

# **MITIGATION MONITORING AND REPORTING PROGRAM**

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**5977 Silver Creek Valley Road Warehouse Project**  
**File No. H21-047**  
**July 2022**

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# PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration prepared for the 5977 Silver Creek Valley Road Warehouse Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This MMRP addresses those measures in terms of how and when they will be implemented.

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

I, Jason Bernstein, the applicant, on the behalf of Duke Realty, LP, hereby agree to 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 8/30/22

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<b>BIOLOGICAL RESOURCES</b>					
<b>Impact BIO-1:</b> Development of the proposed project would result in impacts to nesting birds, if present on or near the site at the time of construction.					
<b>MM BIO-1.1:</b> Prior to the issuance of any demolition, grading or building permits (whichever occurs first), the project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive).	Schedule demolition and construction activities to avoid the nesting season (February 1 <sup>st</sup> through August 31 <sup>st</sup> )	Prior to the issuance of any demolition, grading or building permits (whichever occurs first) and during construction	City’s Director of Planning, Building and Code Enforcement or the Director’s designee	Confirm timing	Prior to the issuance of any demolition, grading or building permits (whichever occurs first).
<b>MM BIO-1.2:</b> If demolition and construction cannot be scheduled between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests 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 31st inclusive). During this survey, the qualified ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. Any surveys produced prior will also be provided to the Director of Planning Building and Code Enforcement.	A qualified ornithologist shall conduct pre-construction surveys for nesting birds.	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	City’s Director of Planning, Building and Code Enforcement or the Director’s designee	Confirm execution of surveys	Prior to the issuance of any demolition, grading or building permits (whichever occurs first),

		August 31st inclusive).			
<b>MM BIO-1.3:</b> If an active nest is found sufficiently close to work areas to be disturbed by construction, the qualified ornithologist 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.	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	If an active nest is found sufficiently close to work areas to be disturbed by construction	City's Director of Planning, Building and Code Enforcement or the Director's designee	Confirm Buffer	Prior to the issuance of any demolition, grading or building permits (whichever occurs first),
<b>MM BIO-1.4:</b> Prior to any vegetation removal or approval of any grading or demolition permits (whichever occurs first), the qualified ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Director of Planning, Building and Code Enforcement or the Director's designee.	Qualified ornithologist shall submit a report indicating the results of the survey and any designated buffer zones	Prior to any vegetation removal or approval of any grading or demolition permits (whichever occurs first)	City's Director of Planning, Building and Code Enforcement or the Director's designee.	Receive survey report	Prior to any vegetation removal or approval of any grading or demolition permits (whichever occurs first)
<b>Impact BIO-2:</b> Construction during the nesting season (February 1st to August 31st, inclusive) would indirectly impact nesting tricolored blackbird if a nesting colony was found within Coyote Creek within 250 feet of construction activities.					
The proposed project would implement <b>MM BIO-1.1</b> through <b>MM BIO-1.4</b> which would require pre-construction surveys to identify if nesting birds are located in vegetation on or near the construction area. If found, a buffer would be established for the blackbird habitat. Therefore, with mitigation implemented, the proposed project would have a less than significant impact on special status species.	See MM BIO-1.1 through MM BIO-1.4	See MM BIO-1.1 through MM BIO-1.4	See MM BIO-1.1 through MM BIO-1.4	See MM BIO-1.1 through MM BIO-1.4	See MM BIO-1.1 through MM BIO-1.4
<b>GREENHOUSE GAS EMISSIONS</b>					
<b>Impact GHG-1:</b> The proposed project would not be compliant with the 2030 Greenhouse Gas Reduction Strategy and would result in cumulative increases in greenhouse gas emissions.					
<b>MM GHG-1:</b> Prior to issuance of any certificates of occupancy, the project applicant shall prepare an Electricity Provision Plan that demonstrates 100% carbon free electricity supply for site operations. The Electricity Provision Plan shall be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee prior to issuance of certificate of occupancy. The plan shall demonstrate that there	Prepare an Electricity Provision Plan that demonstrates 100% carbon free electricity supply for site operations	Prior to issuance of certificate of occupancy	Director of Planning, Building and Code Enforcement or Director's designee	Review Plan	Prior to issuance of certificate of occupancy

<p>would be sufficient carbon-free electricity supply for tenant operations such that 100% of the electricity used for site operations is carbon free. For example, this could be achieved by the following measures:</p> <ul style="list-style-type: none"> <li>• Enrollment in San José Clean Energy (SJCE) TotalGreen program which includes 100 percent renewable energy;</li> <li>• Installation of a solar photovoltaic (PV) system or other source of renewable energy generation on-site, or otherwise acquire energy from the local utility that has been generated by renewable sources, that would provide 100 percent of the expected building load. The PV requirement is subject to the utility provider agreeing to serve and facilitate the use of PV. Should utility provider limit the off-site export, the proposed project may utilize a battery energy storage system (BESS) to lower off-site export while maintaining on-site renewable generation to off-set consumption;</li> <li>• A combination of an on-site PV system and utility provided carbon-free electricity.</li> </ul>					
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**TRANSPORTATION**

**Impact TRAN-1:** The proposed project would exceed the industrial VMT per employee threshold of 14.37 VMT by 5.8 percent during operations of the project.

<p><b>MM-TRAN 1</b> Prior to issuance of any grading permits, the project applicant shall mitigate the significant VMT impact by implementing a variety of VMT reduction strategies. The project applicant shall implement the following multi-modal infrastructure improvements to incentivize alternative modes of travel and reduce VMT generation for the site:</p> <ul style="list-style-type: none"> <li>• Construct a crosswalk on the west leg of the Silver Creek Valley Road and Fontanoso Way intersection. Potential signal and utility modifications would be needed to implement the improvement. This improvement will satisfy VMT reduction strategies for Pedestrian Network Improvement by increasing pedestrian access beyond the project development frontage.</li> </ul>	<p>Implement multi-modal infrastructure improvements to incentivize alternative modes of travel and reduce VMT generation by 5.8 % for the site</p>	<p>Prior to issuance of any grading permits and during Construction</p>	<p>Director of Planning, Building and Code Enforcement or Director's designee</p>	<p>Review Planset to approve design of mitigation</p>	<p>Prior to issuance of any grading permits</p>
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<ul style="list-style-type: none"> <li>• Extend the Class IV protected bike lanes along Silver Creek Valley Road beyond the project frontage westward to the northeast corner of the US-101 Off-Ramp-Coyote Road/Silver Creek Valley Road intersection connecting to the Coyote Creek Trail per City of San Jose Better Bike Plan 2025. This improvement will satisfy VMT reduction strategies for Bike Access Improvement by improving access to the Coyote Creek Trail and reducing the project’s distance to the nearest existing bicycle facility from approximately 300 feet to 10 feet.</li> <li>• Implement a new bus stop along the project frontage at the northwest corner of the Silver Creek Valley Road/Fontanoso Way intersection (as a pair with the existing WB bus stop) to increase transit accessibility. The final design would require coordination with VTA and the City.</li> </ul> <p>Implementation of the above mitigation measures would reduce VMT generation rates by 5.8 %, and VMT to below the 14.37 threshold.</p>					
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**Source:** City of San José. Initial Study. 5977 Silver Creek Valley Road Warehouse Project. July 2022.