

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE ALVISO PARK MASTER PLAN UPDATE 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 Alviso Park Master Plan Update Project under Planning File No. PP16-132 (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 Alviso Park Master Plan Update (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of an update to the Alviso Park Master Plan and includes components such as pedestrian paths, park entryway gateway, wayfinding markers, landscaping and furniture intended to present a cohesive design. Improvements and renovations to existing facilities include the swimming pool and associated restroom, picnic areas and playgrounds, and softball/baseball field. New facilities proposed include an enclosed sun deck adjacent to the swimming pool, shade structures at the picnic areas, outdoor fitness equipment and walking paths, a dog park, a Bay Trail segment, a community plaza with shade structure, and youth practice baseball and soccer fields; and

WHEREAS, Alviso Park is located on a 4.5-acre parcel (Assessor's Parcel Number [APN] 015-43-002) on North First Street between Tony P. Santos Street and Trinity Park Drive in the City of San José, and four additional parcels (APNs 015-43-023, 015-43-022, 015-43-020, and 015-44-013) that have been acquired by the City of San José to expand the park along Tony P. Santos Street, Wilson Way, and Grand Boulevard, and where all of the five parcels together compose the project site for a total acreage of 23.5 acres; 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 No. PP16-132). 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 _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Alviso Park Master Plan Update File No. PP16-132 June 2017



PREFACE

Section 21081 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 have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring or reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration prepared for the Alviso Park Master Plan Update 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/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant.

The City of San José Department of Parks, Recreation, and Neighborhood Services (the “project proponent”) hereby agrees 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 the proposed project. The City understands that these mitigation measures or substantially similar measures will be adopted as conditions of approval to avoid or significantly reduce potential environmental impacts to a less than significant level, where feasible.



Department of Planning, Building and Code Enforcement
HARRY FREITAS, DIRECTOR

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MITIGATIONS	MONITORING AND REPORTING PROGRAM					
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Adopted Mitigation Measures	Responsibility for Implementation	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/ Reports	Monitoring Timing or Schedule
BIOLOGICAL RESOURCES						
<i>Impact BIO-1:</i> Project implementation could result in an adverse effect on burrowing owls and their habitat.						
<p>Mitigation Measure BIO-1: The Department of Parks, Recreation & Neighborhood Services (the “project proponent”) shall implement Condition 15 of the Santa Clara Valley Habitat Plan (VHP) and pay burrowing owl impact fees to the Habitat Agency prior to any ground disturbance activities. Pursuant to Condition 15, a qualified biologist shall conduct pre-construction surveys in all suitable habitat areas. To maximize the likelihood of detecting owls, the preconstruction survey shall last a minimum of three hours. The survey shall begin one hour before sunrise and continue until two hours after sunrise (for three hours total) or begin two hours before sunset and continue until one hour after sunset. Additional time may be required for large project sites. A minimum of two surveys shall be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed will be counted and their locations mapped. Surveys shall conclude no more than two calendar days prior to construction. Therefore, the</p>	<p>Department of Parks, Recreation & Neighborhood Services and contractors</p>	<p>Condition 15 requirements and applicable measures shall be printed on construction documents, contracts, and/or project plans.</p> <p>Pre-construction surveys for burrowing owls shall be conducted according to VHP protocols and submitted to the City’s Supervising Environmental Planner.</p> <p>The VHP application package shall include the burrowing owl survey results and avoidance measures, and shall be submitted to the City’s Supervising Environmental Planner.</p>	<p>Burrowing owl impact fee shall be paid prior to any ground disturbance activities.</p> <p>Results of preconstruction surveys submitted prior to any ground disturbance activities.</p>	<p>Department of Planning, Building, and Code Enforcement Supervising Environmental Planner</p>	<p>Confirm VHP Condition 15 measures are printed on construction documents, contracts, and/or project plans.</p> <p>Review and approve preconstruction survey for burrowing owls.</p> <p>Confirm VHP application package to ensure burrowing owl</p>	<p>Prior to any ground disturbance activities</p>



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<p>project proponent must begin surveys no more than four days prior to construction (two days of surveying plus up to two days between surveys and construction). To avoid last-minute changes in schedule or contracting that may occur if burrowing owls are found, the project proponent may also conduct a preliminary survey up to fourteen (14) days before construction. This preliminary survey may count as the first of the two required surveys as long as the second survey concludes no more than two calendar days in advance of construction.</p> <p>If evidence of western burrowing owls is found during the breeding season (February 1st through August 31st), the project proponent shall avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance shall include establishment of a 250-foot non-disturbance buffer zone around nests. Construction may occur outside of the 250-foot non-disturbance buffer zone. Construction may occur inside of the 250-foot non-disturbance buffer during the breeding season if:</p> <ul style="list-style-type: none"> • The nest is not disturbed; and 					survey and fee calculations are accurate and correct.	



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<ul style="list-style-type: none"> The project proponent develops an avoidance, minimization, and monitoring plan that is approved by the Habitat Agency and the Wildlife Agencies prior to project construction. <p>If evidence of western burrowing owls is found during the non-breeding season (September 1st through January 31st), the project proponent shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of this 250-foot buffer are allowed. Construction activities within the non-disturbance buffer are allowed if certain criteria are met, as outlined in the VHP Conditions Implementation Guide, in order to prevent owls from abandoning important overwintering sites.</p> <p>The project proponent and/or contractor shall submit evidence of compliance with the VHP to the City’s Supervising Environmental Planner prior to the start of ground disturbance activities.</p>						



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<i>Impact BIO-2:</i> Project implementation could potentially have adverse impacts on federally protected wetlands.						
<p><i>Mitigation Measure BIO-2a:</i> The project proponent shall implement Conditions 3 and 12 of the VHP to reduce construction impacts on wetlands. These VHP conditions require avoidance of wetlands during construction.</p> <p>VHP Condition 3 consists of avoidance and minimization measures outlined in Table 6-2 of the VHP. Applicable avoidance and minimization measures shall be implemented during construction. VHP Condition 12 requires the implementation of design phase and construction phase measures to avoid and minimize impacts on wetlands and ponds to the extent feasible, including erosion control measures, fencing of avoided wetlands during construction, establishment of buffers between wetlands and refueling areas, and measures to minimize the spread of invasive species.</p> <p>The project proponent and/or contractor shall submit evidence of compliance with the VHP to the City’s Supervising Environmental Planner prior to the start of any ground disturbance</p>	<p>Department of Parks, Recreation & Neighborhood Services and contractors</p>	<p>Condition 3 and 12 requirements and applicable measures shall be printed on construction documents, contracts, and/or project plans.</p> <p>Project plans shall incorporate all avoidance and minimization measures.</p>	<p>During the design phase; prior to issuance of any construction permits or ground disturbance activities.</p>	<p>Department of Planning, Building, and Code Enforcement Supervising Environmental Planner</p>	<p>Confirm VHP Conditions 3 and 12 measures are printed on construction documents, contracts, and/or project plans.</p> <p>Review final plans for incorporation of avoidance and minimization measures.</p>	<p>Prior to final plan approval and issuance of any construction permits</p>



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activities.						
<u>Mitigation Measure BIO-2b:</u> Prior to any construction activities that could result in fill of the seasonal wetland on the project site, the project proponent shall complete a formal wetland delineation that shall be submitted to the U.S. Army Corps of Engineers (USACE) for verification, and the project shall obtain a Section 404 fill discharge permit from the USACE for any impacts to Waters of the U.S., and a Section 401 Water Quality Certification and/or Waste Discharge Requirement from the California Regional Water Quality Control Board (RWQCB) for any impacts to Waters of the State. In addition, the project proponent shall pay wetland impact fees to the Habitat Agency.	Department of Parks, Recreation & Neighborhood Services and contractors	Completion of wetland delineation and submittal to the USACE. Obtainment of USACE and/or RWQCB permits, if required.	Prior to issuance of any construction permits or ground disturbance activities.	Department of Planning, Building, and Code Enforcement Supervising Environmental Planner	Confirm completion and submittal of wetland delineation. Confirm acquisition of necessary permits.	Prior to final plan approval and issuance of any construction permits
<u>Impact BIO-3:</u> Project implementation could potentially have adverse impacts on trees protected by the City of San José’s tree ordinance.						
<u>Mitigation Measure BIO-3:</u> <u>Tree Preservation and Replacement.</u> During detailed design of future projects under the Master Plan, the project proponent shall avoid and minimize adverse impacts on trees protected by the City of San José’s tree ordinance. Where impacts on trees cannot be avoided, the project proponent shall comply with City’s policies to protect the	Department of Parks, Recreation & Neighborhood Services and contractors	Post a notice of tree removal, signed by Department of Public Works, on the tree and replace trees at required ratios pursuant to City of San José Municipal Code and General Plan policies.	During the design phase	Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code	Approve the landscape plan showing the trees to be removed and the number and type of trees to be planted.	During project design phase and prior to any tree removal during project construction



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<p>urban forest.</p> <p>If a tree proposed for removal is located on public property, the project proponent and/or contractor shall post a notice on the tree signed by the Director of Public Works seven days prior to the tree being removed. Trees removed as a result of construction of the project shall be replaced or mitigated in accordance with the following requirements:</p> <ul style="list-style-type: none"> • City of San José Tree Removal Controls (Municipal Code Section 13.31.010 to 13.32.100). • San José Municipal Code street tree protection requirements (Municipal Code Section 13.28). • General Plan Policies MS-21.4, MS-21.5, and MS-21.6. 				Enforcement		
<i>Impact BIO-4:</i> Project implementation could potentially have adverse impacts to nesting birds.						
<p><i>Mitigation Measure BIO-4:</i> The project proponent shall schedule construction activities to avoid the avian breeding season (February 1st through August 31st, for most species in Santa Clara County). If it is not possible to schedule construction activities between September 1st and January 31st (inclusive), preconstruction surveys</p>	Department of Parks, Recreation & Neighborhood Services and contractors	<p>Avoidance of construction activities during avian breeding season.</p> <p>If construction activities occur during nesting seasons, pre-construction</p>	Prior to any ground disturbing activities	Department of Planning, Building, and Code Enforcement Supervising Environmental Planner	Confirm demolition and construction activities are scheduled outside of the avian nesting	Prior to any ground disturbing activities



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<p>for nesting birds shall be conducted by a qualified biologist (certified for raptors and birds) or ornithologist to ensure that no nests will be disturbed during project implementation. During the early part of the breeding season (February 1st through April 30th), pre-construction surveys shall be conducted no more than 14 days prior to the initiation of any ground-disturbing activities in any given area. During the late part of the breeding season (May 1st through August 31st), pre-construction surveys shall be conducted no more than 30 days prior to the initiation of any ground disturbing activities in any given area. If construction is phased, surveys shall be conducted prior to the commencement of each construction phase. The surveys shall be limited to the portions of the project work area where construction activities will occur. During each survey, the qualified biologist shall inspect all trees and other potential nesting habitats (e.g., shrubs, ruderal grasslands, wetlands, and buildings) in and immediately adjacent to the impact areas for nests.</p> <p>If an active nest is found, the qualified biologist, in consultation with the State of California, Department of Fish and Wildlife (CDFW), shall</p>		<p>nesting bird surveys shall be conducted by a qualified biologist in the time period prescribed, and construction-free buffer zones shall be designated around any discovered nest.</p> <p>Following completion of the preconstruction survey, prepare a report to document the results of the survey and any designated construction-free buffer zones</p>			<p>season.</p> <p>Review the preconstruction survey report indicating the results of the survey and any designated buffer-zones.</p>	



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<p>designate the extent of a disturbance-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for non-raptors) to ensure that no active nests of species protected by the Migratory Bird Treaty Act of California under the California Fish and Game Code shall be disturbed during project implementation. No project-related activities shall be performed within the buffer zones until the young have fledged or the nest has been determined to be inactive by a qualified biologist.</p> <p>The qualified biologist shall submit a report to the City’s Environmental Supervising Planner 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 continuance of any ground disturbance activities.</p>						
HAZARDS AND HAZARDOUS MATERIALS						
<i>Impact HAZ-1:</i> Project implementation could potentially have adverse impacts associated with location on a hazardous materials site.						
<i>Mitigation Measure HAZ-1:</i> Prior to the start of earthwork, landscaping, and subsurface utility trenching activities, the project proponent shall	Department of Parks, Recreation & Neighborhood	SMP prepared by a qualified hazardous materials contractor and	Prior to the start of any earthwork,	Supervising Planner of the Planning,	Review and approve the	Prior to any ground disturbance



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<p>retain a qualified hazardous materials contractor to prepare a Site Management Plan (SMP). The SMP will serve as a guiding document to provide technical and operational guidance in the event that unexpected pollutants historically associated with the property (i.e., petroleum hydrocarbons, asbestos, and heavy metals) are encountered during park construction. The SMP shall include:</p> <ul style="list-style-type: none"> • Management practices for handling contaminated soil or other materials if encountered during construction or cleanup activities and measures to minimize dust generation, stormwater runoff, and tracking of soil off-site. • Preliminary Remediation Goals for environmental contaminants of concern to evaluate the site conditions following SMP implementation. • A health and safety plan (HSP) for each contractor working at the site that addresses the safety and health hazards of each phase of site operations that includes the requirements and procedures for employee protection. The HSP will also outline proper soil handling procedures and health and safety requirements to minimize worker and public exposure to hazardous materials during construction. <p>The SMP would detail procedures and protocols</p>	Services and contractors	submittal of reports.	landscaping, and subsurface utility trenching activities.	Building, and Code Enforcement Department Environmental Services Department	SMP and any other environmental investigation reports prepared for the project.	activities



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for management of soil containing environmental contaminants during site development activities. If applicable, cleanup and remediation activities on the site shall be conducted in accordance with the SMP prior to construction activities. All measures shall be printed on all construction documents, contracts, and project plans. The SMP and any associated environmental investigations shall be provided to the Supervising Planner of the Planning, Building, and Code Enforcement Department and the Environmental Services Department for approval prior to the start of ground disturbance activities.						

Source: City of San José. Alviso Park Master Plan Update Initial Study. June 2017.