

## MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. “Significant effect on the environment” means a substantial or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

**PROJECT NAME:** Electronic Signs on City-Owned Property Project – Downtown sites

**PROJECT FILE NUMBER:** ER23-034

**PROJECT DESCRIPTION:** The project consists of the installation and operation of six programmable electronic signs on five City-owned parcels in the downtown San José area in accordance with Title 23 of the San José Municipal Code and Council Policy 6-4. The proposed electronic signs are as follows:

1. Market & San Pedro Garage: One 1,176 sq. ft. attached, corner wrap sign at the northeast corner of the garage at the intersection of W. Saint John St. and Market St.
2. Tech Interactive Museum: One 800 sq. ft. attached, corner wrap sign at the northeast corner of the museum at the intersection of Park Avenue and S. Market Street.
3. Center for the Performing Arts: Two free-standing signs, consisting of one 900 sq. ft. sign at the southwest corner of Almaden Boulevard and Park Avenue and one 900 sq. ft. sign at the northwest corner of Almaden Boulevard and West San Carlos Street.
4. McEnery Convention Center: One 1,028 sq. ft. attached, dual-sided sign at the southwest portion of the building facing Almaden Boulevard.
5. Second & San Carlos Garage: One 1,120 sq. ft. attached sign at the southwest portion of the garage facing Second Street.

Location and Assessor’s Parcel No.: The location, address, and assessor’s parcel number (APN) for each of the six proposed signs are summarized in the table below.

<b>Sign ID.</b>	<b>Name of City-Owned Property/Structure</b>	<b>Location</b>	<b>Address</b>	<b>APN</b>
1	Market & San Pedro Garage	Northeast corner of the Market & San Pedro Garage (intersection of W. St. John Street and Market Street)	45 N San Pedro Street	259-34-039
2	The Tech Interactive Museum	Northeast corner of The Tech Interactive building (intersection off Park Avenue and S. Market Street)	201 S Market Street	259-42-087
3A 3B	Center for the Performing Arts	Southwest corner of Almaden Boulevard and Park Avenue  Northwest corner of Almaden Boulevard and West San Carlos Street	255 S Almaden Boulevard	259-43-064
4	McEnery Convention Center	Southwest portion of the McEnery Convention Center building facing Almaden Boulevard	150 W San Carlos Street	264-29-113
5	Second & San Carlos Garage	Southwest corner of the Second & San Carlos Garage	280 S Second Street	467-46-097

**COUNCIL DISTRICT: 3**

**APPLICANT CONTACT INFORMATION:** Orange Barrel | Media (Attention: Jessica Burton); 9165 Sunset Blvd. West Hollywood, CA 90069; (214) 662-4633; [jbarton@obm.com](mailto:jbarton@obm.com)

**FINDING**

The Director of Planning, Building and Code Enforcement finds the project described above would not have a significant effect on the environment if certain mitigation measures are incorporated into the project. The attached Initial Study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this Mitigated Negative Declaration (MND), has made or agrees to make project revisions that will clearly mitigate the potentially significant effects to a less than significant level.

**ENVIRONMENTAL RESOURCE AREAS AND MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL**

- A. AESTHETICS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- B. AGRICULTURE AND FORESTRY RESOURCES** – The project would not have a significant impact on this resource, therefore no mitigation is required.

C. **AIR QUALITY** – The project would not have a significant impact on this resource, therefore no mitigation is required.

D. **BIOLOGICAL RESOURCES**

**Impact BIO-1:** Construction activities associated with the project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.

**MM BIO-1.1:** Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest), 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 1 through August 31 (inclusive).

**MM BIO-1.2:** If demolition and construction cannot be scheduled between September 1 and January 31 (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist/biologist to ensure that no nests are disturbed during Project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities. During this survey, the ornithologist/biologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.

If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest to ensure that bird nests shall not be disturbed during Project construction.

Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the City’s Director of Planning, Building and Code Enforcement or the Director’s designee.

E. **CULTURAL RESOURCES**

**Impact CUL-1:** Below-grade construction associated with the Center for Performing Arts would have the potential to encounter unknown subsurface archaeological resources.

**MM CUL-1.1:** A qualified archaeologist and a Native American monitor that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3.1 shall monitor all ground-disturbing activity associated with the installation of signs at the Center for Performing Arts site. The qualified archaeologist shall prepare a report to document the findings after construction is completed.

F. **ENERGY** – The project would not have a significant impact on this resource, therefore no mitigation is required.

G. **GEOLOGY AND SOILS** – The project would not have a significant impact on this resource, therefore no mitigation is required.

H. **GREENHOUSE GAS EMISSIONS** – The project would not have a significant impact on this

resource, therefore no mitigation is required.

## **I. HAZARDS AND HAZARDOUS MATERIALS.**

**Impact HAZ-1:** Construction of Signs 3A and 3B at the Center for Performing Arts location could result in exposure of adjacent uses and the environment to soil contamination from past uses, including residual contamination from automotive uses, lead-based paint, and/or pesticides.

**MM HAZ-1.1:** Prior to issuance of construction permits for the signs to be located at the Center for Performing Arts site, the Project Applicant shall prepare a Site Management Plan and Health and Safety Plan (“SMP and HSP”) to guide activities during demolition, excavation, and initial construction to ensure that potentially contaminated soils, groundwater, and/or other material are identified, characterized, removed, and disposed of properly. The purpose of the SMP and HSP is to establish appropriate management practices for handling impacted soil, groundwater, or other materials that may be encountered during construction activities.

The SMP shall provide the protocols for sampling of in-place soil to facilitate the profiling of the soil for appropriate off-site disposal or reuse, and for construction worker safety, dust mitigation during construction and potential exposure of contaminated soil to future users of the site. The soil profiling shall include (but not limited to) the collection of shallow soil samples (upper one foot) and analyses for lead and organochlorine pesticides. The soil profiling shall be performed prior to any significant earthwork.

If there are no contaminants identified on the Project sites that exceed applicable screening levels published by the Regional Water Quality Control Board, Department of Toxic Substances Control, and/or Environmental Protection Agency (“applicable screening levels”), the SMP does not need to be submitted to an oversight agency and only submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee and the Environmental Compliance Officer in the Environmental Services Department prior to construction earthwork activities.

If contaminants are identified at concentrations exceeding applicable screening levels, the Project Applicant shall enter the County of Santa Clara Department of Environmental Health Site Cleanup Program. The SMP and planned remedial measures shall be reviewed and approved by the Santa Clara County Department of Environmental Health. A copy of the SMP and HSP shall be submitted to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement and with the Supervising Environmental Compliance Officer in the City of San José’s Environmental Services Department.

**J. HYDROLOGY AND WATER QUALITY** – The project would not have a significant impact on this resource, therefore no mitigation is required.

**K. LAND USE AND PLANNING** – The project would not have a significant impact on this resource, therefore no mitigation is required.

**L. MINERAL RESOURCES** – The project would not have a significant impact on this resource, therefore no mitigation is required.

**M. NOISE** – The project would not have a significant impact on this resource, therefore no mitigation

is required.

- N. **POPULATION AND HOUSING** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- O. **PUBLIC SERVICES** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- P. **RECREATION** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- Q. **TRANSPORTATION** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- R. **TRIBAL CULTURAL RESOURCES**

**Impact TCR-1:** Below-grade construction associated with the Project could have the potential to encounter unknown subsurface tribal cultural resources.

**MM TCR-1.1:** The following measures shall be implemented:

Comprehensive Monitoring Plan. Prior to issuance of any tree removal, grading, and/or building permits or activities, the archaeologist shall collaborate with a representative from a Native American Tribe that is traditionally and culturally affiliated with the geographic area pursuant to Public Resources Code Section 21080.3.1 (see MM CUL-1.1) to establish a detailed written monitoring plan. This plan should outline how monitoring will be conducted, the specific roles and responsibilities of all parties involved, and the steps to be taken if Native American Tribal Cultural resources (“tribal cultural resources”) are discovered.

Conduct Sensitivity Training. Implement cultural resources sensitivity training for all Project staff and contractors who will be onsite during ground disturbance. This training shall cover the significance of the sites, the importance of respecting cultural resources, and the specific protocols to follow if artifacts or other items of cultural importance are found. Documentation (i.e., sign in sheets) verifying that Cultural Sensitivity Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee.

Treatment Plans. Ensure that the Native American Tribe is consulted in the development of any treatment plans for the handling of discovered resources. Their input can provide invaluable guidance on how to treat these finds respectfully and appropriately.

Documentation and Reporting. Keep thorough records of monitoring activities, findings, and any actions taken in response to discovered resources. Documentation should be shared with the Native American tribe and relevant authorities as appropriate.

- S. **UTILITIES AND SERVICE SYSTEMS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- T. **WILDFIRE** – The project would not have a significant impact on this resource, therefore no mitigation is required.

**U. MANDATORY FINDINGS OF SIGNIFICANCE.**

Cumulative impacts would be less than significant. The project would comply with existing regulations and City standard conditions of approval. The proposed project would implement the identified mitigation measures and would either have no impacts or less than significant impacts on riparian habitat or other sensitive natural communities, migration of species, applicable biological resources protection ordinances, cultural resources (including tribal cultural resources), and hazards and hazardous materials. Therefore, the proposed project would not contribute to any cumulative impact for these resources. The project would not cause changes in the environment that have any potential to cause substantial adverse direct or indirect effects on human beings.

**PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **November 15, 2024 at 5:00 p.m.** any person may:

1. Review the Draft Mitigated Negative Declaration (MND) and attached Initial Study as an informational document only; or
2. Submit written comments regarding the information and analysis in the Draft MND/Initial Study. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND/Initial Study, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND. Please submit comments to: Cort Hitchens, Environmental Project Manager; 200 E. Santa Clara Street – Tower 3; San Jose, CA 95113 or via e-mail at [cort.hitchens@sanjoseca.gov](mailto:cort.hitchens@sanjoseca.gov).

CHRISTOPHER BURTON, Director  
Planning, Building and Code Enforcement



Deputy

10/11/24

Date

Cort Hitchens  
Environmental Project Manager

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