

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE MUSEUM PLACE II PROJECT ADDENDUM TO THE DOWNTOWN STRATEGY 2040 FINAL ENVIRONMENTAL IMPACT REPORT, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED**

**WHEREAS**, the City of San José (“City”) acting as lead agency under the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”), prepared, completed, and adopted the Final Environmental Impact Report for the Downtown Strategy 2040 (“Downtown Strategy 2040 FEIR”), which updated and replaced the Downtown Strategy 2000 Final Environmental Impact Report, and analyzed the environmental impacts of increased Downtown development capacity to the year 2040 consistent with the General Plan; and

**WHEREAS**, on November 28, 2018, the Planning Commission of the City conducted a public hearing, considered said Downtown Strategy 2040 FEIR, and made certain recommendations to the Council of the City of San José (the “City Council); and

**WHEREAS**, in connection with the adoption of a resolution approving said Downtown Strategy 2040 (Planning File No. PP15-102), the City Council adopted Resolution No. 78942 on December 18, 2018, setting forth certain findings pertaining to the Downtown Strategy 2040 FEIR and adopting a mitigation monitoring and reporting program, all pursuant to the provisions of CEQA; and

**WHEREAS**, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared and approved an Addendum to the Downtown Strategy 2040 FEIR for the Museum Place II Project under Planning File No. SP17-031-01 (the “Addendum”), all in accordance with CEQA; and

**WHEREAS**, the Museum Place II Project (the “Project”) analyzed under the Addendum consists of a Special Use Permit Amendment (Museum Place II) to demolish an existing non-historic building (Parkside Hall) and develop an approximately 1,038,705-square-foot office and museum building up to 21 stories, which includes approximately 928,116 square feet of office, 60,475 square feet of museum tech space, 8,409 square feet of retail, and one level of below-grade parking on an approximately 2.35-gross-acre site, located on the northwestern corner of West San Carlos Street and South Market Street at 180 Park Avenue in San José, California; and

**WHEREAS**, as further described in the Addendum, the implementation of the Project would not result in new significant effects on the environment beyond those already identified in the previously approved Downtown Strategy 2040 FEIR, nor will the Project result in an increase in the severity of significant effects identified in the Downtown Strategy 2040 FEIR, and identified mitigation measures, as amended, would continue to reduce each of those significant effects to a less-than significant level; and

**WHEREAS**, the related mitigation measures are described in the Addendum; and

**WHEREAS**, a related Mitigation Monitoring and Reporting Program (“Mitigation Monitoring and Reporting Program”) was prepared that incorporates certain mitigation measures from the previously certified Downtown Strategy FEIR; 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 Downtown Strategy 2040 FEIR and the Addendum, and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

**WHEREAS**, the Downtown Strategy 2040 FEIR and the Addendum thereto 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, and 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 Downtown Strategy 2040 FEIR, as modified by the Addendum, as well as other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Addendum modifying the Downtown Strategy 2040 FEIR prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Addendum modifying the Downtown Strategy 2040 FEIR 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 Addendum prepared for the Project (Planning File No. SP17-031-01). The Mitigation Monitoring and Reporting Program is attached hereto as Exhibit "A" and is fully incorporated herein by this reference. The Downtown Strategy 2040 FEIR and the Addendum 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:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

# MITIGATION MONITORING AND REPORTING PROGRAM

## Museum Place II Project

**File No. SPA17-031-01**

**CITY OF SAN JOSE**  
**November 2019**



# 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 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 Addendum to the Supplemental Environmental Impact Report prepared for the Museum Place 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 Supplemental Environmental Impact Report and addendum concluded that the impacts from implementation of the project would be less than significant.

I, Max Fink, the applicant, on the behalf of Museum Place Owner LLC, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of the Supplemental Environmental Impact Report and addendum 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 *Max Stanley Fink*

Date 11 November 2019



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*Planning, Building and Code Enforcement*  
ROSALYNN HUGHEY, DIRECTOR

MITIGATION MEASURES	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [City of San José Responsibility]		
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<b>BIOLOGICAL RESOURCES</b>					
<b>Impact BIO-1:</b> Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.					
<p><b><u>Mitigation Measure BIO 1-1:</u></b> Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1 through August 31.</p> <p><b><u>Mitigation Measure BIO 1-2:</u></b> If it is not possible to schedule demolition and construction between September 1 and January 31, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will 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 1 through April 30) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1 through August 31). During this survey, the ornithologist will 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 (CDFW), will determine the extent of a construction-free buffer</p>	<p>Avoidance of construction activities during nesting seasons. If not possible, pre-construction surveys shall be conducted by a qualified ornithologist and construction-free buffer zones shall be designated around discovered nest.</p> <p>Submit a report indicating the results of the survey and any designated buffer zones to the Supervising Environmental Planner of Planning, Building and Code Enforcement.</p>	<p>Prior to issuance of any demolition permit.</p>	<p>Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement.</p>	<p>Review report indicating the results of the survey (or any other environmental investigation reports, if applicable) and any designated buffer zones.</p>	<p>Prior to demolition and construction activities.</p>



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<p>zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction.</p> <p><b>Mitigation Measure BIO 1-3:</b> Prior to approval of any grading permit, 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>					
<b>CULTURAL RESOURCES</b>					
<b>Impact CUL-1:</b> Construction activities on the proposed project could significantly impact two historic structures.					
<p><b>Mitigation Measure CUL 1-1:</b> The project applicant shall prepare preconstruction documentation of the City National Civic Auditorium and McCabe Hall. Prior to construction, a qualified historic architect shall undertake an existing visual conditions study of the nearby historic resources. The purpose of the study would be to establish the baseline conditions of the buildings prior to construction. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including those physical characteristics of the resource that conveys its historic significance. The documentation shall be reviewed and approved by the City of San José’s Historic Preservation Officer.</p>	<p>Preconstruction documentation of the City National Civic Auditorium and McCabe Hall shall be prepared by the project applicant.</p> <p>Prior to construction activities, a qualified historic architect shall prepare an existing visual conditions study of the nearby historic resources.</p>	<p>Prior to demolition and construction activities.</p>	<p>Supervising Environmental Planner and City of San José’s Historic Preservation Officer of the Planning, Building and Code Enforcement.</p>	<p>Review and approve preconstruction documentation and Historical Resources Protection Plan.</p>	<p>Prior to demolition and construction activities.</p>
<p><b>Mitigation Measure CUL 1-2:</b> Prior to commencement of any construction activities, including any ground disturbing activities, the project applicant shall prepare and implement a Historical Resources Protection Plan (HRRP) that provides</p>	<p>The qualified historic architect shall also prepare and implement a Historical Resources Protection Plan.</p>	<p>Prior to demolition and construction activities.</p>	<p>Supervising Environmental Planner and the City of San José’s Historic Preservation Officer of</p>	<p>Review and approve preconstruction documentation and Historical</p>	<p>Prior to demolition and construction activities.</p>





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<p>measures and procedures to protect the City National Civic and McCabe Hall from direct or indirect impacts during construction activities (i.e., due to damage from operation of construction equipment, staging, and material storage). The HRRP shall be prepared by a qualified Historic Architect and reviewed and approved by the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement prior to Public Works clearance, including any ground-disturbing work.</p> <p>The project applicant shall ensure the contractor follows this plan while working near these historic resources. The plan shall be prepared by a qualified historic architect who meets the Secretary of Interior’s Professional Qualifications Standards. The plan shall be reviewed and approved by the City of San José’s Historic Preservation Officer. At a minimum, the plan shall include:</p> <ul style="list-style-type: none"> <li>• Guidelines for operation of construction equipment adjacent to historical resources;</li> <li>• Guidelines for storage of construction materials away from historic resources;</li> <li>• Requirements for monitoring and documenting compliance with the plan; and</li> <li>• Education/training of construction workers about the significance of the historical resources around which they would be working.</li> </ul>			the Department of Planning, Building and Code Enforcement.	Resources Protection Plan.	



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<p><b><u>Mitigation Measure CUL 1-3:</u></b> The project applicant shall establish a “Monitoring Team” comprised of at least one qualified Historic Architect and one structural engineer for the duration of the site monitoring process. During the demolition and construction phases, the Monitoring Team shall make periodic site visits to monitor the condition of the property, including monitoring of any instruments such as crack gauges, if necessary. The monitoring period shall be a minimum of one site visit every month. The Supervising Environmental Planner and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement may request any additional number of site visits at his/her discretion.</p> <p>If, in the opinion of the Monitoring Team substantial adverse impacts related to construction activities are found during construction, a representative of the Monitoring Team shall inform the project applicant (or the applicant’s designated representative responsible for construction activities), the Supervising Environmental Planner, and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement of the potential impacts. The project applicant shall implement the Monitoring Team’s recommendations for corrective measures, including halting construction in situations where construction activities would imminently endanger historic resources.</p>	<p>The project applicant shall:</p> <ul style="list-style-type: none"> <li>• Establish a Monitoring Team</li> <li>• Conduct a minimum of one site visit per month</li> <li>• Submit a report summarizing the monthly site visit every three months to Historic Preservation Officer of the City of San José Department of Planning, Building, and Code Enforcement</li> <li>• Submit one final report prior to the issuance of any Certificate of Occupancy (temporary or final)</li> <li>• Ensure any repair work to historic resources is performed in compliance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties and</li> </ul>	<p>Prior to the issuance of any Certificate of Occupancy permit (temporary or final).</p> <p>Submit site visit reports to the Historic Preservation Officer of the City of San José Department of Planning, Building, and Code Enforcement no later than one week after each quarterly reporting period.</p>	<p>Supervising Environmental Planner and the City of San José’s Historic Preservation Officer of the Department of Planning, Building and Code Enforcement.</p>	<p>Review site visit reports.</p>	<p>Prior to demolition and construction activities. Receive site visit reports no later than one week after each quarterly reporting period.</p>



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<p>The project applicant shall ensure that, in the event of damage to a nearby historic resource during construction, repair work is performed in compliance with the Secretary of the Interior’s Standards for the Treatment of Historic Properties and shall restore the character-defining features in a manner that does not affect the structure’s historic status.</p> <p>The Monitoring Team shall prepare a report documenting all site visits. The reporting period shall be a minimum of once every three months. The Monitoring Team, or its representative, shall prepare a report documenting all site visits. The reporting period shall be a minimum of once every three months. The Monitoring Team or its representative shall submit the site visit reports to the Supervising Environmental Planner and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement no later than one week after each reporting period.</p> <p>The Monitoring Report shall also include, but is not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Summary of the demolition and construction progress;</li> <li>• Identification of substantial adverse impacts related to construction activities</li> </ul>	<p>shall restore the character defining features in a manner that does not affect the structure’s historic status.</p>				



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<ul style="list-style-type: none"> <li>Problems and potential impacts to the historical resources and adjacent buildings during construction activities;</li> <li>Recommendations to avoid any potential impacts;</li> <li>Actions taken by the project applicant in response to the problem;</li> <li>Progress and the level of success in meeting the applicable Secretary of the Interior's Standards for the Treatment of Historic Properties for the project as noted above for the character-defining features, and in preserving the character-defining features of nearby historic properties; and</li> <li>Inclusion of photographs to explain and illustrate progress.</li> </ul> <p>In addition, the Monitoring Team shall submit a final document associated with monitoring and repairs after completion of the construction activities to the Supervising Environmental Planner and the Historic Preservation Officer of the City of San José Department of Planning, Building and Code Enforcement prior to the issuance of any Certificate of Occupancy (temporary or final).</p>					
<b>LAND USE</b>					
<b>Impact LU-1:</b> Shadows cast by the proposed building would have a significant impact on Plaza de César Chávez in the winter months.					
<u>Mitigation Measure LU 1-1.</u> The project applicant shall contribute \$100,000 to the Parks and Community Facilities Development Capital Improvement Program	Project applicant shall contribute \$100,000 to the	Prior to issuance of any building permit.	Director, Department of Parks, Recreation,	Develop and implement Improvement Plan.	Prior to issuance of any building permits.



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<p>(Program) to develop and implement an Improvement Plan to 1) provide an enhanced lighting system for the shaded area of the park; and 2) replace vegetated areas affected by the shade with less sensitive and more permanent material. This fee shall be a one-time amount and shall be paid prior to issuance of any building permit.</p> <p>The City will develop and implement the Improvement Plan. Development and implementation of the Improvement Plan will include, but will not be limited to, the following:</p> <ul style="list-style-type: none"> <li>• Design and construction drawings</li> <li>• Lighting study</li> <li>• Lighting fixtures</li> <li>• Energy consumption</li> <li>• Replacement of turf and sod</li> </ul>	<p>Parks and Community Facilities Development Capital Improvement Program.</p>		<p>and Neighborhood Services.</p>		
<b>NOISE</b>					
<b>Impact NOI-1:</b> Construction of the proposed project would expose nearby buildings to vibration levels in excess of City standards and could result in significant construction-related groundborne vibration impacts.					
<p><b>Mitigation Measure NOI 1-1:</b> The project applicant and its contractors shall use drilled piers or rammed aggregate piers which cause lower vibration levels and are the preferred foundation method where geological conditions permit.</p> <p><b>Mitigation Measure NOI 1-2:</b> A list of all heavy construction equipment to be used for this project and the anticipated time duration of using equipment that</p>	<p>Submit a list of all heavy construction equipment to be used for the project and the duration the equipment would be used.</p>	<p>Prior to the issuance of any demolition permit.</p>	<p>A copy of the list shall be submitted to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement.</p>	<p>Ensure list of construction equipment are included on approved documents.</p>	<p>Prior to the issuance of any demolition permit.</p>



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has been known to produce high vibration levels (tracked vehicles, vibratory compaction, jackhammers, hoe rams, etc.) shall be submitted by the contractor to the structural engineer. 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 (see Mitigation Measure NOI-1.3 below).					
<p><b>Mitigation Measure NOI 1-3:</b> The project applicant shall prepare and implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. The Plan shall address vibration impacts to sensitive historic structures of 0.08 in/sec PPV and all normal conventional construction structures of 0.20 in/sec PPV. 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 the following tasks:</p> <ul style="list-style-type: none"> <li>• Identification of the sensitivity of on- and off-site structures to groundborne vibration. Vibration limits shall be applied to all vibration sensitive structures located on or within 50 feet of the project site.</li> <li>• Performance of a photo survey, elevation survey, and crack monitoring survey for each structure within 50 feet of construction activities identified as sources of high vibration levels. Surveys shall</li> </ul>	The project applicant shall implement a Construction Vibration Monitoring Plan (Plan). The plan shall be summarized and submitted to the Director of Planning, Building and Code Enforcement.	<p>Prior to the issuance of any demolition permit.</p> <p>The construction monitoring plan shall be implemented prior to, during, and after vibration generating construction activities.</p>	A copy of the Plan shall be submitted to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement	Review vibration monitoring plan.	Prior to the issuance of any demolition permit.



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<p>be performed prior to any construction activity, in regular intervals during construction and after project completion and shall include internal and external crack monitoring in structures, settlement, and distress and shall document the condition of foundations, walls, and other structural elements in the interior and exterior of said structures. Development of a vibration monitoring and construction contingency plan to identify structures where monitoring would be conducted, set up a vibration monitoring schedule, define structure-specific vibration limits, and address the need to conduct photo, elevation, and crack surveys to document before and after construction conditions. Construction contingencies would be identified for when vibration levels approach the limits.</p> <ul style="list-style-type: none"> <li>• At minimum, vibration monitoring shall be conducted during pavement removal, building demolition, and drilling activities. Monitoring results may indicate the need for more or less intensive measurements.</li> <li>• If vibration levels approach limits, suspend construction and implement contingencies to either lower vibration levels or secure the affected structures.</li> <li>• Designate a person responsible for registering and investigating claims of excessive vibration. The</li> </ul>					



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contact information of such person shall be clearly posted on the construction site. <ul style="list-style-type: none"> <li>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.</li> </ul>					
<p><b><u>Mitigation Measure NOI 1-4:</u></b> The project applicant shall submit a report summarizing the result of the vibration monitoring process during all demolition and construction phases to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement no later than a week after substantial completion of each phase identified in the project schedule of the Construction Vibration Monitoring Plan. The report shall include, but is not limited to, a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations. An explanation of all events that exceeded vibration limits shall be included together with proper documentation supporting any such claims.</p>	The project applicant shall submit a report summarizing the result of the vibration monitoring process during all demolition and construction phases.	The construction monitoring plan shall be implemented prior to, during, and after vibration generating construction activities.	Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement.	Review vibration monitoring plan.	Prior to the issuance of any demolition permit.

**Source:** City of San José, Museum Place Supplemental Environmental Impact Report and Initial Study, February 2017; Addendum to the Museum Place Supplemental Environmental Impact Report, November 2019.