

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN JOSE ADOPTING THE DUPONT RESIDENTIAL
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, the Planning Commission of the City reviewed and recommended the City Council of the City of San José (the City Council) certified said Downtown Strategy 2040 FEIR on November 28, 2018; 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, the Dupont Residential Project (the “Project”) analyzed under the Addendum consists of a Planned Development Rezoning, Vesting Tentative Map, and Planned Development Permit to facilitate the demolition of 64,800 square feet of

industrial buildings on-site, the removal of 29 ordinance-size trees, and the construction of 689 residential units and 4,000 square feet of commercial uses on an approximately 5.4-gross-acre site, located on six parcels along McEvoy Street and Dupont Street 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 on the Department of Planning,

Building and Code Enforcement website (www.sanjoseca.gov/Planning) 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, Building and Code Enforcement 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 Nos. PDC20-036, PT20-036 and PD20-011). 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, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and on the Department of Planning, Building and Code Enforcement's website, and (2) available for inspection by any interested person.

ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Dupont Residential Project
File Nos. PDC20-020, PT20-036, & PD20-011
March 2022



PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) 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 Initial Study (IS)/Addendum prepared for the Dupont Residential 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 MMRP addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the IS/Addendum concluded that the impacts from implementation of the project would be less than significant.

I, PERRY HARIRI, the applicant, on the behalf of M&M DIRIDON, LLC, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of an EIR 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

Perry Hariri

Date

4/4/22

MITIGATIONS	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 activities associated with the proposed project would result in nearby sensitive receptors being exposed to toxic air contaminant emissions in excess of BAAQMD threshold for cancer risk (1 in 10 per million) and PM _{2.5} (0.3 µg/m ³).					
MM AIR-1.1: Prior to the issuance of any demolition, grading, and/or building permits, whichever occurs earliest, the project applicant shall submit a Construction Operations Plan that includes specifications of the equipment to be used during construction to the City's Director of Planning, Building and Code Enforcement or Director's designee for review and approval. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below. - The project applicant shall ensure that 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 EPA particulate matter emissions standards for Tier 4 engines. - If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall use equipment that meets U.S. EPA emission standards for Tier 3 engines that have CARB	Allow diesel-powered off-road equipment, as described, having engines that meet EPA particulate matter standards for Tier 4. Submit construction operations plan to the Director of Planning, Building, and Code Enforcement or Director's designee and, if applicable, be accompanied by a letter signed by an air quality specialist verifying the equipment included in the plan meets the standards set forth in this mitigation measure.	Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).	Director of Planning, Building, and Code Enforcement or Director's designee	Receive the construction operations plan and letter.	Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).



Planning, Building and Code Enforcement
CHRISTOPHER BURTON, DIRECTOR

Dupont Residential Project
File Nos. PDC20-020, PT20-036, &
PD20-011

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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certified Level 3 Diesel Particulate Filters or equivalent diesel emission control devices that altogether achieve an 80 percent reduction in diesel particulate matter emissions. Provide line power to the site during the early phases of construction to minimize the use of diesel-powered stationary equipment, such as generators. Additionally, large stationary cranes shall be powered by electricity, and generators and welders using diesel fuel shall be limited to 200 hours over the entire construction period.					
BIOLOGICAL RESOURCES					
Impact BIO-1: Construction activities associated with the proposed project, such as tree removals, could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.					
MM BIO-1.1: Tree removal and construction shall be scheduled 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. If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of	Avoidance of construction activities during the nesting season or completion of a pre-construction nesting bird survey conducted by a qualified ornithologist and, in consultation with the California Department of Fish and Wildlife, a construction-free buffer zone shall be designated around any discovered nest.	Prior to issuance of any tree removal, grading, and/or building permit or activities.	Director of Planning, Building, and Code Enforcement or Director's designee	Confirm that construction activities are scheduled outside of the nesting season. -or- Review report indicating the results of the	Prior to issuance of any tree removal, grading, and/or building permit or activities.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
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demolition/construction activities during 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), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the ornithologist will inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the qualified ornithologist will designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction. The project applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any tree removal, grading, or demolition permit.	Submit the ornithologist's 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.			survey (or any other environmental investigation reports, if applicable) and any designated buffer zones.	

HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-1: Grading and excavation of the project site could expose construction workers to elevated concentrations of chemicals such as lead, arsenic, nickel and cobalt.					
MM HAZ-1.1: Prior to the issuance of any demolition or grading permits, the project applicant shall enter the Santa Clara County Department of Environmental Health (SCCDEH) Site Cleanup Program (SCP). The regulatory agency may require further testing, remediation, or development of a Site Management Plan (SMP) or similar document to mitigate the elevated soil and soil vapor contamination. If an SMP is required, it shall be prepared prior to the issuance of any grading permit to reduce or eliminate exposure risk to human health and the environment and make the site suitable for the proposed residential development. Any further work required by the SCCDEH shall be performed by a qualified environmental professional. Evidence of regulatory oversight and copies of any subsequent documents developed under regulatory oversight such as testing results, an SMP or similar document, shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer of the City of San José's Environmental Services Department.	Notify and coordinate with SCCDEH to determine appropriate next steps for hazardous materials cleanup. Provide evidence of coordination and compliance with SCCDEH to the Director of Planning, Building and Code Enforcement or the Director's designee, the Environmental Planner of the City's Planning Department, and the City's Environmental Compliance Officer	Prior to the issuance of any grading permits.	Director of Planning, Building and Code Enforcement or the Director's designee, the Environmental Planner of the City's Planning Department, and the City's Environmental Compliance Officer.	Review coordination and compliance with SCCDEH requirements Review of project plans and construction documents to confirm inclusion of any necessary permit conditions.	Prior to the issuance of any grading permits.
Impact HAZ-2: Construction activities could result in asbestos-containing dust exposure to on-site and off-site receptors (greater than 0.25 percent asbestos).					
MM HAZ-2.1: BAAQMD requires project sites that contain greater than 0.25 percent asbestos to have an Asbestos Dust Mitigation Plan (ADPM). Prior to issuance of any demolition or grading permits, the applicant shall retain a qualified environmental professional to prepare the required ADPM. The ADPM shall identify the measures, procedures and protocols required to minimize exposure of human receptors (both on-site and off-site) to naturally-occurring asbestos (NOA) during site redevelopment activities and/or minimize by dust generated at the specific emission sources, such as track-out onto paved public roads, active storage piles, inactive disturbed surface areas and storage piles, traffic on unpaved on-site roads, earthmoving activities, and off-site transport of materials. Since the site is less than one-acre in size,	Submit the Asbestos Dust Mitigation Plan indicating measures, procedures and protocols required to minimize exposure of human receptors (both on-site and off-site) to naturally occurring asbestos to the City's Director of Planning, Building and Code Enforcement or Director's designee and the City's Environmental Compliance Officer	Prior to the issuance of any grading or demolition permits.	Director of Planning, Building and Code Enforcement or the Director's designee; the Environmental Planner of the City's Planning Department, and the City's Environmental Compliance Officer.	Review Asbestos Dust Mitigation Plan	Prior to the issuance of any grading or demolition permits.

the ADPM will not require BAAQMD review/approval or their oversight during construction. The ADPM will be provided to the Director of Planning, Building and Code Enforcement Department or the Director's designee and the City's Environmental Compliance Officer prior to issuance of any demolition or grading permits.					
NOISE					
Impact NOI-1: Construction noise would exceed ambient levels by 5 dBA for a period of more than one year in the vicinity of residential and commercial uses.					
MM NOI-1.1: Prior to the issuance of any demolition or grading permits, the project applicant shall submit 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. The noise logistics plan shall be implemented during all construction activities including demolition and site preparation, to reduce noise impacts to below the City's threshold of 60 dBA to neighboring residents and other uses. The noise logistic plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition or grading permits. As part of the noise logistic plan, construction activities for the proposed project shall include, but are not limited to, the following best management practices: • Pile Driving is prohibited. • Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction	Preparation of construction noise logistics plan by qualified acoustical consultant. Submit noise logistics plan to the Director of Planning, Building and Code Enforcement, or Director's designee	Prior to issuance of any demolition or grading permits.	Director of Planning, Building, and Code Enforcement or Director's designee	Review of project plans and construction noise logistics plan.	Prior to issuance of any demolition or grading permits.

noise mitigation plan is adequate to prevent noise disturbance of affected residential use. • Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses. • Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment. • Prohibit unnecessary idling of internal combustion engines. • 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. • Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site. • Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences. • If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites. • Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad					
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muffler, etc.) and shall 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 it in the notice sent to neighbors regarding the construction schedule.					
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Source: City of San José. *Dupont Residential Project Initial Study/Addendum*. March 2022.