

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.

NAME OF PROJECT: Digester and Thickener Facilities Upgrade Project

PROJECT FILE NUMBER: PP15-055

PROJECT DESCRIPTION: The project is envisioned as the backbone of a major anaerobic digestion process conversion at the San Jose-Santa Clara Regional Wastewater Facility (RWF). Components of the project include upgrades and improvements to the anaerobic digesters, dissolved air flotation thickeners, and digester gas system; conversion of the current mesophilic digestion process to a temperature (thermophilic/mesophilic) phased anaerobic digestion process; odor control system; and replacement of existing flares.

PROJECT LOCATION & ASSESSORS PARCEL NO.: 700 Los Esteros Road; APN: 015-31-024

COUNCIL DISTRICT: 4

APPLICANT CONTACT INFORMATION: Ken Davies, Environmental Compliance Officer, City of San Jose Environmental Services Department, 200 E. Santa Clara Street, 10th Floor, San Jose, CA 95113-1905, (408) 975-2587.

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- A. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- B. **AGRICULTURE AND FOREST RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- C. **AIR QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- D. **BIOLOGICAL RESOURCES.**

Impact D-1: Construction activities may result in abandonment of a nest in active use and loss of any eggs or young in the nest, resulting in violation of the federal Migratory Bird Treaty Act and State Fish and Game sections.

The following mitigation measures will be included as part of the project during the construction phase to avoid the inadvertent take of raptor and other protected migratory birds' nests:

Mitigation Measure D-1.1: If initial construction is proposed during the nesting season (February 1 to August 31), a focused survey for nesting raptors and other migratory birds shall be conducted by a qualified biologist within 7 days prior to the onset of construction in order to determine whether any active nests are present in the Area of Potential Effects (APE) and surrounding area within 100 feet of proposed construction. The survey shall be reconducted any time construction has been delayed or curtailed for more than 7 days during the nesting season.

Mitigation Measure D-1.2: If no active nests are identified during the construction survey period, or development is initiated during the non-breeding season (September 1 to January 31), construction may proceed with no restrictions.

Mitigation Measure D-1.3: If bird nests are found, an adequate setback shall be established around the nest location and construction activities restricted within this no-disturbance zone until the qualified biologist has confirmed that any young birds have fledged and are able to function outside the nest location. Required setback distances for the no-disturbance zone shall be based on input received from the California Department of Fish and Wildlife (CDFW), and may vary depending on species and sensitivity to disturbance. As necessary, the no-disturbance zone shall be fenced with temporary orange construction fencing if construction is to be initiated elsewhere in the APE.

Mitigation Measure D-1.4: A report of findings shall be prepared by the qualified biologist and submitted to the City for review and approval prior to initiation of construction during the nesting season (February 1 to August 31). The report shall either

confirm absence of any active nests or should confirm that any young are located within a designated no-disturbance zone and construction can proceed. No report of findings is required if construction is initiated during the non-nesting season (September 1 to January 31) and continues uninterrupted according to the above criteria.

E. CULTURAL RESOURCES.

Impact E-1: Excavation activities for the sludge equalization tanks in Process Area 73 and for structural reinforcement of digesters 5-8 walls will be to depth where native soils will be encountered, raising the potential that archaeological materials that are either intact or displaced from another site may be encountered.

The following mitigation measures will be included as part of the project during the construction phase for the protection of archaeological resources:

Mitigation Measure E-1.1: Full-time monitoring by an archaeologist of the sludge equalization tank and digester excavations for the first three days in each of these areas. Based on the initial observations regarding the depth of fill or any previous disturbance, the archaeologist will determine the necessity for and frequency of remaining monitoring.

Mitigation Measure E-1.2: Should archaeological materials be encountered, work in the immediate find area should halt and an archaeologist would assess the potential significance of the find. If significant, the archaeologist shall develop a treatment plan in consultation with the City, the SWRCB, the State Historic Preservation Officer, and a qualified Native American monitor. This plan would likely entail a program of systematic data recovery in which cultural materials are documented and removed.

- F. GEOLOGY AND SOILS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- G. GREENHOUSE GAS EMISSIONS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- H. HAZARDS AND HAZARDOUS MATERIALS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- I. HYDROLOGY AND WATER QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- J. LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- K. MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

- L. **NOISE** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- M. **POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- N. **PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- O. **RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- P. **TRANSPORTATION / TRAFFIC** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- Q. **UTILITIES AND SERVICE SYSTEMS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- R. **MANDATORY FINDINGS OF SIGNIFICANCE** – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **September 28th, 2015**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
2. Submit written comments regarding the information and analysis in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Harry Freitas, Director
Planning, Building and Code Enforcement

Circulated on: August 28th, 2015

