

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE 1090 SOUTH DE ANZA BOULEVARD HOTEL 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 1090 South De Anza Boulevard Hotel Project under Planning File Nos. C16-041 and H16-032 (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 1090 South De Anza Boulevard Hotel Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a conventional rezoning from the CP (PD) Commercial Pedestrian Planned Development Zoning District to the CP Commercial Pedestrian Zoning District for commercial uses and a Site Development Permit to allow the construction of a four-story, 90-room hotel with one-level of underground parking on a 0.61-gross acre site located on the northeasterly corner of Via Vico and South De Anza Boulevard at 1090 South De Anza Boulevard (Assessor’s Parcel Number 372-25-015), 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. C16-041 and H16-032). 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:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

# **MITIGATION MONITORING AND REPORTING PROGRAM**

## **1090 S. De Anza Boulevard Hotel Project Initial Study/Mitigated Negative Declaration**

**File Nos. C16-041 and H16-032**

**CITY OF SAN JOSE**

**August 2017**



# 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 Initial Study/Mitigated Negative Declaration prepared for the 1090 S. De Anza Boulevard Hotel 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/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant.

I, JERRY KWOK, the applicant, on the behalf of Cupertino De Anza Hospitality<sup>LLC</sup>, 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.

Project Applicant's Signature   
Date 5/4/18

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
<b>Biological Resources</b>					
<b>Impact BIO-1:</b> Construction activities associated with the proposed project would remove existing trees that could potentially support nesting birds protected under the Migratory Bird Treaty Act.					
<b>Mitigation Measure BIO-1-1:</b> To avoid disturbance of nesting and special-status birds, the project applicant shall schedule activities related to the project, including, but not limited to, vegetation removal, ground disturbance, construction, and demolition to occur outside of the bird nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1 <sup>st</sup> through August 31 <sup>st</sup> (inclusive).	Schedule construction activities to occur outside of the nesting season.	Prior to the issuance of a grading permit.	PBCE Supervising Environmental Planner	Confirm construction activities occur outside of nesting season.	Prior to construction activities.
<b>Mitigation Measure BIO-1.2:</b> If it is not possible to schedule demolition and construction between September 1 <sup>st</sup> and January 31 <sup>st</sup> (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified biologist or ornithologist to ensure that no nests shall be disturbed during project implementation. The nesting bird pre-construction survey shall be conducted within the project boundary, including a 300-foot buffer (500-foot for raptors), on foot. The survey shall be conducted by a biologist familiar with the identification of avian species known to occur in the area. The pre-construction 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 <sup>st</sup> through April 30 <sup>th</sup> , inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1 <sup>st</sup> through August 31 <sup>st</sup> , inclusive).	Pre-construction surveys shall be conducted by a qualified biologist or ornithologist and construction-free buffer zones shall be designated around active nests.  Submit a report indicating the results of the survey and any	Prior to the issuance of a grading permit.  Surveys to be conducted during the appropriate time prior to initiation of construction activities.	PBCE Supervising Environmental Planner	Review and approve report indicating the results of the survey and designated buffer zones; verify implementation in field	Prior to issuance of any demolition or grading permits.



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

**1090 S. De Anza Boulevard  
 Hotel Project  
 File Nos. C16-041 and H16-032**

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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<p>If active nests are found, the qualified biologist or ornithologist, in consultation with 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 will not be disturbed during project construction (which is dependent upon the species, the proposed work activity, and existing disturbances associated with land uses outside of the site). The buffer zone shall be demarcated by the qualified biologist or ornithologist with bright orange construction fencing, flagging, construction lathe, or other means to mark the boundary. All construction personnel shall be notified as to the existence of the buffer zone and shall be instructed to avoid entering the buffer zone during the nesting season. No ground disturbing activities shall occur within this buffer until the qualified biologist or ornithologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Encroachment into the buffer shall occur only at the discretion of the qualified biologist.</p> <p>The project applicant shall submit a report to the City’s Environmental Supervising Planner indicating the results of the survey and any designated buffer zones, and is to be completed to the satisfaction of the Director of Planning, Building and Code Enforcement prior to the issuance of any demolition or grading permits.</p>	<p>designated buffer zones to the PBCE Supervising Environmental Planner.</p>				





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

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<b>Hazards and Hazardous Materials</b>					
<b>Impact HAZ 1:</b> The proposed project has the potential to expose the public or the environment to on-site hazardous materials.					
<p><b>Mitigation Measure HAZ-1: UST Violation Clearance.</b> To avoid potential on-site hazardous material exposure to the public or the environment, the project applicant shall confirm proper administrative actions are taken by the onsite underground storage tank (UST) system permit holder to clear the two existing violations in order to bring the system into compliance. The violations must be closed with the California EPA and Santa Clara County Department of Environmental Health. Documentation confirming the closure of these violations shall be provided to the City’s Environmental Supervising Planner prior to issuance of any grading or building permit.</p>	<p>Confirm the permit holder of the existing UST system on the project site clears the two existing violations through the listed regulatory agencies.</p>	<p>Prior to grading activities</p>	<p>PBCE Supervising Environmental Planner in coordination with the Environmental Services Department (ESD) Compliance Officer.</p>	<p>Receive confirmation of the clearance of two existing UST system permit violations from the California EPA and Santa Clara County Department of Environmental Health.</p>	<p>Prior to issuance of any grading or building permit.</p>
<b>Impact HAZ-2:</b> The proposed project site has the potential to contain soils that are contaminated with residual agricultural pesticides and/or pesticide based metals.					
<p><b>Mitigation Measure HAZ-2: Organochlorine Pesticide and Pesticide-Based Metal Testing.</b> The project applicant shall retain a qualified hazardous materials specialist to collect and analyze shallow soil samples for organochlorine pesticides (OCPs) using the EPA Test Method 8081A and for pesticide-based metals (arsenic and lead) using EPA Test Method 6010B/7471.</p>	<p>Retain a qualified hazardous materials specialist to collect and analyze shallow soil samples for pesticides</p>	<p>Prior to grading activities</p>	<p>Santa Clara County Department of Environmental Health or the Department of Toxic Substances Control</p>	<p>Receive copies of the environmental investigations</p> <p>Confirm project applicant receives No Further Action letter or</p>	<p>Prior to issuance of any grading or building permit</p>

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

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
<p>Based upon the analytical results, if pesticides are found and are above regulatory environmental screening levels for public health and the environment, the project applicant shall implement the appropriate soil management mitigation under regulatory oversight from the Santa Clara County Department of Environmental Health or the Department of Toxic Substances Control. These soil management mitigation measures shall be required and implemented prior to issuance of any grading or building permit. Copies of the environmental investigations shall be submitted to the City’s Environmental Supervising Planner and the Environmental Services Department Compliance Officer prior to issuance of any building or grading permits.</p>			<p>PBCE Supervising Environmental Planner in coordination with the Environmental Services Department (ESD) Compliance Officer.</p>	<p>equivalent assurance documenting completion of cleanup activities.</p>	
<p><b>Impact HAZ-3:</b> Project implementation could expose construction workers, future employees, and/or the environment to a significant health risk during earthwork activities.</p>					
<p><b>Mitigation Measure HAZ-3: Site Management Plan.</b> The project applicant shall prepare a Site Management Plan (SMP) to establish management practices for identifying, handling, and disposing of contaminated soils encountered during construction activities. At a minimum, the SMP shall include the following:</p> <ul style="list-style-type: none"> <li>• Stockpile management including; dust control, sampling, stormwater pollution prevention and the installation of BMPs</li> <li>• Mitigation of soil vapors (if required)</li> </ul>	<p>Complete and submit the SMP to PBCE Supervising Environmental Planner for approval.</p>	<p>Prior to and during construction activities.</p>	<p>PBCE Supervising Environmental Planner in coordination with the Environmental Services Department (ESD) Compliance Officer</p>	<p>Review and approve the SMP.  Confirm implementation of SMP.</p>	<p>Prior to issuance of any grading or demolition permit.  Implementation during construction activities.</p>

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<ul style="list-style-type: none"> <li>• Proper disposal procedures of contaminated materials (if required)</li> <li>• Monitoring, reporting, and regulatory oversight notifications.</li> <li>• 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.</li> </ul> <p>The SMP shall detail procedures and protocols 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 shall be reviewed and approved by the City’s Supervising Environmental Planner and Environmental Services Department Compliance Officer prior to issuance of any grading or building permit.</p>					

Source: 1090 S. De Anza Boulevard Hotel Project Initial Study/MND, August 2017.