

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE MITIGATED NEGATIVE DECLARATION FOR THE BELMONT VILLAGE UNION AVENUE PROJECT, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM**

**WHEREAS**, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the Belmont Village Union Avenue Project under Planning File Nos. C18-018, CP18-025, and AT18-027 (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 Belmont Village Union Avenue Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a Conforming Rezoning from the R-1-8 Single Family Residence Zoning District to the CN Commercial Neighborhood Zoning District, a Conditional Use Permit to allow the demolition of four storage buildings and the construction of a four-story 125,303-square foot, 152-unit assisted living and memory care facility and the removal of twenty ordinance size trees, and a lot line adjustment to reconfigure two parcels to two lots on an approximately 3.79-gross acre site located on the west side of Union Avenue, approximately 260 feet northerly of Los Gatos Almaden Road at 5175 Union Avenue (Assessor’s Parcel Number 421-20-010), San José, California; and

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**WHEREAS**, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

**WHEREAS**, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

**WHEREAS**, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the “Mitigation Monitoring and Reporting Program”); and

**WHEREAS**, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

**WHEREAS**, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

**WHEREAS**, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

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

**THAT THE CITY COUNCIL** does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/ Mitigated Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

**THAT THE CITY COUNCIL** does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File Nos. C18-018, CP18-025 and AT18-027). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/ Mitigated Negative

Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113 and (2) available for inspection by any interested person.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

## **MITIGATION MONITORING AND REPORTING PROGRAM**

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**BELMONT VILLAGE UNION AVENUE**  
**5175 UNION AVENUE**  
**FILE NOS. C18-018, CP18-025, AT18-027**

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## 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 Belmont Village Union Avenue project (File Nos. C18-018, CP18-025, AT18-027) 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 identifies those measures and 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, **David Nussbaum**  
~~Executive Vice President~~ the applicant, on the behalf of BV Union Avenue, LLC, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of the Initial Study/Mitigated Negative 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 David Nussbaum  
Date 10/7/2019



*Planning, Building and Code Enforcement*  
 ROSALYNN HUGHEY, DIRECTOR

**BELMONT VILLAGE UNION AVENUE**  
**File Nos. C18-018, CP18-025, AT18-027**

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<b>AIR QUALITY</b>					
<b>Impact AQ-1:</b> Project construction would result in an infant cancer risk of 68.3 in one million and a PM <sub>2.5</sub> concentration of 0.60 µg/m <sup>3</sup> at the maximally exposed individual (MEI), and an infant cancer risk of 31.5 in one million at the Peppertree Schools of Los Gatos, which exceed Bay Area Air Quality Management District's (BAAQMD's) cancer risk significance threshold of 10 in one million and single-source threshold for PM <sub>2.5</sub> of 0.30 µg/m <sup>3</sup> .					
<b>MM AQ-1</b> Prior to the issuance of any demolition, grading, or building permits (whichever occurs first), the project applicant shall prepare a construction operations plan that demonstrates off-road equipment used on-site to construct the project would achieve a fleet-wide average of an 85 percent or more reduction in diesel particulate matter (DPM) exhaust emissions. Specifically, this plan shall include, but is not limited to, the measures identified below: <ul style="list-style-type: none"> <li>• All diesel-powered off-road equipment larger than 25 horsepower operating on the site for more than two days continuously shall, at a minimum, meet U.S. EPA particulate matter emissions standards for Tier 3 engines with CARB-certified Level 3 Diesel Particulate Filters, or equivalent.</li> <li>• Equipment that meets U.S. EPA Tier 4 standards for particulate matter.</li> <li>• All portable equipment for construction be electrically powered or alternatively-fueled equipment (i.e., non-diesel).</li> </ul>	Submit construction operations plan.  Include this measure in all plans and contracts.	Prior to issuance of any demolition, grading, or building permit.	Director of Planning, Building, and Code Enforcement or Director's designee	Review construction operations plan and requirements to reduce construction equipment DPM.	Prior to issuance of any demolition, grading, or building permits; implement requirements during construction.

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Off-road equipment descriptions and information shall include, but are not limited to, equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, and engine serial number. The project applicant shall submit the construction operations plan and records of compliance to the Director of Planning, Building, and Code Enforcement or Director's designee for review and approval.					
<b>BIOLOGICAL RESOURCES</b>					
<b>Impact BIO-1:</b> Project construction, including tree removals, which occur during the breeding season, could result in a significant impact to nesting raptors and other protected migratory bird species.					
<b>MM BIO-1:</b> Prior to the issuance of any tree removal, grading, building or demolition permits (whichever occurs first), the project applicant shall schedule all construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1 <sup>st</sup> through August 31 <sup>st</sup> (inclusive). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching.  If construction activities cannot be scheduled to occur between September 1 <sup>st</sup> and January 31 <sup>st</sup> (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist or biologist to ensure that no active nests shall be disturbed during construction activities. This survey shall be completed	Schedule construction activities outside of nesting season (September 1st through January 31st). If it is not possible to schedule construction between September 1st and January 31st, a qualified ornithologist shall conduct preconstruction surveys and establish construction-free buffer zones.  The ornithologist/biologist shall submit a report	Prior to the issuance of any tree removal, grading, building or demolition permits (whichever occurs first)	Director of Planning, Building, and Code Enforcement or Director's designee	Review report of the results of the survey and any designated buffer zones.	Prior to the issuance of any tree removal, demolition, grading, or building permits (whichever occurs first).



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<p>no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1<sup>st</sup> through April 30<sup>th</sup> inclusive) and no more than 30 days prior to the initiation of these activities during the latter part of the breeding season (May 1<sup>st</sup> through August 31<sup>st</sup> inclusive). During this survey, the ornithologist/biologist shall inspect all trees and other possible nesting habitats on-site and within 250 feet of the site for nests.</p> <p>If an active nest is found within 250 feet of the project area to be disturbed by construction, the ornithologist/biologist, in coordination with CDFW, shall determine the extent of a construction free buffer zone to be established around the nest (typically 250 feet for raptors and 100 feet for other birds) to ensure that raptor or migratory bird nests shall not be disturbed during project construction.</p> <p>Prior to any site disturbance, such as tree removal, or the issuance of any grading, building or demolition permits (whichever occurs first), the ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning or Director's designee.</p>	<p>indicating the results of the survey and any designated buffer zones to the Director of Planning, Building, and Code Enforcement or Director's designee</p>				
<b>HAZARDS &amp; HAZARDOUS MATERIALS</b>					

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<b>Impact HAZ-1:</b> Given the site's history as a vehicle and bus maintenance yard and the previous leaking underground storage tank (LUST) case status, hazardous materials such as motor oils, automobile fluids, paints, and thinners may be present in onsite soils, which could be disturbed during project development. Release of these hazardous materials could result in exposure during construction or occupancy.					
<b>MM HAZ-1.1</b> Prior to the issuance of any grading permits, the project applicant shall contact SCCDEH and provide the results of the Phase I and limited soil sampling studies as well as the location of the abandoned vapor monitoring well to determine if further investigation is required. The project applicant shall retain a qualified consultant to prepare a Site Management Plan, Health and Safety Plan, or equivalent document if required.  The project applicant shall submit evidence of the meeting with SCCDEH to the Director of Planning or Director's designee and the Municipal Compliance Officer of the City of San José Environmental Services Department.	Submit evidence of meeting with SCCDEH.	Prior to issuance of any grading permits.	Director of Planning, Building, and Code Enforcement or Director's designee, Municipal Compliance Officer of the City of San José Environmental Services Department, and the Santa Clara County Department of Environmental Health	Review evidence of meeting with SCCDEH.	Prior to the issuance of any grading permits.
<b>Impact HAZ-2:</b> Due to the site's agricultural history, agricultural chemicals may be present in onsite soils, which could be disturbed during project development. Release of these hazardous materials could result in exposure during construction or occupancy.					
<b>MM HAZ-2:</b> Prior to issuance of any grading permits, the project applicant shall retain a qualified consultant to take shallow soil samples in the near surface soil to test for organochlorine pesticides and pesticide-based metals (arsenic and lead) to determine if contaminants from previous agricultural operations occur at concentrations above established construction worker safety and residential standard environmental screening levels. The results of the soil sampling testing shall be	Submit soil sampling report and, if needed, remediation plan.	Prior to issuance of any grading permit.	Director of Planning, Building, and Code Enforcement or Director's designee, Municipal Compliance Officer of the City of San José Environmental Services Department	Review reports.	Prior to the issuance of any grading permits.



*Planning, Building and Code Enforcement*  
 ROSALYNN HUGHEY, DIRECTOR

**EXHIBIT "A"**  
**(File Nos. C18-018; CP18-025)**

**BELMONT VILLAGE UNION AVENUE**  
**File Nos. C18-018, CP18-025, AT18-027**

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<p>submitted to the of the City of San José Department of Planning, Building, and Code Enforcement and the Municipal Compliance Officer of the City of San José Environmental Services Department for review.</p> <p>If contaminated soils are found in concentrations above the appropriate regulatory environmental screening levels for the project, the project applicant shall obtain regulatory oversight from the SCCDEH or Department of Toxic Substances Control under their Voluntary Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified consultant that identifies remedial measures and/or soil management practices to ensure construction worker safety and the health of future occupants. The plan and evidence of regulatory oversight shall be provided to the Director of Planning or Director's designee and the Environmental Compliance Officer in the City of San José Environmental Services Department.</p>					
<b>TRAFFIC AND TRANSPORTATION</b>					
<b>Impact TR-1:</b> Project operations will generate 16.47 vehicle miles traveled (VMT) per employee that exceeds the threshold of 12.21 VMT per employee (based on Council Policy 5-1), therefore resulting in a significant transportation impact.					

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<p><b>MM TR-1:</b> Prior to issuance of any Public Works Clearance, including a grading permit, the project applicant shall prepare and implement a transportation demand management (TDM) plan for the project. The TDM plan shall include the following measures to reduce the VMT impact.</p> <ul style="list-style-type: none"> <li>• <u>Bike Parking/End of Trip Bike Facilities:</u> The project applicant is required to provide and maintain end-of-trip facilities for employees which include bicycle parking, bicycle lockers, showers, and lockers. The project shall maintain the existing bicycle parking and bicycle lockers for the lifetime of the project.</li> <li>• <u>Fully Subsidized Transit Program:</u> The project applicant shall provide fully (100%) subsidized transit passes (e.g., SmartPass) for all (both full-time and part-time) employees.</li> <li>• <u>TDM Coordinator:</u> The project applicant shall designate an on-site TDM coordinator who will be responsible for implementing and managing the TDM plan. The TDM coordinator will be a point of contact and will be responsible for ensuring that the employees are aware of transportation options. The TDM coordinator will provide the following services: a) provide information about public transit services, transit passes, bicycle maps, bike share information, rideshare/carpool program, Zipcar station locations, and ride</li> </ul>	<p>Include end-of-trip facilities including bike parking, bike lockers, showers, and lockers and employee transit passes in all plans and contracts.</p>	<p>Prior to issuance of grading permit.</p>	<p>Director of Planning, Building, and Code Enforcement or Director's designee,</p> <p>Director of the Department of Public Works or Director's Designee</p>	<p>Review plans and contracts to ensure end-of-trip facilities and transit pass measures are included.</p>	<p>Prior to issuance of any Public Works Clearances.</p>

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<p>matching services, and b) assist with rideshare/carpool matching.</p> <p>A traffic engineer shall prepare and submit the TDM plan to the Director of Planning or Director's designee and to the Director of Public Works or Director's designee. Furthermore, a report verifying the implementation of the measures shall be submitted to the satisfaction of the Director of Public Works or Director's designee.</p>					
<p><b>MM TR-1:</b> Consistent with TR-1.1, an annual verification of consistency with MM TR-1.1 shall be submitted to the Director of Public Works or Director's designee for on-going monitoring and reporting.</p>	<p>Submit annual verification of consistency and payment of appropriate monitoring fee.</p>	<p>Annually, every year after the anniversary of Certificate of Occupancy</p>	<p>Director of Planning, Building, and Code Enforcement or Director's designee,</p> <p>Director of Public Works or Director's Designee</p>	<p>Receive reports for review and approval.</p>	<p>On-going for lifetime of project.</p>