

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT EFFECTS AND MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES, AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE ALMADEN RANCH RETAIL CENTER PROJECT (FILE NO. PDC10-006), FOR WHICH A FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970, AS AMENDED

WHEREAS, prior to the adoption of this Resolution, on February 22, 2012, the Planning Commission of the City of San Jose certified that certain Final Subsequent Environmental Impact Report for the Almaden Ranch Retail Center (the "Final SEIR"), which Final SEIR was completed in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local implementation guidelines, as amended (collectively, "CEQA"); and

WHEREAS, the certification of the Final SEIR by the Planning Commission was appealed to the City Council; and

WHEREAS, the City Council held a de novo public hearing on the certification of the Final SEIR on March 20, 2012, pursuant to Title 21 of the San Jose Municipal Code, at which time the City Council received the full record of the entire proceedings, took public testimony, and heard additional City staff response; and

WHEREAS, the project analyzed and more fully described in the Final SEIR consists of the Almaden Ranch Retail Center Planned Development Rezoning from A(PD) to A(PD) Planned Development Zoning District (File No. PDC10-006) to allow development of up to 400,000 square feet of commercial uses and modifications to a previously approved roadway network by extending Cherry Avenue through the 43.5-acre site, located at the southeast corner of Almaden Expressway and Chynoweth Avenue at the northeasterly quadrant of Almaden Expressway and State Route 85 (the "Project"); and

WHEREAS, approval and implementation of the Almaden Ranch Retail Center Project constitutes a project under CEQA; and

WHEREAS, the City Council is the decision-making body for the Almaden Ranch Retail Center rezoning element of the Project; and

WHEREAS, the City Council intends to take approval actions in connection with the rezoning related to the Project; and

WHEREAS, CEQA requires that in connection with the approval of a project for which an environmental impact report has been prepared that identifies one or more significant environmental effects, the decision-making body of a lead agency must make certain findings

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regarding those significant effects on the environment identified in the environmental impact report prepared for that project; and

WHEREAS, the City Council adopts this Resolution in light of the foregoing facts.

NOW THEREFORE, IT IS HEREBY STATED ON BEHALF OF AND 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 SEIR, comprising that certain Draft Subsequent Environmental Impact Report prepared for the Project together with a First, Second and Third Amendment thereto, has been completed in compliance with CEQA, and that the City Council has upheld the Planning Commission's certification of the Final SEIR, and has independently reviewed and analyzed the Final SEIR and other information in the record and has considered the information contained therein, including written and oral comments received at the public hearings on the Final SEIR and the Project, prior to acting on the Project, and has found that the Final SEIR represents the independent judgment and analysis of the City of San Jose as Lead Agency for the Project under CEQA, and designates the Director of Planning, Building and Code Enforcement at his office at 200 East Santa Clara Street, San Jose, California 95113-1905, as the custodian of documents and records of proceedings on which this decision is based; and

THAT THE CITY COUNCIL does hereby find and recognizes that the Final SEIR contains additions, clarifications, modifications and other information in its responses to comments on the Draft SEIR and also incorporates information obtained by the City since the Draft SEIR was issued. The City Council does hereby find and determine that such changes and additional information are not significant new information as that term is defined under the provisions of CEQA because such changes and additional information do not indicate that any new significant environmental impacts not already evaluated would result from the Project and they do not reflect any substantial increase in the severity of any environmental impact; and

FURTHER THAT THE CITY COUNCIL OF THE CITY OF SAN JOSE does hereby make the following findings with respect to the significant effects on the environment of the Project as it is described more fully in the Final SEIR:

I. FINDINGS CONCERNING SIGNIFICANT ENVIRONMENTAL EFFECTS

A. AIR QUALITY

Impact

Regional average daily and annual operational emissions of ROG, NO_x and PM₁₀ generated by the Project would exceed BAAQMD significance thresholds.

Mitigation

An Air Quality Mitigation Plan shall be prepared in accordance with Chapter 4 of the BAAQMD's *CEQA Air Quality Guidelines*, to include measures such as:

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- . Operational mobile source measures including availability of transit service, bike and pedestrian facilities, free transit passes for employees, secure bike parking, provision of alternate transportation information, and carpool matching programs;
- . Operational area-source measures including increased energy efficiency and use of low VOC architectural coatings; and
- . Energy efficiency measures including requiring smart meters and programmable thermostats, meeting GBC standards for natural gas, installing solar water heaters, improving the jobs/housing balance, completing streets, and increasing roof/ceiling insulation.

The Plan shall be submitted for review to and approval by the Director of Planning, Building and Code Enforcement prior to the issuance of a PD Permit for the Project. The provisions of the Air Quality Mitigation Plan shall be fully implemented to the satisfaction of the Director of Planning, Building and Code Enforcement.

Impact

Project construction will produce short-term fugitive dust generated as a result of demolition, site preparation and construction.

Mitigation

The following Best Management Practices shall be required of construction contracts and specifications for all construction of the Project to prevent visible dust emissions from leaving the Project site:

- . All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- . All haul trucks transporting soil, sand or other loose material off-site shall be covered.
- . All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- . All vehicle speeds on unpaved roads shall be limited to 15 mph.
- . All roadways, driveways and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- . Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by CCR Title 13). Clear signage shall be provided for construction workers at all access points.
- . All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- . A publicly-visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints shall be posted. This person shall respond and

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take corrective action within 48 hours. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.

FINDINGS

The Project includes specific mitigation measures that would reduce the temporary construction air quality impacts to a less-than-significant level. The Project includes specific mitigation measures that would reduce the regional operational emissions of project development; however, the Project’s regional average daily and annual operational emissions of ROG, NO_x and PM₁₀ would still exceed the BAAQMD significance threshold and would remain a **significant unavoidable impact**.

B. BIOLOGICAL RESOURCES

Impact

All 95 onsite (non-riparian) trees, 25 of which are Ordinance-sized and 11 of which are native, are assumed to be removed with the Project.

Mitigation

Any tree that is removed shall be replaced with the addition of a new tree(s) at the ratios shown in the following Tree Replacement Ratios table.

Tree Replacement Ratios

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12 to <18 inches	3:1	2:1	None	24-inch box
Less than 12 inches	1:1	1:1	None	15-gallon container

x:x = tree replacement to tree loss ratio

Note: Trees greater than 18” diameter shall not be removed unless a Tree Removal Permit, or equivalent, has first been approved for the removal of such trees.

The species and exact number of trees to be planted on the site shall be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

Replacement trees are to be above and beyond standard landscaping; required street trees do not count as replacement trees, nor do riparian corridor plantings.

In the event the Project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:

- . The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees.
- . An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building and Code Enforcement. Contact Jaime Ruiz, Parks, Recreation and Neighborhood Services Landscape Maintenance Manager, at 975-7214 or jaime.ruiz@sanjoseca.gov for specific park locations in need of trees.
- . A donation of \$300.00 per mitigation tree will be paid to Our City Forest for in-lieu offsite tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. Contact Rhonda Berry, Our City Forest, at (408) 998-7337 x106 to make a donation. A donation receipt for offsite tree planting will be provided to the Planning Project Manager prior to issuance of a development permit.

Impact

Twenty-six (26) trees within the riparian corridor will remain with the Project. Trees to remain on the site could be disturbed by construction activity.

Mitigation

The following tree protection measures, as well as those contained in the San Jose Municipal Code Section 13.32.130, shall also be included in the Project in order to protect trees to be retained during construction:

Pre-construction Treatments

- . The applicant will retain a consulting arborist. The construction superintendent will meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
- . Fence all trees to be retained to completely enclose the tree protection zone prior to demolition, grubbing or grading. Fences will be 6-foot chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction are completed.
- . Prune trees to be preserved to clean the crown and to provide clearance. All pruning will be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.

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During Construction

- . No grading, construction, demolition or other work will occur within the tree protection zone. Any modifications must be approved and monitored by the consulting arborist.
- . Any root pruning required for construction purposes will receive the prior approval of, and be supervised by, the consulting arborist.
- . Supplemental irrigation will be applied as determined by the consulting arborist.
- . If injury should occur to any tree during construction, it will be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- . No excess soil, chemicals debris, equipment or other materials will be dumped or stored within the tree protection zone.
- . Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel.
- . As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees will be designed to withstand differential displacement.

Impact

Project development could impact the riparian corridor along the Guadalupe River.

Mitigation

The riparian corridor along the Guadalupe River shall be preserved in its natural state.

A 100-foot setback shall be established from the edge of the riparian corridor.

Landscape plantings within the setback area, if any, shall be comprised of trees, shrubs and/ or groundcover species that are riparian and native to the region, in accordance with the City's Riparian Corridor Policy.

Lighting shall be consistent with the City's Outdoor Lighting Policy (Policy 4-3) and will be designed so that it is not directed toward the riparian corridor, in accordance with the City's Riparian Corridor Policy.

Prior to issuance of a grading permit, a City approved erosion control plan shall be developed with such measures as: 1) the timing of grading activities during the dry months; 2) temporary and permanent planting of exposed soil; 3) temporary check dams; 4) temporary sediment basins and traps; and 5) temporary silt fences. The provisions of the Erosion Control Plan shall be implemented to the satisfaction of the Director of Planning, Building and Code Enforcement.

An HMP basin located within the riparian corridor setback, to maintain runoff from the site at pre-construction levels, shall sit back from the edge of existing riparian habitat by a minimum of 25 feet.

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Impact

The Project site provides potentially suitable nesting habitat for white-tailed kite, loggerhead shrike, California yellow warbler, non-listed raptors, and other migratory breeding birds.

Mitigation

If possible, construction should be scheduled between September 1 and January 31 (inclusive) to avoid the nesting season. If this is not possible, pre-construction surveys for nesting white-tailed kite, loggerhead shrike, California yellow warbler, non-listed raptors, and other migratory breeding birds shall be conducted by a qualified ornithologist to identify active nests that may be disturbed during Project implementation. Between February and April (inclusive) pre-construction surveys shall be conducted no more than fourteen (14) days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for nests. If an active nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist shall, in consultation with the California Department of Fish and Game, designate a construction-free buffer zone (typically 250 feet for raptors and 100 feet for other birds) around the nest, which shall be maintained until after the breeding season has ended and/or a qualified ornithologist has determined that the young birds have fledged. The applicant shall submit a report to the Director of Planning, Building and Code Enforcement indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement prior to the issuance of any grading or building permit.

Impact

The Project site provides potentially suitable habitat for pallid bat and other non-listed bats.

Mitigation

A detailed bat survey shall be conducted by a qualified bat biologist to determine if bats are roosting or breeding in the onsite buildings prior to demolition. A qualified bat biologist shall look for individuals, guano, staining, and/or vocalization by direct observation and potential waiting for nighttime emergence. The survey shall be conducted during the time of year when bats are active, between April 1 and September 15. If demolition is planned within this timeframe, the survey shall be conducted within 30 days of demolition. An initial survey could be conducted to provide early warning if bats are present, but a follow-up survey will be necessary within 30 days. If demolition is

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planned outside of this timeframe (September 16 through March 31), the survey shall be conducted in September prior to demolition. If no bats are observed to be roosting or breeding in these structures, then no further action would be required, and demolition can proceed.

If a non-breeding bat colony is found in any buildings to be demolished, the individuals will be humanely evicted via the partial dismantlement of the buildings prior to demolition under the direction of a qualified bat biologist to ensure that no harm or “take” would occur to any bats as a result of demolition activities. If a maternity colony is detected in the buildings, then a construction-free buffer shall be established around the structure and remain in place until it has been determined by a qualified bat biologist that the nursery is no longer active. Demolition will preferably be done between March 1 and April 15 or August 15 and October 15 to avoid interfering with an active nursery.

A biologist report outlining the results of pre-construction bat surveys and any recommended buffer zones or other mitigation shall be submitted to the Director of Planning, Building and Code Enforcement and shall first be approved to the satisfaction of the Director of Planning, Building and Code Enforcement prior to the issuance of any grading, building, or tree removal permit.

Impact

The Project site supports potentially suitable habitat for burrowing owls.

Mitigation

A pre-construction survey for burrowing owls shall be conducted by a qualified biologist within thirty (30) days prior to any ground disturbance activities.

A buffer zone of a minimum of 250 feet shall be established around active burrowing owl nesting sites if nesting burrowing owls are discovered during pre-construction surveys conducted between February 1st and August 31st, and no disturbance shall occur within the buffer zone until a qualified biologist has determined that the young birds have fledged; and at least 6.5 acres of foraging habitat contiguous with the occupied burrow site shall be protected for each pair of breeding burrowing owls (with or without dependent young) or single unpaired resident bird.

No disturbance shall occur within 160 feet of occupied burrows if over-wintering burrowing owls are discovered using the site during the non-breeding season (September 1st through January 31st); and at least 6.5 acres of foraging habitat contiguous with the occupied burrow site shall be protected for each pair of burrowing owls or single unpaired resident bird.

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If any burrowing owls are discovered using the site during the pre-construction surveys during the non-breeding season, a burrowing owl relocation plan to be approved by the California Department of Fish and Game shall be developed and implemented, including passive measures such as installation of one-way doors in active burrows for up to four days, careful excavation of all active burrows after four days to ensure no owls remain underground, and filling all burrows in the construction area to prevent owls from using them. This plan must provide for the owls' relocation to nearby lands possessing available nesting and foraging habitat.

A biologist report outlining the results of the pre-construction burrowing owl surveys and any recommended buffer zones or other mitigation shall first be submitted to the satisfaction of the Director of Planning, Building and Code Enforcement prior to the issuance of a grading or building permit.

FINDINGS

The Project includes specific biological mitigation measures that would reduce the biological resources impacts to a **less-than-significant level**.

C. GEOLOGY AND SOILS

Impact

The Project site is underlain by moderately to highly expansive soils, which can pose a hazard to building foundations because of their shrink/swell potential.

Mitigations

Pre-moisturizing programs for the overall site, the foundation trenches, and soil subgrades for concrete slabs-on-grade shall be utilized during construction, if required by soil engineering analysis required prior to issuance of grading permit or Public Works clearance.

Drainage shall be controlled away from all structures and pavements.

Impact

Development of the project site may subject the soils to accelerated erosion.

Mitigation

A City-approved Erosion Control Plan shall be developed prior to approval of a grading permit or Public Works clearance with such measures as: 1) the timing of grading activities during the dry months, if feasible; 2) temporary and permanent planting of exposed soil; 3) temporary check dams; 4) temporary sediment basins and traps; and/or

5) temporary silt fences. The provisions of the Erosion Control Plan shall be implemented to the satisfaction of the Director of Planning, Building and Code Enforcement.

Impact

Seismic shaking at this site could be caused by moderate to major activity on the active Bay Area faults, which could endanger structures and occupants on the site.

Mitigation

The proposed structures on the site shall be designed and constructed in conformance with the Uniform Building Code Guidelines for Seismic Zone 4 to avoid or minimize potential damage from seismic shaking on the site.

Impact

Liquefaction and/or lateral spreading on the site, which could adversely impact the performance of the proposed buildings, could result from seismic shaking.

Mitigations

A report addressing the potential hazard of liquefaction shall be submitted to, and reviewed and approved by, the City Geologist prior to issuance of a grading permit or Public Works clearance. The investigation shall be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center (“SCEC”) report.

Ground improvement measures such as removal and re-compaction of low-density soils, removal of excess groundwater, in-situ ground densification, and/or other types of ground improvement; or special foundations such as deep piles or reinforcement of shallow foundations (post-tensioned mats or grid footings) shall be utilized to reduce liquefaction and/or lateral spreading, as warranted.

FINDINGS

The project includes specific mitigation measures that would reduce the geology and soils impacts to a **less-than-significant level**.

D. GREENHOUSE GAS EMISSIONS

Impact

Both Project annual greenhouse gas emissions and emissions per service population would exceed BAAQMD performance standards.

Mitigation

The following mitigation measures will be incorporated into the Project:

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- . Plant shade trees within 40 feet of the south side of buildings or within 60 feet of the west side of buildings
- . Use cool roof materials (albedo \geq 30)
- . Meet Green Building Code standards in all new construction
- . Install solar panels on select commercial building(s)

FINDINGS

The Project includes specific mitigation measures that would reduce annual greenhouse gas emissions and emissions per service population; however, the Project's annual emissions and emissions per service population would remain **a significant unavoidable impact**.

E. HYDROLOGY AND WATER QUALITY

Impact

An increase in impervious surfaces associated with Project development would cause an increase in stormwater runoff.

Mitigation

The Project shall include a hydromodification management basin within the riparian setback along the Guadalupe River frontage. Drainage runoff from the site shall be collected in underground pipes and discharged to the basin. The basin shall be sized and the outlets shall be designed so the collected runoff volume closely matches the site's pre-developed runoff in accordance with the requirements of the regional stormwater permit and Council Policy 8-14.

Impact

Construction and post-construction Project development could impact surface water and/or groundwater quality in the area.

Mitigations

Construction

Prior to the commencement of any clearing, grading or excavation, the Project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the Director of Public Works, as follows:

- . The applicant will develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities; and
- . The applicant will file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

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The Project shall incorporate Best Management Practices (BMPs) into the Project to control the discharge of stormwater pollutants, including sediments associated with construction activities.

The Project applicant shall comply with the City of San Jose Grading Ordinance, including erosion and dust control, during site preparation and with the City of San Jose Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs shall be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:

- . Restriction of grading to the dry season (April 15 through October 15) or meet City requirements for grading during the rainy season
- . Utilize onsite sediment control BMPs to retain sediment on the Project site;
- . Utilize stabilized construction entrances and/or wash racks;
- . Implement damp street sweeping;
- . Provide temporary cover of disturbed surfaces to help control erosion during construction; and
- . Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

Post-Construction

Prior to the issuance of a Planned Development Permit, the applicant shall provide details of specific BMPs including, but not limited to, bioswales, disconnected downspouts, landscaping to reduce impervious surface area, and inlets stenciled “No Dumping – Flows to Bay” to the satisfaction of the Director of Planning, Building and Code Enforcement.

The Project shall comply with the Municipal Regional Stormwater NPDES Permit No. CAS612008, which provides enhanced performance standards for the management of stormwater of new development.

The Project shall comply with applicable provisions of the following City Policies – 1) Post-Construction Urban Runoff Management Policy (6-29) which establishes guidelines and minimum BMPs and numerically-sized (or hydraulically-sized) Treatment Control Measures (TCMs) for all projects; and 2) Post-Construction Hydromodification Management Policy (8-14) which provides for hydromodification measures.

FINDINGS

The Project includes specific mitigation measures that would reduce the hydrology and water quality impacts to **a less-than-significant level**.

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F. NOISE

Impact

The Project will be impacted by existing and future traffic noise levels that exceed adopted City exterior standards.

Mitigation

Prior to issuance of PD permits for the Project, when specific plans are proposed, the developer shall retain a qualified acoustical consultant to ensure that an exterior noise level of 60 dBA DNL for all outdoor Project uses is not exceeded to the satisfaction of the Director of Planning, Building and Code Enforcement.

Impact

The Project will be impacted by existing and future traffic noise levels that exceed adopted City interior standards.

Mitigations

Windows shall have sound insulation ratings of STC 30 or higher, and walls shall be STC 50 or higher at buildings located within approximately 300 feet of the centerline of Almaden Expressway.

All buildings shall be equipped with forced air ventilation systems to allow the occupants the option of maintaining the windows and/or doors closed to control noise, and maintain an interior noise level of 45 dBA DNL.

Prior to issuance of PD permits, the developer shall retain a qualified acoustical consultant to check the building plans to ensure that interior noise levels can be sufficiently attenuated to 45 dBA DNL to the satisfaction of the Director of Planning, Building and Code Enforcement.

Impact

Noise from operations associated with the Project could adversely impact nearby residential areas.

Mitigation

Prior to issuance of PD permits for the Project, when specific plans and equipment are proposed, the developer shall retain a qualified acoustical consultant to ensure that a noise level of 55 dBA DNL is not exceeded at the nearest residential property line to the satisfaction of the Director of Planning, Building and Code Enforcement.

Impact

Mechanical equipment associated with the Project could result in significant noise impacts to adjacent land uses.

Mitigation

Post-construction mechanical equipment shall conform to the City's General Plan limitation of 55 dBA DNL at residential property lines; and 60 dBA DNL at commercial property lines by utilizing measures such as equipment selection and location and, if necessary, equipment enclosures.

Impact

Temporary noise from construction equipment will result in significant noise impacts at nearby sensitive land uses.

Mitigations

Construction activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or offsite 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.

The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.

Stationary noise-generating equipment shall be located as far as possible from sensitive receptors. Staging areas shall be located a minimum of 200 feet from noise-sensitive receptors, such as residential uses.

Unnecessary idling of internal combustion engines shall be prohibited.

A "noise disturbance coordinator," who will be responsible for responding to any local complaints about construction noise, shall be designated. The disturbance coordinator shall determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site.

FINDINGS

The project includes specific mitigation measures that would reduce the noise impacts to a **less-than-significant level**.

G. TRANSPORTATION / TRAFFIC

Impact

Project traffic will have an adverse impact on the intersection of Almaden Expressway and Cherry Avenue.

Mitigation

The intersection of Almaden Expressway and Cherry Avenue shall be fully built out, including the addition of a fourth northbound through lane; the addition of a second southbound left-turn lane; the conversion of the eastbound and westbound approaches from permitted to protected left-turn phasing; the construction of the westbound approach to include two left-turn lanes, one through lane and one right-turn lane; and the provision of a separate eastbound through lane. (58.0 seconds of delay – Level E)

Impact

Project traffic will have an adverse impact on the intersection of Almaden Expressway and State Route 85 (SR 85) North.

Mitigation

A fourth northbound through lane along the entire project frontage on Almaden Expressway shall be constructed to create a receiving lane for the westbound right-turn movement from the SR 85 northbound off-ramp, which would allow vehicles to make a right turn on red onto northbound Almaden Expressway; and the lanes on the SR 85 northbound off-ramp shall be reconfigured to provide one dedicated left-turn lane, one shared left-turn/through lane, and one dedicated right-turn lane. (69.9 seconds of delay – Level E)

Implementation of this mitigation measure is required and will meet the City of San Jose's Level of Service Policy; however, the intersection of Almaden Expressway and SR 85 (North) off ramp is under the jurisdiction of both the County of Santa Clara and CalTrans; therefore, any proposed improvements at this intersection off ramp will require review, approval and issuance of an Encroachment Permit from these jurisdictions.

FINDINGS

The Project includes specific mitigation measures that would reduce the transportation / traffic impacts to a **less-than-significant level**.

II. CUMULATIVE IMPACTS

A. AIR QUALITY

Description

The regional average daily and annual operational emissions of ROG, NO_x and PM₁₀ generated by the proposed Project would combine with emissions across the Bay Area to cumulatively contribute to air quality. Because the Project would exceed the adopted thresholds for individual projects, it is reasonable to conclude that the Project's contribution to air quality would be cumulatively considerable; therefore, the proposed Project would make a cumulatively significant contribution to air quality and implementation of the proposed Project will result in a significant unavoidable air quality impact.

Mitigation

An Air Quality Mitigation Plan shall be prepared in accordance with Chapter 4 of the BAAQMD's *CEQA Air Quality Guidelines*, to include measures such as:

- . Operational mobile source measures including availability of transit service, bike and pedestrian facilities, free transit passes for employees, secure bike parking, provision of alternate transportation information, and carpool matching programs;
- . Operational area-source measures including increased energy efficiency and use of low VOC architectural coatings; and
- . Energy efficiency measures including requiring smart meters and programmable thermostats, meeting GBC standards for natural gas, installing solar water heaters, improving the jobs/housing balance, completing streets, and increasing roof/ceiling insulation.

The Plan shall be submitted for review to and approval by the Director of Planning, Building and Code Enforcement prior to the issuance of a PD Permit. The provisions of the Air Quality Mitigation Plan shall be implemented to the satisfaction of the Director of Planning, Building and Code Enforcement.

FINDINGS

Implementation of the above Final SEIR project-level mitigation measures will reduce the potentially significant cumulative impact but not to a less-than-significant level. This impact would remain a **significant unavoidable cumulative impact**.

B. GREENHOUSE GAS EMISSIONS

Description

The greenhouse gas emissions generated by the proposed Project would combine with emissions across the State, nation and globe to cumulatively contribute to global climate change. Because the Project would exceed the adopted thresholds for individual projects, it is reasonable to conclude that the Project's contribution to global climate change would be cumulatively considerable; therefore, the proposed Project would make a cumulatively significant contribution to greenhouse gas emissions and implementation of the proposed Project will result in a significant unavoidable global climate change impact.

Mitigation

The following mitigation measures will be incorporated into the Project:

- . Plant shade trees within 40 feet of the south side of buildings or within 60 feet of the west side of buildings
- . Use cool roof materials (albedo \geq 30)
- . Meet Green Building Code standards in all new construction
- . Install solar panels on select commercial building(s)

FINDINGS

Implementation of the above Final SEIR project-level mitigation measures will reduce the potentially significant cumulative impact, but not to a less-than-significant level. This impact would remain a **significant unavoidable cumulative impact**.

III. ALTERNATIVES TO THE PROPOSED PROJECT

A. NO PROJECT ALTERNATIVE

Description

Under the No Project alternative, the project site would continue as active and fallow agricultural land with a complex of buildings that is utilized for the production and seasonal sale of agricultural products.

Comparison to Proposed Project

The continued operation of the existing land uses on the Project site would not result in any significant impacts, as defined by CEQA. Impacts from the continued operation of the existing land uses would be those that occur from the conditions reflected throughout the Final SEIR in the sections entitled "Existing Setting". Continued operations would not

increase the severity of any impacts or result in any new impacts compared to the proposed Project.

FINDINGS

The No Project alternative, assuming the continuation of the existing land uses onsite, would not achieve any of the Project objectives and would leave more than half of the Project site undeveloped and underutilized. Overall, the No Project alternative would be environmentally superior to the Project because it would avoid all new environmental impacts. The No Project alternative would not, however, provide any new regional retail commercial uses or new jobs in close proximity to existing housing and transit services, nor would it provide increased tax revenue to the City. Therefore, this alternative would not produce these important benefits of the Project. For the above-stated reasons, this alternative is found infeasible and rejected.

B. REDUCED PROJECT ALTERNATIVE - 172,000 SQUARE FEET OF COMMERCIAL TO MEET AIR QUALITY STANDARDS

Description

Under this alternative, the overall size of the proposed Project would be reduced by approximately 228,000 square feet (approximately 57 percent) to 172,000 square feet in order to meet the NO_x daily standard of 54 lbs/day, which has the greatest impact.

Comparison to Proposed Project

This Reduced Project (172,000 square feet) alternative would reduce the Project's air quality impact to a less-than-significant level. It would require similar geotechnical, water quality, and noise mitigation as the proposed Project. There would be less of an impact on biological resources, and on the riparian corridor, and would generate less traffic and air pollution.

FINDINGS

This Reduced Project (172,000 square feet) alternative would not achieve the Project objectives of developing up to 400,000 square feet of commercial uses. It would not provide as many new regional retail commercial uses or new jobs, nor would it provide as much increased tax revenue to the City. Therefore, this alternative would not produce these important benefits of the Project. For the above-stated reasons, this alternative is found infeasible and rejected.

C. REDUCED PROJECT ALTERNATIVE - 28,000 SQUARE FEET OF COMMERCIAL TO MEET GREENHOUSE GAS EMISSIONS STANDARDS

Description

Under this alternative, the overall size of the proposed Project would be reduced by approximately 372,000 square feet (approximately 93 percent) to 28,000 square feet in order to meet the annual greenhouse gas emissions standard of 1,100 metric tons.

Comparison to Proposed Project

This Reduced Project (28,000 square feet) alternative would reduce the greenhouse gas emissions impact to a less-than-significant level. It would require similar geotechnical, water quality, and noise mitigation as the proposed Project. There would be less of an impact on biological resources and on the riparian corridor and would generate less traffic and air pollution.

FINDINGS

This Reduced Project (28,000 square feet) alternative would not achieve the Project objectives of developing up to 400,000 square feet of commercial uses. It would not provide nearly as many new regional retail commercial uses or new jobs, nor would it provide nearly as much increased tax revenue to the City. Therefore, this alternative would not produce these important benefits of the Project. For the above-stated reasons, this alternative is found infeasible and rejected.

D. ALTERNATIVE LOCATION - ARCADIA-EVERGREEN

Description

Under this alternative, the Project location would be a 45.5-acre site at Quimby Road and Capitol Expressway, which is the only comparable large, undeveloped site in the City that is designated for commercial development. However, while the site appears to be available as an alternative location, there is currently a rezoning application on file by the same applicant for a 200,000-square-foot retail center.

Comparison to Proposed Project

Development on this alternative site would have the same significant unavoidable air quality and greenhouse gas emissions impacts as the Project site. There would be significant traffic impacts in the Evergreen area that are mitigated by an area-wide plan and fee.

FINDINGS

The alternative site is already proposed for commercial development; however, it does not meet the Project objective of being located in the Almaden Valley area. For the above-stated reasons, this alternative is found infeasible and rejected.

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

IV. MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution and incorporated herein as EXHIBIT “A”, and adopted as a part of this Resolution, is the Mitigation Monitoring and Reporting Program for the Project (“MMRP”). The MMRP identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action. To the extent of any conflict between the language contained in the MMRP and the language contained in the main body of this Resolution, the language contained in the main body of this Resolution shall control and prevail.

V. OVERRIDING CONSIDERATIONS

The Project provides specific economic, legal, social, technological, and other benefits identified below that outweigh the unavoidable impacts identified in the Final SEIR, and the City hereby finds that the adverse environmental effects are considered acceptable in light of the overriding benefits of the Project as follows – these overriding benefits recognize the fact that the preparation of the Final SEIR commenced under the City’s 2020 General Plan and continued during that period of time that the City considered and adopted its Envision 2040 General Plan, such that the Project was analyzed and reviewed for its ability to further both General Plans:

- The Project offers the opportunity within the City for high quality commercial development.
- The Project will fully conform to the City’s Commercial Design Guidelines.
- The Project helps generate a more robust and stable tax base that is necessary to fund the City’s urban service needs in conformance with both the San Jose 2020 and Envision 2040 General Plan Economic Development Strategy.
- The Project is consistent with the Economic Development and Growth Management Major Strategies of both General Plans that encourage the improvement of the existing jobs/housing imbalance and the provision of infill development.
- The Project is consistent with the Sustainable City Major Strategy of both General Plans that encourages design features that improve energy and water use efficiency and reduce consumption and waste.
- The Project provides a commercial center on a major roadway that is well served by a public transportation system and within close proximity to residential development.
- The Project generates approximately 1,000 needed new jobs in the City.

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RD:RG

- The Project is compatible with the existing and planned uses in the surrounding area.
- The Project preserves the riparian corridor along the Guadalupe River in its natural state.

ADOPTED this day of March 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk

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