program with an oversight agency such as Santa Clara County Department of Environmental Health (SCCDEH), or equivalent (i.e. Department of Toxic Substance Control [DTSC]). The project applicant shall meet with the oversight agency and may be required to perform additional soil, soil gas and/or groundwater sampling and testing to adequately define the known and suspected contamination from past agricultural use and any other past uses of concern. A Site Management Plan (SMP), Corrective Action Plan, Remedial Action Plan, or other equivalent plan shall be prepared and submitted to the SCCDEH for their approval. The Plan shall include a Health & Safety Plan (HASP) and shall establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors. The Plan and evidence of regulatory oversight shall be provided to the Supervising Environmental Planner of the City of San José Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department. Implementation of the above mitigation measure(s) will avoid or reduce the potential environmental impact stated above to a less than significant level.	Complete a site cleanup program AND Prepare a Site Management Plan (SMP), Corrective Action Plan, Remedial Action Plan, or other equivalent plan shall be prepared	Prior to issuance of any grading permits	Santa Clara County Department of Environmental Health (SCCDEH), or equivalent (i.e. Department of Toxic Substance Control [DTSC]) Supervising Environmental Planner of the City of San José Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department	Review Cleanup program and Management Plan	Prior to issuance of any grading permits

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NOISE					
Impact NOI-1: Construction noise levels would potentially exceed the General Plan thresholds of 60 dBA at adjacent residential buildings within 25 feet of the project site for more than 12 months.					
MM-NOI-1.1: Construction-related Noise: Prior to issuance of any grading, building or demolition permits, the project applicant shall prepare and implement a noise logistics plan that includes measures to minimize construction noise impacts on adjacent residential land uses. Noise minimization measures include, but are not limited to, the following: - Pursuant to General Plan Policy EC-1.7, project construction operations shall use best available noise suppression devices and techniques including, but not limited to the following: - Pile driving is prohibited. - Limit construction to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.	Prepare and implement noise logistics plan. Submit a copy of the plan to the Director of Planning, Building and Code Enforcement. Comply with Policy EC-1.7 noise suppression measures	Prior to issuance of any grading, building or demolition permits During construction	Director of Planning, Building and Code Enforcement or Director's designee	Receive copy of noise logistics plan. Ensure compliance with noise suppression devices and techniques through review of documentation provided by applicant.	Prior to issuance of any grading, building or demolition permits Documentation of compliance provided monthly during construction

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○ Construct solid plywood fences around ground level construction sites adjacent to operational business, residences, or other noise-sensitive land uses. ○ Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. ○ Prohibit unnecessary idling of internal combustion engines over 15 minutes. ○ Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors such as occupied residential buildings. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses including but not limited to occupied residential buildings. ○ Utilize “quiet” air compressors and other stationary noise sources where technology exists. ○ Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.					

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○ Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to adjacent land uses and nearby residences. ○ If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites. ○ Designate a “disturbance coordinator” who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to current the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.					

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Prior to issuance of any grading, building or demolition permits, the project applicant shall submit a copy of the noise logistic plan to the Director of Planning, Building and Code Enforcement. Implementation of the above mitigation measure(s) will avoid or reduce the potential environmental impact stated above to a less than significant level.					
Impact NOI-2: Construction vibration levels would exceed the General Plan threshold of 0.2 in/sec PPV for adjacent residential buildings within 25 feet of the project site.					
MM NOI-2.1: Prior to the issuance of any grading or demolition permits, whichever occurs first, the project applicant shall submit and implement a Construction Vibration Monitoring, Treatment, and Reporting Plan to document conditions prior to, during, and after vibration generating construction activities. The plan shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The vibration monitoring, treatment, and reporting plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits for review and approval. As part of the construction vibration monitoring, treatment, and reporting plan, construction activities for the proposed project shall include, but are not limited to, the following measures:	Prepare and a implement a Construction Vibration Monitoring Plan under the direction of a licensed Professional Structural Engineer in the State of California. Submit a copy of the plan to the Director of Planning, Building and Code Enforcement or the Director's designee Submit post-construction survey to the Director of Planning, Building and Code Enforcement or the Director's designee,	Prepare plan prior to issuance of any demolition, grading, or building permits. Implement Plan during and after vibration generating construction activities Before issuance of certificate of occupancy	Director of Planning, Building and Code Enforcement or the Director's designee	Review and approve Construction Vibration Monitoring Plan Receive post-construction survey showing compliance with plan.	Prior to issuance of any demolition, grading, or building permits. Within 60 days after completion of the project

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- The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. - A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. The contractor shall phase demolition, earth-moving, and ground impacting operations so as not to occur during the same time period. - Prohibit pile driving. - Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 20 feet of any adjacent building. - Develop a vibration monitoring and construction contingency plan to identify structures where monitoring would be	demonstrating compliance with plan.				

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conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies shall be identified for when vibration levels approached the limits. • At a minimum, vibration monitoring shall be conducted during demolition and excavation activities. • If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures. • Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site. • Conduct a post-construction survey on structures where either monitoring has indicated high vibration levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. The survey shall be submitted to the Director of the Department of Planning, Building, and Code Enforcement.					

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Implementation of the above mitigation measure(s) will avoid or reduce the potential environmental impact stated above to a less than significant level.					

Source: City of San José. EIR. Wat Khmer Kampuchea Krom Temple Project. August 2022.