

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE BARK LANE PLANNED DEVELOPMENT REZONING PROJECT MITIGATED NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, prior to the adoption of this Resolution, the Director of Planning, Building and Code Enforcement of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the Bark Lane Planned Development Rezoning Project under Planning File No. PDC17-035 (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 Bark Lane Planned Development Rezoning Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a Planned Development Rezoning from the A(PD) Planned Development Zoning District to the R-M(PD) Zoning District to facilitate conceptual development of a residential building with up to 85 residential units, below grade parking, and open space, with a height of 71 feet to the top of the roof and 75 feet to the top of the parapet on an approximately 0.90-gross acre site located at 7201 Bark Lane, San José, California, and

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

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

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

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

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

WHEREAS, the Initial Study/Mitigated Negative Declaration and the related Mitigation Monitoring and Reporting Program for the Project are 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, 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; and

WHEREAS, the Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the California Department of Fish and Game Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY 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, 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 adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File No. PDC17-035). 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 (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Bark Lane Residential Project

File No. PDC17-035

May 2020



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 Initial Study/Mitigated Negative Declaration prepared for the Bark Lane Residential 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 Initial Study concluded that the impacts from implementation of the project would be less than significant.

I, Jason Lee, the applicant, on the behalf of owner/self, 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

Jason Lee

Date

5/21/2020



Planning, Building and Code Enforcement
ROSALYNN HUGHEY, DIRECTOR

Bark Lane Residential Project
File No. PDC17-035

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-3: Construction activities associated with the proposed project would expose infants near the project site to TAC emissions in excess of BAAQMD thresholds. In addition, construction activities on-site would expose sensitive receptors to PM _{2.5} emissions in excess of acceptable thresholds.					
<p>MM AIR-3.1: Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operation plan to the Director of Planning or Director's designee, demonstrating that the off-road equipment used for construction of the project would achieve a fleet-wide average of at least 91 percent reduction in particulate matter exhaust emissions.</p> <p>All mobile diesel-powered off-road equipment operating on-site for more than two days and larger than 25 horsepower shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) particulate matter emissions standards for Tier 4 engines or equivalent. Prior to the issuance of demolition permits, the project applicant shall submit a construction operations plan to the Supervising Planner of the Environmental Review Division of the Department of Planning, Building and Code Enforcement, which includes specifications of the equipment to be used during construction and confirmation this requirement is met.</p>	<p>The project applicant shall submit a construction operations plan to the Director of Planning, Building and Code Enforcement or Director's designee. The construction operations plan shall include specifications of the equipment to be used during construction and confirmation this requirement is met.</p> <p>The plan shall be accompanied by a letter signed by an air quality specialist.</p>	<p>Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).</p>	<p>Director of Planning, Building and Code Enforcement or Director's designee</p>	<p>Review and approve the construction operations plan and letter.</p>	<p>Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).</p>

<p>The construction contractor may use other measures to minimize construction period Diesel Particulate Matter (DPM) emissions to reduce the estimated cancer risk below the thresholds. The use of equipment that includes CARB-certified Level 4 Diesel Particulate Filters or alternatively-fueled equipment (i.e., non-diesel), added exhaust devices, or a combination of these measures could meet this requirement. If any of these alternative measures are proposed, the construction operations plans must include specifications of the equipment to be used during construction prior to the issuance of demolition permits. The plan shall be accompanied by a letter signed by an air quality specialist, verifying the equipment included in the plan meets the standards set forth in this mitigation measure.</p>					
---	--	--	--	--	--

BIOLOGICAL RESOURCES

Impact BIO-1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.

<p>MM BIO-1.1: The project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay Area, extends from February 1st through August 31st (inclusive).</p> <p>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 are 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</p>	<p>Avoidance of construction activities during nesting season.</p> <p>If avoidance of construction activities during nesting season is not feasible, a qualified ornithologist shall conduct a pre-construction nesting bird survey by , in consultation with the California Department of Fish and Wildlife.</p> <p>The ornithologist, in consultation with the California Department of Fish and Wildlife shall designate a construction-free buffer zone around any discovered nest.</p>	<p>No more than 14 days prior to the initiation of any 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).</p>	<p>City's Director of Planning, Building and Code Enforcement or Director's designee.</p>	<p>Confirm that demolition and construction activities are scheduled outside of the nesting season.</p> <p>Review report indicating the results of the survey (or any other environmental investigation reports, if applicable) and any designated buffer zones.</p>	<p>Prior to issuance of any tree removal, grading, demolition, and/or building permits or activities.</p>
---	---	---	---	--	---

<p>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.</p> <p>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 or Director's designee.</p>	<p>The ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the City's Director of Planning, Building and Code Enforcement or Director's designee.</p>				
--	---	--	--	--	--

HAZARDS AND HAZARDOUS MATERIALS

Impact HAZ-2: Construction of the proposed project could exposure construction workers to residual soil contamination associated with past agricultural operations.

<p>MM HAZ-2.1: Prior to the issuance of grading permits, shallow soil samples shall be taken to determine if contaminates from previous agricultural operations are located on-site in concentrations above established residential screening levels. Once the soil sampling analysis is complete, a report of the findings shall be provided to the Director of Planning, Building and Code Enforcement, and other applicable City staff for review prior to issuance of any grading permits.</p>	<p>Conduct shallow soil sampling to determine if residual contaminates from past agricultural operations are located on-site.</p> <p>Provide sampling results to the Director of Planning, Building and Code Enforcement or Director's designee, and the other applicable City staff (e.g., City's Environmental Compliance Officer) for review.</p>	<p>Prior to the issuance of grading permits.</p>	<p>City's Director of Planning, Building and Code Enforcement or Director's designee and the City's Environmental Compliance Officer.</p>	<p>Review the soil sampling report and proposed remedial measures (if applicable)</p>	<p>Prior to the issuance of any grading permits.</p>
<p>MM HAZ-2.2: A Site Management Plan (SMP) shall be prepared and implemented (as outlined below) and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations or the contaminated portions of the site shall be capped beneath the planned development under the regulatory oversight of the Santa Clara County Department of Environmental Health (SCCDEH) or State Department of Toxic Substances</p>	<p>Prepare and implement a Site Management Plan. If results of the soil sampling indicate concentrations of chemicals exceeding established thresholds, remove the contaminated soils and dispose of according to California</p>	<p>Prior to issuance of any grading or building permits.</p>	<p>Santa Clara County Department of Environmental Health (or equivalent regulatory agency).</p> <p>Environmental Services Department</p>	<p>Review report of the findings.</p> <p>Approval of the Removal Action Plan, Soil Mitigation Plan or other similarly titled report.</p>	<p>Prior to issuance of any grading or building permits.</p>

<p>Control (DTSC). The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site.</p> <p>Components of the SMP shall include, but shall not be limited to:</p> <ul style="list-style-type: none"> • A detailed discussion of the site background; • Preparation of a Health and Safety Plan (HSP) by an industrial hygienist; • Notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; • On-site soil reuse guidelines based on the California Regional Water Quality Control Board (RWQCB), San Francisco Bay Region's reuse policy; • Sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site water disposal facility; • Soil stockpiling protocols. <p>MM HAZ-2.3: All contractors and subcontractors at the project site shall develop a HSP specific to their scope of work and based upon the known environmental conditions for the site. The HSP shall be provided to the Planning, Building and Code Enforcement Supervising Environmental Planner and Environmental Services Department (ESD) and implemented under the direction of a Site Safety and Health Officer. The HSP shall include, but shall not be limited to, the following elements, as applicable:</p> <ul style="list-style-type: none"> • Provisions for personal protection and monitoring exposure to construction workers; • Procedures to be undertaken in the event that contamination is identified above action levels or previously unknown contamination is discovered; • Procedures for the safe storage, stockpiling, and disposal of contaminated soils; • Provisions for the on-site management and/or treatment of contaminated groundwater during extraction or dewatering activities; and • Emergency procedures and responsible personnel. 	<p>Hazardous Waste Regulations or cap the contaminated portions of the site beneath the surface of the site under the regulatory oversight of SCCDEH.</p> <p>Haul the contaminated soil removed from the site off-site and dispose of at a licensed hazardous materials disposal site.</p> <p>All contractors and subcontractors at the project site shall develop a HSP specific to their scope of work and based upon the known environmental conditions for the site.</p> <p>Provide the HSP to the Supervising Environmental Planner of the City of San José Planning, Building and Code Enforcement and the Environmental Services Department. Implement the HSP under the direction of a Site Safety and Health Officer.</p>	<p>Prior to issuance of any demolition, grading or building permits.</p>	<p>Department of Toxic Substances Control</p> <p>Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement</p> <p>Site Safety and Health Officer</p> <p>Santa Clara County Department of Environmental Health (or equivalent regulatory agency).</p> <p>Environmental Services Department</p> <p>Department of Toxic Substances Control</p> <p>Supervising Environmental Planner of the City of San José Department of</p>	<p>Provide HSP to Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement.</p> <p>SCCDEH, DTSC, or equivalent regulatory agency to review and approve the HSP.</p>	<p>Prior to issuance of any demolition, grading or building permits.</p>
--	--	--	--	--	--

The HSP shall be submitted to SCCDEH, DTSC, or equivalent regulatory agency for review and approval. Copies of the approved HSP shall be provided to the Planning, Building and Code Enforcement Supervising Environmental Planner and ESD prior to issuance of grading permits.	Submit the HSP to the SCCDEH, DTSC, or equivalent agency, for review and approval.		Planning, Building and Code Enforcement		
NOISE					
Impact NOI-1: Mechanical equipment proposed for the project is currently unknown at this time and could potentially exceed 55 dBA DNL at nearby sensitive land uses.					
<p>MM NOI-1.1: Prior to the issuance of building permits, mechanical equipment shall be selected and designed to reduce impacts on surrounding uses to meet the City's 55 dBA DNL noise level requirement at the nearby noise-sensitive land uses. A qualified acoustical consultant shall be retained by the applicant to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce noise to comply with the City's noise level requirements. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels and installation of noise barriers, such as enclosures and parapet walls, to block the line-of-sight between the noise source and the nearest receptors. The findings and recommendations from the acoustical consultant for noise reduction measures shall be submitted to the Director of Planning or Director's designee prior to the issuance of any building permits.</p> <p>MM NOI-1.2: Prior to the issuance of any grading permits or demolition, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. As part of the</p>	<p>Retain a qualified acoustical consultant to review the mechanical noise equipment to determine specific noise reduction measures needed to reduce noise to comply with the City's noise level requirements.</p> <p>Submit the findings and recommendations from the acoustical consultant for noise reduction measures to the Director of Planning, Building and Code Enforcement or Director's designee.</p> <p>Submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used.</p> <p>Designate a noise disturbance coordinator.</p>	<p>Prior to the issuance of any building permits.</p> <p>Prior to the issuance of any grading or demolition permits.</p>	<p>Director of Planning, Building and Code Enforcement or Director's designee.</p> <p>Director of Planning, Building and Code Enforcement or Director's designee.</p>	<p>Review findings and recommendations for noise reduction measures.</p> <p>Review and approve the construction noise logistics plan.</p>	<p>Prior to the issuance of any building permits.</p> <p>Prior to the issuance of any grading or demolition permits.</p>

<p>noise logistic plan and project, construction activities for the proposed project shall include, but is not limited to, the following:</p> <ul style="list-style-type: none"> • Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends within 500 feet of residences. • Construct temporary noise barriers, where feasible, to screen stationary construction equipment. The temporary noise barrier fences would provide a five dBA noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receiver and if the barrier is constructed in a manner that eliminates any cracks or gaps. • 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. Temporary noise barriers could reduce construction noise levels by five dBA. • Utilize "quiet" air compressors and other stationary noise sources where technology exists. • Construction staging areas shall be established at locations that would create the greatest distance between the construction-related noise source and 					
---	--	--	--	--	--

<p>noise-sensitive receptors nearest the project site during project construction.</p> <ul style="list-style-type: none"> • Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors. • Notify all adjacent businesses, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences. • Additional temporary noise control blanket barriers could be erected, if necessary, along other residential building façades facing the site if determined to be necessary during construction. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. • Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site. • Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and 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 in it the notice sent to neighbors regarding the construction schedule. <p>MM NOI-2.1: Prior to the issuance of any demolition, grading, or building permits the project applicant shall prepare and implement a Construction Vibration Monitoring, Treatment, and Reporting Plan (Plan) to document conditions prior to, during, and after</p>	<p>Prepare and implement a Construction Vibration Monitoring, Treatment, and Reporting Plan to document conditions prior to, during, and after vibration</p>	<p>Prior to the issuance of any demolition, grading, or building permits.</p>	<p>Supervising Environmental Planner of the City of San José Department of</p>	<p>Review and approve the Construction Vibration Monitoring,</p>	<p>Prior to the issuance of any demolition, grading, or building permits.</p>
--	--	---	--	--	---

<p>vibration generating construction activities. All Plan tasks 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 plan shall be submitted to the Supervising Environmental Planner of City of San José Department of Planning, Building and Code Enforcement for review and approval. The Plan shall include the following:</p> <ul style="list-style-type: none"> • A list of all heavy construction equipment to be used for this project and the anticipated time duration of using equipment that has been known to produce high vibration levels (tracked vehicles, vibratory compaction, jackhammers, hoe rams, etc.) shall be submitted to the City's Supervising Environmental Planner by the contractor. • The use of heavy vibration-generating construction equipment, such as vibratory rollers or excavation using clam shell or chisel drops, shall be prohibited within 30 feet of any adjacent building. The 30-foot boundary shall be clearly marked on all construction plans and confirmed by the planning official prior to issuance of grading permits. • The project applicant shall designate a person responsible for registering and investigating claims of excessive vibration. The contact information of the designated person shall be clearly posted on the construction site. • The operating equipment on-site shall be placed as far as possible from vibration-sensitive receptors. • Smaller equipment shall be used to minimize vibration levels below the vibration limits. • Select demolition methods not involving impact tools. • Modify/design or identify alternative construction methods to reduce vibration levels below the limits. • Avoid dropping heavy objects or materials. 	<p>generating construction activities.</p> <p>All Plan tasks 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.</p> <p>Submit Plan to the Supervising Environmental Planner of City of San José Department of Planning, Building and Code Enforcement for review and approval.</p>		<p>Planning, Building and Code Enforcement.</p>	<p>Treatment, and Reporting Plan</p>	
--	---	--	---	--------------------------------------	--

Source: City of San José. Initial Study. Bark Lane Residential Project. March 2020.