

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE HEMLOCK MIXED-USE PROJECT MITIGATED NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the Hemlock Mixed-Use Project under Planning File Nos. PDC18-009, PD18-037, PT18-002 (the “Initial Study/Mitigated Negative Declaration”), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

WHEREAS, the Hemlock Mixed-Use Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a Planned Development Rezoning from the CG General Commercial Zoning District to the CP(PD) Planned Development Zoning District, a Vesting Tentative Map to merge two parcels into one parcel and to resubdivide the parcel into no more than 48 residential condominium units and no more than 15 commercial condominium units, and a Planned Development Permit to allow the demolition of the 1,544-square foot single-family residence and approximately 3,887-square foot commercial building, the removal of seven ordinance-size trees, and the construction of a mixed-use project with no more than 48 residential condominium units and approximately 18,495-square feet of commercial office space with no more than 15 commercial condominium units on an approximately 0.47-gross acre site located along the at 376 South Baywood Avenue and 2881 Hemlock Avenue in the City of San José (Assessor’s Parcel Number 277-34-023 and -051), San José, California; and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the “Mitigation Monitoring and Reporting Program”); and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director

of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

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

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File Nos. PDC18-009, PD18-037, PT18-002). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/ Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113 and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

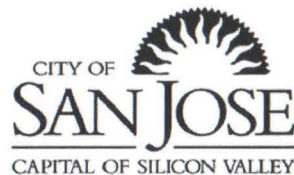
TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Hemlock Mixed Use Project

File Nos. PDC18-009, PD18-037, and PT18-002

December 2018



P R E F A C E


Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures are 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 prepared for the Hemlock Mixed Use 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 Mitigation Monitoring and Reporting Program 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, Adam Askari, the applicant, on the behalf of myself, hereby agree to fully 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, where feasible.

This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

Project Applicant's Signature 

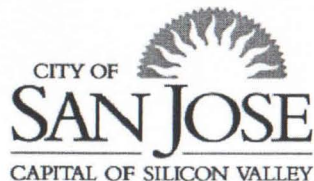
Date 2/9/19



Planning, Building and Code Enforcement
 ROSALYNN HUGHEY, DIRECTOR

Hemlock Mixed Use Project
 File Nos. PDC18-009 and PT18-002

MITIGATION	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
Air Quality					
Impact AIR-1: Construction of the proposed project would result in a temporary community risk impact.					
<p>MM AIR-1.1: Prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest), the project applicant shall prepare and submit a construction operations plan that includes specifications of the equipment to be used during construction to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement. The plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.</p> <ul style="list-style-type: none"> All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet the U.S. Environmental Protection Agency (EPA) particulate matter emissions standards for Tier 3 engines with CARB-certified Level 3 Diesel Particulate Filters or equivalent. The use of equipment meeting U.S. EPA Tier 4 standards for particulate matter would meet this requirement. 	<p>Submit relevant pages from the construction contract document that show the use of off-road construction equipment that would reduce DPM emissions to the Supervising Environmental Planner, Department of Planning, Building and Code Enforcement.</p>	<p>Prior to issuance of any grading or demolition permit for the proposed project.</p>	<p>Supervising Environmental Planner, City of San José Department of Planning, Building, and Code Enforcement</p>	<p>Review and approve relevant pages from the construction contract document that show the use of off-road construction equipment that would reduce DPM emissions.</p>	<p>Prior to issuance of any grading or demolition permits for the proposed project.</p>



Planning, Building and Code Enforcement

ROSALYNN HUGHEY, DIRECTOR

Hemlock Mixed Use Project

File Nos. PDC18-009 and PT18-002

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<ul style="list-style-type: none"> If Tier 4 equipment is not readily available, the use of equipment that includes alternatively-fueled equipment (i.e., non-diesel) would meet this requirement. Other measures may be the use of added exhaust devices, or a combination of measures, provided that these measures are approved by the City and demonstrated to reduce community risk impacts to a less than significant level. 					
Impact BIO-1: Demolition, grading, and construction activities and tree removal during the nesting season could impact migratory birds.					
<p>MM BIO-1.1: Avoidance: 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).</p> <p>MM BIO-1.2: Nesting Bird Surveys: If demolition and construction activities 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</p>	<p>Avoidance of construction activities during nesting seasons.</p> <p>If construction activities cannot be scheduled outside of nesting seasons, a pre-construction nesting bird survey shall be conducted by a qualified biologist and construction-free buffer zones shall be designated, in consultation with CDFW, around any discovered nest.</p>	<p>Prior to issuance of any tree removal, grading, demolition, and/or building permits.</p>	<p>Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement</p> <p>CDFW, if an active nest is found</p>	<p>Confirm that demolition and construction activities are scheduled outside of the nesting season.</p> <p>Review the pre-construction survey report indicating the results of the survey and any designated buffer-zones</p>	<p>Prior to issuance of any tree removal, grading, demolition, and/or building permits.</p>

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<p>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 ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.</p> <p>MM BIO-1.3: Buffer Zones: 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 (CDFW), 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.</p> <p>MM BIO-1.4: Reporting: 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 satisfaction of the City's Supervising Environmental Planner.</p>	<p>Following completion of the preconstruction survey, the project applicant shall submit a report prepared by a qualified biologist to document the results of the survey and any designated construction-free buffer zones.</p>				

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Hazards and Hazardous Materials					
Impact HAZ-1: Construction workers and adjacent residences could be exposed to residential agricultural chemicals in soil, which could be hazardous.					
MM HAZ-1.1: After demolition but prior to the issuance of grading permits, shallow soil samples taken from the near surface soil and tested for organochlorine pesticides and pesticide-based metals arsenic and lead to determine if contaminants from previous agricultural operations occur at concentrations above established construction worker safety and residential environmental screening levels. The result of soil sampling and testing shall be provided to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the Municipal Compliance Officer of the City of San José Environmental Services Department for review.	Collect and analyze shallow near surface soil samples for organochlorine pesticides and pesticide-based metals.	After demolition and prior to issuance of any grading permits.	Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement, and the Environmental Services Department Municipal Compliance Officer	Review results from soil sampling.	After demolition and prior to issuance of any grading permits.
MM HAZ-1.2: If contaminated soils are found in concentrations above established regulatory environmental screening levels, the project applicant shall enter into the Santa Clara County Department of Environmental Health's (SCCDEH) Voluntary Cleanup Program (VCP), or equivalent, to formalize regulatory oversight of the mitigation of contaminated soil to ensure the site is safe for construction workers and the public after development. The project	Project applicant shall enter into the SCCDEH VCP or equivalent if soil samples are above regulatory screening levels. Prepare and implement approved Removal Action	After demolition and prior to issuance of any grading permits.	Santa Clara County Department of Environmental Health or equivalent agency Supervising Environmental Planner of the Department of	Oversight of VCP and remediation of soils. Confirm implementation of Removal Action	After demolition and prior to issuance of any grading permits.

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<p>applicant must remove contaminated soil to levels acceptable to the SCCDEH (or equivalent oversight agency). The SCCDEH (or equivalent oversight agency) may also approve leaving in-place some of the contaminated soil if the contaminated soil will be buried under hardscape and/or several feet of clean soil.</p> <p>A Removal Action Plan, Soil Mitigation Plan or other similarly titled report describing the remediation must be prepared and implemented to document the removal and /or capping of contaminated soil. A copy of these reports shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the Municipal Compliance Officer of the City of San José Environmental Services Department. All work and reports produced shall be performed under the regulatory oversight and approval of the SCCDEH (or equivalent oversight agency).</p>	Workplan and/or Soil Mitigation Plan.		Planning, Building, and Code Enforcement, Environmental Services Department, Municipal Compliance Officer	Workplan and dust control measures.	
Noise and Vibration					
Sensitive receptors in the project area would be intermittently exposed to high noise and vibration levels during project construction.					

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<p>MM NOI-1.1: Prior to the issuance of any grading permits or demolition, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistic plan shall be submitted to the Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement prior to the issuance of any grading or demolition permits.</p> <p>As part of the noise logistic plan and project, construction activities for the proposed project shall include, but is not limited to, the following best management practices:</p> <ul style="list-style-type: none"> Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 	Submit and implement a construction noise logistic plan.	Prior to the issuance of any grading or demolition permits.	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement.	Review and approve noise logistic plan.	Prior to issuance of any grading or demolition permits.

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<p>500 feet of a residence (San José Municipal Code Section 20.100.450).</p> <ul style="list-style-type: none"> • Construct temporary noise barriers, where feasible, to screen mobile and stationary construction equipment. The temporary noise barrier fences would provide noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receiver and if the barrier is constructed in a manner that eliminates any cracks or gaps. • Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. • Unnecessary idling of internal combustion engines should be strictly prohibited. • Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. • Utilize "quiet" air compressors and other stationary noise sources where technology exists. 					

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<ul style="list-style-type: none"> • Construction staging areas shall be established at locations that would create the greatest distance between the construction-related noise source and noise-sensitive receptors nearest the project site during all project construction. • A temporary noise control blanket barrier could be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected. • Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors. • Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site. • The project applicant shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land 					

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<p>uses so that construction activities can be scheduled to minimize noise disturbance.</p> <ul style="list-style-type: none"> Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule. 					
Impact NOI 2: Implementation of the proposed project would result in significant construction related to groundborne vibration impacts at the nearest structures.					
<p>MM NOI-2.1: The project applicant shall implement a construction vibration monitoring plan to document conditions prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The construction vibration monitoring plan shall include, but not be limited to, the following measures:</p>	<p>Submit a construction vibration monitoring plan.</p>	<p>Prior to the issuance of any grading or demolition permits.</p>	<p>Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement,</p>	<p>Review and approve vibration monitoring plan.</p>	<p>Prior to issuance of any grading or demolition permits.</p>

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<ul style="list-style-type: none"> The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort required for continuous vibration monitoring. Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 25 feet of any adjacent building. Identification of the sensitivity of nearby structures to groundborne vibration. Vibration limits should be applied to all vibration-sensitive structures located within 50 feet of construction activities identified as sources of high vibration levels. 					

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<ul style="list-style-type: none"> • Preconstruction condition surveys of the structures within 50 feet of construction activities identified as source of high vibration levels shall be completed with the agreement of the property owner. • Surveys shall be performed prior to any construction activity, in regular intervals during construction and after project completion • At a minimum, vibration monitoring should be conducted during demolition and excavation activities. • If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures. • Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site. • Conduct post-survey on structures where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities. 					

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The construction vibration plan shall be submitted to the Supervising Environmental Planner prior to the issuance of any demolition permits and grading permits. The associated monitoring reports shall be submitted after substantial completion of each phase identified in the project schedule to the Supervising Environmental Planner. An explanation of all events that exceeded vibration limits shall be included together with proper documentation of any exceedance event.					

Source: City of San José. *Initial Study: Hemlock Mixed Use Project*. December 2018.