

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS REGARDING ENVIRONMENTAL IMPACTS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970 FOR THE MOE'S STOP GAS & SERVICE STATION PROJECT, FOR WHICH A FOCUSED ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED

WHEREAS, on March 29, 2011, the Superior Court of California, County of Santa Clara, in case number 1-10-CV-176412, issued a Writ of Mandate requiring the City of San Jose ("City") to prepare an environmental impact report for the Moe's Stop Gas & Service Station project (the "Project");

WHEREAS, the City, as lead agency, has prepared and completed the Final Environmental Impact Report for the Project pursuant to the requirements of the California Environmental Quality Act and related state and local guidelines promulgated thereunder (the "Final EIR"), and the Final EIR has State Clearinghouse No. 2011062068; and

WHEREAS, a Draft Environmental Impact Report ("Draft EIR") for the Project was completed and released for public and agency review on September 1, 2011. The Draft EIR assesses the potential environmental effects of implementation of the Project, identifies means to eliminate or reduce potential adverse impacts, if any, and evaluates a reasonable range of alternatives to the Project as required. The Final EIR comprises the Draft EIR together with the First Amendment to the Draft EIR, which is an additional volume that includes the comments on the Draft EIR submitted by interested public agencies, organizations and members of the public, written responses to the environmental issues raised in those comments, any amendments to the text of the Draft EIR reflecting changes made in response to comments and other information, and other minor changes to the text of the Draft EIR; and

WHEREAS, prior to the adoption of this Resolution, the City Council of the City of San José has certified that the Final EIR for the Project was completed in accordance with the requirements of the California Environmental Quality Act of 1970, together with related state and local implementation guidelines (collectively, "CEQA"); and

WHEREAS, implementation of the Project as a whole would require City approval of a Conditional Use Permit (File No. 11-049); and

WHEREAS, CEQA requires that, in connection with the approval of a project for which an EIR has been prepared in response to a fair argument about the possibility of potentially significant environmental effects raised through legal challenge,

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the decision-making body has reviewed and considered the evidence surrounding the potential areas of controversy;

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

THAT THE CITY COUNCIL does hereby reaffirm that the Final EIR has been prepared and completed in compliance with CEQA, that the Council has independently reviewed and considered the Final EIR and other information in the record, prior to acting upon or approving the Project, and that the Final EIR represents the independent judgment and analysis of the City of San José as Lead Agency for the Project; and

THAT THE CITY COUNCIL does hereby make the following findings with respect to the effects on the environment of such Project, as identified in the Final EIR, with the stipulation that all information in these findings is intended as a summary of the full administrative record supporting the Final EIR, which full administrative record is incorporated herein by this reference and should be consulted for the full details supporting these findings; and

FINDINGS

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

A. INTRODUCTION

These California Environmental Quality Act (“CEQA”) findings are adopted by the City Council of the City of San Jose as lead agency for the Moe’s Stop Gas & Service Station Project . The Environmental Impact Report completed for the Moe’s Stop Gas & Service Station Project is identified as State Clearinghouse # 2011062068.

These CEQA findings are adopted in connection with the approval of a Conditional Use Permit (File No. **CP11-049**) to allow the demolition of an existing single-family detached residence and the expansion of an existing gas and service station. Three additional gas pumps and a canopy for the new pumping facility will be constructed as a part of the Project. The driveway into the service station on 33rd Street will be relocated to allow a new exit and entry for the use on the site.

B. ENVIRONMENTAL REVIEW OF THE PROJECT

Pursuant to the provisions and guidelines of CEQA, the City prepared the Final EIR for the Project. The City issued a Notice of Preparation, which was circulated to responsible agencies and interested groups and individuals for review and comment. A Draft EIR was prepared for the Moe’s Stop Gas & Service Station Project to analyze its

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environmental effects. The Draft EIR was circulated for public review and comment from September 1, 2011 to October 17, 2011.

The City received one comment on the Draft EIR. Working with its environmental consultants, Denise Duffy and Associates, the City prepared responses to all comments raising environmental issues. The responses describe the disposition of significant environmental issues raised by the comments, and make some minor changes and additions to the Draft EIR. The comments, responses to comments, changes to the Draft EIR and additional information are included in a First Amendment to the Draft EIR which was completed and made available to the public on October 21, 2011. The Draft EIR, the First Amendment to the Draft EIR, and all the appendices to the draft EIR comprise the Final EIR referenced in these findings as the "Final EIR." The Final EIR is incorporated into this document by this reference.

The Planning Commission held a public hearing on the Final EIR and the Project on November 2, 2011. During these hearings, members of the public had the opportunity to submit comments and express their concerns and interest about the Final EIR and the Project. The Planning Commission certified the Final EIR and granted a conditional use permit for the Project, which certification action and approval action were timely appealed to the City Council. The City Council held a public hearing on the Final EIR and the Project on November 29, 2011. During these public hearing, members of the public had the opportunity to submit comments and express their concerns and interest about the Final EIR and the Project. The City Council certified the Final EIR by resolution of City Council on November 29, 2011.

Finding: There were no significant impacts from the Project identified in the draft EIR or Final EIR.

In making these findings, the City Council recognizes that the environmental analysis of the Project has created controversy with regard to traffic, and that a range of technical opinion exists with respect to that issue and that there are differing and conflicting expert and other opinions regarding the Project, its impacts, and the feasibility of reducing or avoiding those impacts. These differences of opinion and expert opinion relate to the methodologies employed in analyses contained in the draft EIR. The City Council has, by its review of the evidence and analyses presented in the Final EIR, and other evidence in the record, acquired an understanding of the breadth of this technical opinion and of the scope of the environmental issues presented by the Project. In turn, this understanding has enabled the City to make informed, carefully considered decisions after taking into account of the various viewpoints on these important issues. These findings are based on full appraisal of all viewpoints expressed in the Final EIR and in the record as well as other relevant evidence in the record of proceedings for the Project.

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C. THE RECORD

The record upon which all findings and determinations related to the Project and the Final EIR are based includes the following:

- a. The Final EIR, and all documents referenced in or relied upon by the Final EIR.
- b. All information (including written evidence and testimony) provided by City staff to the Planning Commission or the City Council relating to the Final EIR or the proposed approvals for the Project.
- c. All information (including written evidence and testimony) presented to the Planning Commission or the City Council by the environmental consultant and sub-consultants who assisted City in the preparation of the Final EIR, or incorporated into reports presented to the Commission or the Council.
- d. All information (including written evidence and testimony) presented to the City by other public agencies relating to the Final EIR or the Project.
- e. All applications, letters, testimony and hearing presentations given by any of the Project sponsors or their consultants to the City in connection with the Project.
- f. All information (including written evidence and testimony) presented to the City by members of the public relating to the Final EIR or the Project.
- g. For documentary and information purposes, all City-adopted land use plans and ordinances, including, without limitation, general plans, specific plans, and ordinances relating to the Project or the Final EIR.
- h. Any Mitigation Monitoring and Reporting Program for the Project.
- i. All other documents comprising the record of proceedings pursuant to Public Resources Code section 21167.6(e).

These findings are based upon the evidence contained in the entire record of the City's proceedings relating to the Project and the Final EIR. The City concludes that all the evidence supporting these findings was presented in a timely fashion, and early enough to allow adequate consideration by the City. Some findings are based on specific

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references, as and if noted below. References to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings contained herein. The reference to certain parts of the Final EIR set forth in these findings are for ease of reference and are not intended to provide an exhaustive list of the evidence relied upon for these findings.

The custodian of the documents and other materials that constitute the record of proceedings on which the City's decision is based is the Director of Planning, Building and Code Enforcement, or his designee. Such documents and other materials are located at 200 East Santa Clara Street, San José CA 95113-1905.

D. CERTIFICATION OF THE FINAL EIR

In accordance with CEQA, the City Council has, by separate resolution, certified that the Final EIR has been completed in compliance with CEQA, that the Final EIR was presented to the City Council as the decision-making body for the Project and that the members of the City Council reviewed and considered the information contained in the Final EIR prior to taking any action on the Project. Preparation of the Final EIR has been directed and overseen by the Director of the Department of Planning, Building and Code Enforcement, who also participated in its preparation. The City Council also determined by separate resolution that the Final EIR represents the independent judgment and analysis of the City. By these findings, the City Council confirms, ratifies and adopts all of the findings and conclusions of the Final EIR, except as they may be specifically modified by these findings.

The City Council recognizes that the Final EIR may contain clerical errors. The City Council has reviewed the entirety of the Final EIR and bases its determinations on the substance of the information it contains.

By adopting these findings, the City Council certifies that the Final EIR is adequate to support the review and approval of the Project and that it is adequate for each discretionary approval or other entitlement or approval required for construction and operation of the Project.

E. ABSENCE OF SIGNIFICANT NEW INFORMATION

The City Council recognizes that the Final EIR incorporates information obtained and produced after the Draft EIR was circulated and completed, and that it contains additions, clarifications, and modifications from the Draft EIR. The City Council has reviewed and considered the information in the Final EIR and finds and determines that neither the Final EIR, nor any of these modifications, adds significant new information to the Draft EIR that would require recirculation of the Final EIR under CEQA. No information has revealed the existence of (1) a significant new environmental impact that would result from the Project; (2) a substantial increase in the severity of an environmental impact; (3) a feasible Project alternative or mitigation measure not

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