RD:JVP:JMD
11/2/2020

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE LITTLE PORTUGAL GATEWAY MIXED-USE 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 Little Portugal Gateway Mixed-Use Project under Planning File Nos. PDC18-021, and PD18-016 (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 Little Portugal Gateway Mixed-Use Project (the "Project") analyzed under the Initial Study/Mitigated Negative Declaration consists of a rezoning from the CG Commercial General Zoning District, CP Commercial Pedestrian Zoning District, and R-2 Two-Family Residence Zoning District to the CP(PD) Commercial Pedestrian Planned Development Zoning District and a Planned Development Permit to demolish existing residential and commercial buildings, and remove all associated pavement, landscaping, and fencing; and to construct a mixed-use building consisting of approximately 13,650 square feet of ground-floor retail and 123 residential units with two levels of underground parking, including six tandem parking spaces, and the removal of 38 on-site trees, six of which are ordinance-size trees, on an approximately 0.9-gross acre site located on the north side of Alum Rock Avenue, approximately 300

feet west of King Road (1661, 1663, 1665 Alum Rock Avenue) (Assessor's Parcel Numbers 481-12-069, 481-12-070, 481-12-109), San José, California; and

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

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

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

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

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

WHEREAS, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director of Planning, 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 on-line 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, 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 Nos. PDC18-021 and PD18-016). 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

Little Portugal Gateway Mixed-Use Project

File Nos. PDC18-021 and PD18-016

September 2020

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

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 are 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 Little Portugal Gateway Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

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

I, Sanjeev Acharya, the applicant, on the behalf of SiliconSage Builders, 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 

Date 10/15/2020

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Planning, Building and Code Enforcement
ROSALYNN HUGHEY, DIRECTOR

Little Portugal Gateway
Mixed-Use Project
File Nos. PDC18-021 and PD18-016

MITIGATION	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 project would result in a maximum residential infant/child cancer risk during construction activities that would exceed the BAAQMD significance threshold of 10 in one million.					
MM AIR-1.1: Prior to issuance of any demolition, grading, or building permits (whichever occurs earliest) the project applicant shall submit a construction operations plan to the Director or Director's designee of the City of San José Department of Planning, Building and Code Enforcement that includes specifications of the equipment to be used during construction. The construction operations plan shall demonstrate that the off-road equipment used for construction of the project would achieve a fleet-wide average of at least 60 percent reduction in diesel particulate matter (DPM) emissions. The plan shall be accompanied by a letter signed by an air quality specialist, verifying that equipment included in the plan meets the standards set forth in this mitigation measure.	Submit a construction operations plan to the Director or Director's designee of the City of San Jose Department of Planning, Building and Code Enforcement	Prior to issuance of any grading or demolition permit for the proposed project	Supervising Environmental Planner, City of San José Department of Planning, Building and Code Enforcement	Review and approve construction operations plan	Prior to issuance of any grading or demolition permits for the proposed project.

The following construction operations plan shall be implemented by the project applicant. Implementation of the plan would reduce DPM emissions by 60 percent and the infant cancer risk at the maximally exposed individual (MEI) to below 10 in one million. • 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 4 engines. Exceptions could be made for equipment that includes CARB-certified Level 3 Diesel Particulate Filters or equivalent. Equipment that is electrically powered or uses non-diesel fuels would also meet this requirement.					
Biological Resources					
Impact BIO-1: Demolition, grading, and construction activities and tree removal during the nesting season could impact nearby migratory birds.					
MM BIO-1.1: Avoidance: 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 15th (inclusive), as amended. **MM BIO-1.2:** Nesting Bird Surveys If demolition and construction activities cannot be scheduled to occur between August 16th 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 15th inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.	For avoidance of construction activities during nesting seasons: provide a statement of avoidance to the City. If construction activities cannot be scheduled outside of nesting seasons, a qualified biologist shall prepare a plan for pre-construction nesting bird surveys.	Prior to the issuance of any grading, demolition or building permit. Submit the statement of avoidance, or the plan for pre-construction nesting bird surveys and reporting prepared by a qualified biologist, the City prior to issuance of any tree removal, grading, demolition, and/or building permits.	Director, Planning, Building and Code Enforcement, or Director's designee CDFW, if an active nest is found	Confirm that demolition and construction activities are scheduled outside of the nesting season. Review the plan for pre-construction nesting bird surveys and reporting. Review the pre-construction survey report indicating the results of the survey and any designated buffer-zones	Prior to issuance of any tree removal, grading, demolition, and/or building permits.

MM BIO-1.3: Buffer Zones 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, 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. The no-disturbance buffer shall remain in place until the biologist determines the nest is no longer active or the nesting season ends. If construction ceases for two days or more and then resumes again during the nesting season, an additional survey shall be necessary to avoid impacts to active bird nests that may be present.	Construction-free buffer zones shall be designated by the qualified biologist, in consultation with CDFW, around any discovered nest.				
MM BIO-1.4: Reporting: Prior to any tree removal, or approval of any grading permits (whichever occurs first), the project applicant shall submit the ornithologist's report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement, or the Director's designee, prior to issuance of any grading or building permits.	Following completion of the preconstruction survey, submit the pre-construction survey report to the City to document the results of the survey and any designated construction-free buffer zones.				
Impact BIO-2: Project construction activities could result in physical damage to the coast live oak Tree #17 resulting in a significant impact.					
MM BIO-2.1: The project applicant shall contract with a qualified arborist to monitor construction activities near the coast live oak Tree #17. The Critical Root Zone (CRZ) is six multiplied by the diameter (18 inches); therefore, the distance of construction activities shall be at least nine feet away from the trunk edge of the tree where possible. Construction activities within the CRZ shall adhere to the following construction techniques: • Prior to construction, exploratory trenching shall be completed to determine which roots would be encountered where the basement level and parking walkway are proposed. Exploratory trenching includes excavation by	Provide a written and signed contract between the project applicant and the arborist to conduct monitoring during construction Complete trenching to determine which roots would be encountered where the basement level and parking walkway are proposed.	Prior to issuance of any grading or demolition permits for the proposed project Prior to initiation of project construction activities	Director, Planning, Building and Code Enforcement, or Director's designee	Confirm that the project applicant has provided written and signed contract with arborist to conduct monitoring during construction activities near the coast live oak tree #17 Confirm trenching has been completed	Prior to issuance of any grading or demolition permits

air knife and hand tools while leaving all roots exposed and as damage free as possible. • The proposed development's basement levels shall be shored during construction to maintain the nine-foot clearance from the roots of the tree. • The walkway along the eastern border of the site, which is adjacent to the tree, shall be constructed on top of the existing grade and shall not require more than four to six inches of excavation. • The project applicant shall construct the retaining wall so that it is at least nine feet north of the coast live oak tree. Alternatively, within nine feet of the tree, a fence that has small post holes and no continuous footing can be constructed. • Grade changes shall not be more than four to six inches within nine feet of the coast live oak tree. Vegetation within nine feet of the tree shall be planted by hand while retaining encountered roots. If the coast live oak tree does not survive construction activities or if its preservation is determined infeasible due to the proximity of on-site construction activities, the project applicant shall be required to replace the tree pursuant to San José Municipal Code Chapter 13.32 The tree shall be replaced with five trees in accordance with the City's tree replacement ratio requirements. The species of the tree to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.				to determine which roots would be encountered where basement level and parking walkways are proposed. If tree replacement required, confirm replacement complies with Tree Removal Permit.	
Hazards and Hazardous Materials					
Impact HAZ-1: Construction of the proposed mixed-use development could result in the exposure of construction workers and adjacent residences to soils contaminated with total petroleum hydrocarbons, semi-volatile organic compounds (SVOCs), lead, and arsenic above regulatory screening levels or background concentrations. .					
MM HAZ-1.1: The project applicant shall obtain regulatory oversight from Santa Clara Department of Environmental Health (DEH) regarding the next steps	Obtain regulatory oversight from Santa Clara Department of	Prior to issuance of any grading or demolition permits	Director, Planning, Building and Code Enforcement, or	Confirm that the project applicant has provided	Prior to issuance of any grading

and appropriate actions. Any further investigation and remedial actions must be performed under regulatory oversight to mitigate the contamination. The project applicant shall enter the Santa Clara County Department of Environmental Health Site Cleanup Program to assess the petroleum levels and potential presence of a closed Underground Storage Tank. The project applicant will provide the SCCDEH with the most recent Phase I and soil sampling results. Any further investigation and/or remedial actions must be performed under regulatory oversight to mitigate the contamination and make the site suitable for the proposed residential development. **MM HAZ-1.2:** A Site Management Plan (SMP) and Health and Safety Plan (HSP) shall be prepared by a qualified environmental professional and implemented during project construction activities. The SMP shall characterize the soil, establish appropriate construction activities, and evaluate potential disposal options if excess soil is generated that will require off-haul and describe methods of segregating impacted and non-impacted soil during excavation activities. The HSP shall establish soil management practices to ensure construction worker safety and the health of future workers, residents, and the environment. If naturally occurring asbestos is identified during soil sampling or if it is determined that it is likely to be encountered during excavation and trenching activities, the SMP shall include asbestos dust mitigation measures and protocols to perform personnel and perimeter air and dust monitoring to evaluate the effectiveness of dust-control measures. If groundwater dewatering is to be conducted, the SMP shall describe methods for groundwater extraction. The SMP shall outline protocols for pumping groundwater	Environmental Health regarding the next steps and appropriate actions. Enter the Santa Clara County Department of Environmental Health Site Cleanup Program Provide the SCCDEH with the most recent Phase I and soil sampling results. Retain a qualified environmental consultant to prepare a SMP for the proposed project If naturally occurring asbestos is identified during soil sampling, or if it is determined that it is likely to be encountered during excavation and trenching activities, include asbestos dust mitigation measures and protocols in the SMP. If groundwater dewatering is to be conducted, the SMP shall describe methods for groundwater extraction.	on the proposed project.	Director's designee and the Environmental Compliance Officer in the City of San Jose's Environmental Services Department.	evidence of regulatory oversight and a copy of the SMP	or demolition permits

into appropriate storage containers, as well as sampling and analysis. The SMP shall also establish appropriate disposal options for the groundwater. The SMP and evidence of regulatory oversight, shall be provided to the Director of Planning or Director's designee of the City of San José Department of Planning, Building and Code Enforcement and the Environmental Compliance Officer in the City of San José's Environmental Services Department.	Provide the SMP and any evidence of regulatory oversight to the Director or Director's designee of the City of San José Department of Planning, Building and Code Enforcement and to the Environmental Compliance Officer in the City of San José's Environmental Services Department.				
Noise					
Impact NOI-1: Noise levels from construction activities would substantially exceed ambient conditions at residences and commercial businesses (within 50 feet) for a period exceeding 12 months.					
MM NOI-1.1: The project applicant shall implement a construction noise logistics plan. The logistics plan shall include, but not be limited to, the following measures to reduce construction noise levels: • Limit construction to the hours of 7:00 AM to 7:00 PM 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 businesses, 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.	Retain a qualified acoustical consultant who shall prepare a construction noise logistics. Implement the construction noise logistics plan during construction of the proposed project. Submit recommended noise reduction measures to the Director of Planning, Building and Code Enforcement, or the Director's designee.	Prior to issuance of any building permits.	Director of Planning, Building and Code Enforcement, or the Director's designee.	Review construction noise logistics plan and ensure implementation of it conditioned in the building permit.	Prior to issuance of any building permits.

• 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 the 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 shall 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 shall 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.					

Impact NOI-2: Implementation of the proposed project would result in construction vibration levels that exceed the construction related groundborne vibration threshold of 0.2 in/sec peak particle velocity (PPV) at the nearest structures.					
MM NOI-2.1: The project applicant shall implement a construction vibration monitoring plan to document conditions prior to, during, and after vibration generating 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 construction vibration monitoring plan shall include, but not be 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 known to produce high vibration levels (tracked vehicles, vibratory compaction, jackhammers, hoe rams, etc.) shall be submitted 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. Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 25 feet of any adjacent building. • Place operating equipment on the construction site as far as possible from vibration-sensitive receptors. • Use smaller equipment to minimize vibration levels below the limits. • Avoid using vibratory rollers and tampers near sensitive areas. • 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.	Implement construction vibration monitoring plan	Prior to approval of any demolition or grading permits.	Director of Planning, Building and Code Enforcement, or the Director's designee	Ensure that construction vibration monitoring plan is conditioned in the grading plans. Monitoring compliance during construction period.	Prior to issuance of any demolition or grading permits and monitoring during construction period.

• A construction vibration-monitoring plan shall be implemented to document conditions conventional properties within 30 feet of the project site prior to, during, and after 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 construction vibration monitoring plan should be implemented to include the following tasks: o Identification of sensitivity to ground-borne vibration of the property. A vibration survey (generally described below) would need to be performed. o Performance of a photo survey, elevation survey, and crack monitoring survey for the structures within 30 feet of the site. Surveys shall be performed prior to, in regular intervals during, and after completion of vibration generating construction activities and shall include internal and external crack monitoring in the structure, settlement, and distress and shall document the condition of the foundation, walls and other structural elements in the interior and exterior of said structure. o Development of a vibration monitoring and construction contingency plan to identify 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. Construction contingencies would be identified for when vibration levels approach the limits. o If vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structure. o Conduct a post-survey on the structure where either monitoring has indicated high levels or complaints of damage. Make appropriate repairs where damage has occurred as a result of construction activities. o The results of all vibration monitoring shall be summarized and submitted in a report shortly after substantial completion of each phase identified in the project schedule. The report will include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. An explanation of all events that exceeded vibration limits will be included together with proper documentation supporting any such claims. o 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.					
Source: City of San José. *Initial Study: Little Portugal Gateway Project*. July 2020.					