

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE RIVER OAKS STORMWATER CAPTURE 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 River Oaks Stormwater Capture Project under Planning File Nos. ER20-186 (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 River Oaks Stormwater Capture Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a Public project to convert the existing flood control basin to provide stormwater treatment via bioretention prior to discharge to the Guadalupe River, and would include the installation of park-like enhancements, such as a boardwalk viewing platform, interpretive signage, a perimeter trail, and public art, and the area surrounding the detention basin would be planted with new trees, native grasses, and a pollinator garden; located on a 5.2-acre project in North San José between Riverview Parkway and the Guadalupe River (Assessor’s Parcel Number 097-060-37), 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 electronically on the City of San José's Department of Planning, Building and Code Enforcement website, 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 No. ER20-186). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/ Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and electronically on the City of San

José's Department of Planning, Building and Code Enforcement website, and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

River Oaks Stormwater Capture Project

File No. ER20-186

December 2020



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

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

The City of San José hereby agrees to fully implement the Mitigation Measures described below, which have been developed in conjunction with the preparation of an Initial Study/Mitigated Native Declaration for the proposed project. The City understands that these mitigation measures, or substantially similar measures, will be adopted as conditions of approval to avoid or significantly reduce potential environmental impacts to less than significant levels.

MITIGATION MEASURES	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
	Method of Compliance or Mitigation Action	Timing of Mitigation Action	Oversight Responsibility	Actions/ Reports	Monitoring Timing or Schedule
BIOLOGICAL RESOURCES					
Impact BIO-1: The Project could have a substantial adverse effect, either directly or through habitat modifications, on burrowing owls.					
Mitigation Measure BIO-1: Compliance with SCVHCP for Burrowing Owl Fee payments into the Santa Clara Valley Habitat Conservation Plan (SCVHCP) have been made by the City of San José (City). Participation in the plan allows for participating projects to move forward without additional mitigation, though the terms of the plan must be followed, and the terms are species specific. With respect to burrowing owl, projects occurring within mapped burrowing owl breeding habitat require preconstruction surveys and subsequent measures to protect burrowing owls, if detected. However, the Project Area is not in an area mapped as burrowing owl breeding habitat and may proceed without additional mitigation.	Department of Public Works (DPW) to verify continuing fee payments into the SCVHCP	Pre-construction	DPW and Planning Building and Code Enforcement (PBCE) or Director's Designee	Verification documentation for MMRP compliance file.	Pre-construction
Impact BIO-2: The Project could have a substantial adverse effect, either directly or through habitat modifications, on nesting birds.					
Mitigation Measure BIO-2: Pre-construction Nesting Bird Surveys A survey for active bird nests shall be conducted by a qualified biologist no more than 14 days prior to the start of Project activities (vegetation removal, grading, or other initial ground-disturbing activities) if ground disturbing activities commence during the nesting season (February 1	DPW shall contract a qualified biologist to conduct a survey for active bird nests within 14 days of start of Project activities.	Prior to construction	DPW and PBCE or Director's Designee	Survey reports for MMRP compliance file	Within 14 days prior to start of construction disturbance on-site

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	<p>through August 31, inclusive). The survey shall be conducted in a sufficient area around the Project Area to identify the location and status of any nests that could potentially be directly or indirectly affected by vegetation removal, or grading activities. For white-tailed kite, the survey area shall extend at least 0.25 miles from the area of potential disturbance.</p> <p>Based on the results of the pre-construction breeding bird survey, the following measures shall apply:</p> <ul style="list-style-type: none">If active nests of protected species are found within the Project Area, or close enough to the area that nesting success would be adversely affected, a work exclusion zone should be established around each nest. Established exclusion zones shall remain in place until all young in the nest have fledged or the nest otherwise becomes inactive (e.g., due to predation). Appropriate exclusion zone sizes vary dependent upon bird species, nest location, existing visual buffers, ambient sound levels, and other factors; an exclusion zone radius may be as small as 25 feet (for common, disturbance-adapted species) or more than 250 feet (for raptors). Listed species are typically provided more extensive exclusion zones, which may be specific to the species and/or follow California Department of Fish and Wildlife (CDFW) guidance. Exclusion zone size may also be reduced from established levels if supported with nest monitoring by a qualified biologist indicating that work activities are not adversely impacting the nest.A copy of the survey shall be submitted to the Director of Planning Building and Code Enforcement (PBCE) or Director's Designee prior to any ground-disturbance activities.	<p>If active nests are located during survey, DPW shall coordinate with biologist to establish work exclusion zone and follow CDFW guidance. DPW shall monitor to ensure that contractor implements work exclusion zones. DPW shall maintain site inspection logs.</p>	<p>Pre-construction and Construction</p>	<p>DPW and PBCE or Director's Designee</p>	<p>If exclusion zones are established, maintain compliance documentation in MMRP compliance file.</p>
	<p>DPW to submit survey and final compliance reports to the Director of PBCE or Director Designee</p>	<p>Construction</p>	<p>DPW and PBCE or Director's Designee</p>	<p>Survey and final Compliance Report included in MMRP compliance file.</p>	<p>Construction</p>
CULTURAL RESOURCES					

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Impact CR-1: Implementation of the Project could cause a substantial adverse change in the significance of a cultural resource.					
Mitigation Measure CR-1: Protection of Cultural Resources The City shall implement the following measures: <ul style="list-style-type: none"> • Disclaimer on Documents: The City shall note on any plans that require ground disturbing excavation that there is a potential for exposing buried cultural resources including prehistoric Native American burials. Any archaeological site information supplied to the Contractor shall be considered confidential. • Training Materials: The City shall retain a Qualified Archaeologist to develop an Alert Sheet outlining the potential for the discovery of unexpected <i>archaeological</i> resources and protocols to deal with a discovery. The Qualified Archaeologist shall provide the Contractor's construction crew "tool box" sensitivity training to present the Alert Sheet and protocols to supervisors, foreman, project managers, and non-supervisory contractor personnel. The Contractor is responsible for ensuring that all workers requiring training are in attendance. • Accidental Discovery: The City shall retain a Qualified Archaeologist on an "on-call" basis during ground disturbing construction to review, identify and evaluate cultural resources that may be inadvertently exposed during construction. If cultural resources are found, all work must be stopped until further examination and determination of the finds are made and approved. The archaeologist shall review and evaluate any discoveries to determine if they are historical resource(s) and/or unique archaeological resources under CEQA. <ul style="list-style-type: none"> ○ If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be 	DPW shall ensure that measures related to potential cultural resource discoveries are included in contract documents	Design/ Contracting	DPW and PBCE or Director's Designee	Review Contract, keep copy in MMRP compliance file	Design/ Contracting
	DPW shall retain a Qualified Archaeologist to develop an Alert Sheet and to be "on-call" during ground disturbing activities	Pre-construction	DPW and PBCE or Director's Designee	Check for ALERT Sheet and keep in MMRP compliance file	Pre-construction/
	DPW, in coordination with Contractor, shall ensure that all personnel complete sensitivity training prior to beginning work.	Pre-construction	DPW and PBCE or Director's Designee	Keep training documentation in MMRP compliance file	Pre-construction
	DPW to ensure Qualified Archaeologist is available on an on-call basis during grading and excavation. If a discovery is made, DPW shall contact the on-call archaeologist and notify the Director of PBCE or the designee, and ensure all required procedures	Construction	DPW and PBCE or Director's Designee	Ensure any cultural resources monitoring reports prepared in the event of a discovery, are maintained in MMRP compliance file.	Construction

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	<p>stopped, the Director of PBCE or the Director's Designee and DPW shall be notified, and a Qualified Archaeologist shall examine the find.</p> <ul style="list-style-type: none"> ○ If the Qualified Archaeologist determines that any cultural resources exposed during construction constitute a historical resource and/or unique archaeological resource under CEQA, he/she shall notify the City and other appropriate parties of the evaluation and recommend mitigation measures to mitigate to a less-than significant impact in accordance with California Public Resources Code Section 15064.5. Mitigation measures may include avoidance, preservation in-place, recordation, additional archaeological testing and data recovery among other options. The completion of a formal <i>Archaeological Monitoring Plan</i> (AMP) and/or <i>Archaeological Treatment Plan</i> (ATP) that may include data recovery may be recommended by the Qualified Archaeologist if significant archaeological deposits are exposed during ground disturbing construction. Development and implementation of the AMP and ATP and treatment of significant cultural resources will be determined by City in consultation with any regulatory agencies. ○ A <i>Monitoring Closure Report</i> shall be filed with PBCE and DPW at the conclusion of ground disturbing construction if archaeological and Native American monitoring of excavation was undertaken. 	as followed as warranted.			

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HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-1: The Project could create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials or reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.					
Mitigation Measure HAZ-1: Hazardous Materials Management and Spill Prevention and Control Plan Before construction begins, the construction contractor shall prepare a Hazardous Materials Management Spill Prevention and Control Plan (HMM & SPCP), for review and approval by DPW, that includes a project-specific contingency plan for hazardous materials and water operations. The Plan shall be applicable to construction activities and shall establish policies and procedures according to applicable codes and regulations, including but not limited to the California building and fire codes, and federal and California Occupational Safety and Health Administration regulations. The Plan shall include, but is not limited to, the following procedures: <ul style="list-style-type: none"> • A discussion of hazardous materials management, including delineation of access and egress routes, waterways, emergency assembly areas, and hazardous material disposal; • Notification and documentation of procedures; and • Spill control and countermeasures, including employee spill prevention/response training. 	DPW shall ensure that contract documents include preparation of a HMM & SPCP	Design/ Contracting	DPW and PBCE or Director's Designee	Review contract; keep copy in MMRP compliance file	Design/ Contracting
	DPW shall ensure contractor prepares HMM & SPCP and is kept on-site. Also ensure a copy is submitted to Director of PBCE or Director's designee. In the event of a spill, ensure spill procedures are implemented and documented.	Pre-construction and Construction	DPW and PBCE or Director's Designee	Document that HMM & SPCP is on site; include documentation of compliance with the HMM & SPCP in the event of a spill; include all documentation in MMRP compliance file.	Pre-construction and Construction

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NOISE					
Impact NOI-1: Implementation of the Project could cause a substantial temporary or permanent impact in ambient noise levels.					
Mitigation Measure NOI 1: Construction Noise Logistics Plan The City of San José shall require its contractor to implement the following actions relative to construction noise: <ul style="list-style-type: none"> Prepare 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. The noise logistic plan shall be submitted to the Director of PBCE or Director's Designee, and DPW prior to the start of any ground 	DPW shall ensure that contract documents include preparation of a construction noise logistics plan and ensure copy is provided to Director of PBCE or Director's designee.	Design/ Contracting	DPW and PBCE or Director's Designee	Review contract; keep copy in MMRP compliance file	Design/ Contracting
	DPW shall provide written notification to all properties within 100 feet of project site.	Pre-construction	DPW and PBCE or Director's Designee	Include notification letter in MMRP compliance file	Pre-construction

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<p>disturbance activities. The logistic plan shall also include, but is not limited to, the following procedures:</p> <ul style="list-style-type: none"> ○ Prior to construction, the City, in coordination with the construction contractor, shall provide written notification, to all properties within 100 feet of the proposed Project site informing occupants of the type and duration of construction activities. Notification materials shall identify a method to contact the City's project manager with noise concerns. Prior to construction commencement, the City's project manager shall establish a noise complaint process to allow for resolution of noise problems. This process shall be clearly described in the notifications. ○ Stationary noise-generating equipment shall be located as far from sensitive receptors as possible. Such equipment shall also be oriented to minimize noise that would be directed toward sensitive receptors. Whenever possible, other non-noise generating equipment (e.g., water tanks, roll-off dumpsters) shall be positioned between the noise source and sensitive receptors. ○ Equipment and staging areas shall be located as far from sensitive receptors as possible. At the staging location, equipment and materials shall be kept as far from adjacent sensitive receptors as possible. ○ Construction vehicles and equipment shall be maintained in the best possible working order; operated by an experienced, trained operator; and shall utilize the best available noise control techniques (including mufflers, use of intake silencers, ducts, engine enclosures and acoustically attenuating shields or shrouds). <ul style="list-style-type: none"> ○ Unnecessary idling of internal combustion engines shall be prohibited. In practice, this would 	<p>DPW shall ensure noise measures in construction noise logistics plan are implemented throughout construction.</p>	<p>Construction</p>	<p>DPW and PBCE or Director's Designee</p>	<p>Document that noise reduction measures in construction noise logistics plan are implemented; include in MMRP compliance file</p>	<p>Construction</p>

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<p>require turning off equipment if it would idle for five or more minutes.</p> <ul style="list-style-type: none"> Electrically powered equipment shall be used instead of pneumatic or internal-combustion powered equipment, where feasible. Utilize “quiet” air compressors and other stationary noise sources where technology exists. The use of noise-producing signals, including horns, whistles, alarms, and bells, shall be for safety warning purposes only. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of historical buildings, or buildings in poor condition. 					
<p>Mitigation Measure NOI 2: Pump Noise Control</p> <p>The proposed dewatering pumps and sump pumps are anticipated to be placed below-ground, which would reduce operational noise levels at the nearest residential property line to negligible levels. However, in the event that the pumps are located above-ground, the contractor shall install shielding around the dewatering pumps and sump pumps such that the noise generated at the nearest residential property line does not increase by more than 3 dBA DNL above ambient conditions. If the pumps are located above-ground, the contractor shall install shielding that would reduce noise levels by at least 10 dBA. Confirmation of new</p>	<p>If pumps are located above ground, DPW shall ensure contractor installs shielding; conducts noise monitoring to ensure noise reduction requirement is met</p>	<p>Construction</p>	<p>DPW and PBCE or Director’s Designee</p>	<p>Document noise reduction compliance activities in MMRP compliance file</p>	<p>Construction</p>

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site plans, if applicable, with information on shielding shall be provided to the Director of PBCE or Director's Designee.					

Source: Initial Study/Mitigated Negative Declaration for the River Oaks Stormwater Capture Project (November. 2020).