

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN JOSE ADOPTING THE MURPHY VILLAS
SUBDIVISION 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 Murphy Villas Subdivision under Planning File Nos. PDC17-050, PD17-024, and PT17-054 (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 Murphy Villas Subdivision analyzed under the Initial Study/Mitigated Negative Declaration consists of a Planned Development Rezoning from the A Agricultural Zoning District to the R-M(PD) Planned Development Zoning District to allow up to five residential units; a Planned Development Permit to demolish a single-family residence and construct five single-family detached residences; and a Tentative Map to subdivide one (1) parcel into five (5) residential condominium units and one (1) common parcel on an approximately 0.45-gross acre site located at the southeast corner of Murphy Avenue and Ringwood Avenue, at 1508 Murphy Avenue, in the City of San José (Assessor's Parcel Number 241-23-053), San José, California (the "Project"); 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 (File Nos. PDC17-050, PD17-024, and PT17-054). 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

Murphy Villas Subdivision
File Nos. PDC17-050, PD17-024, PT17-054
June 2018



PREFACE

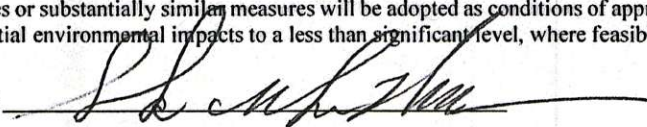
Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration prepared for the Murphy Villas Subdivision 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, Mack Mohsen, the applicant, on the behalf of Degan Homes Inc, 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 7/16/2018

DEGAN HOMES, INC.
2959 S. Winchester Blvd, Suite 200A
Campbell, CA 95008

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
BIOLOGICAL RESOURCES					
Impact BIO-1: Tree removal, demolition, grading, and other construction activities occur during breeding season could result in a significant impact to nesting raptors.					
Mitigation Measure BIO-1: The project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive). If it is not possible to schedule demolition and construction between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. 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, shall determine the extent of a	Retain a qualified ornithologist to conduct preconstruction surveys for nesting birds within 250 feet of construction, in consultation with California Department of Fish and Wildlife. If nests are found, ornithologist/biologist to establish buffer and/or monitor nests. A report indicating the results of the survey and any designated buffer zone to be submitted to the City’s Supervising Environmental Planner.	Conduct surveys no more than 14 days prior to construction if between February 1st and April 30th. No more than 30 days prior to construction if between May 1st and August 31st. Ornithologist to establish buffer and monitor nests.	City’s Supervising Environmental Planner.	Receive and approve the ornithologist survey report.	Prior to any construction activity or issuance of grading permits.

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<p>construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction.</p> <p>Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Supervising Environmental Planner.</p>					
HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-1: Historic activities on the project site may have impacted subsurface soil from previous agricultural uses.					
<p>Mitigation Measure HAZ-1.1: The project applicant shall retain a qualified professional to prepare a Phase II Soil Contamination Investigation (Phase II) prior to issuance of any demolition or grading permits or site clearance activities. The Phase II investigation shall consist of collecting shallow soil samples and testing for organochloride pesticides and pesticide based metals, arsenic, and lead across the entire site to investigate historical agricultural use. The Phase II investigation shall also include shallow soil sampling around existing structures to test for lead that may have flaked off structures with lead-containing paint and for</p>	<p>Retain qualified hazardous materials professional to collect and analyze shallow soil samples and prepare a Phase II Soil Contamination Investigation.</p> <p>Provide the Phase II Soil Contamination Investigation report to City's Supervising Environmental Planner.</p>	<p>Prior to issuance of any demolition or grading permits or site clearance activities.</p>	<p>City's Supervising Environmental Planner.</p>	<p>Review Phase II Soil Contamination Investigation report.</p>	<p>Prior to issuance of any demolition or grading permits.</p>

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<p>organochlorine pesticides that may have been applied for termite control.</p> <p>The Phase II Soil Contamination Investigation report shall be provided to the City's Supervising Environmental Planner. If the soil testing results indicate residual contamination is not detected and/or found below regulatory environmental screening levels for public health and the environment and/or construction worker safety, no further mitigation is required.</p>					
<p>Mitigation Measure HAZ-1.2: If the soil testing results indicate pesticides, arsenic and/or lead that exceed regulatory environmental screening levels for public health and the environment and/or construction worker safety, then the project applicant shall enter into the Santa Clara County Department of Environmental Health's (SCCDEH) Voluntary Cleanup Program to mitigate the contamination. Mitigation may include removal of the contaminated soil and/or capping the contaminated soil under hardscape or clean soil with deed restrictions. The SCCDEH will require a Health & Safety Plan to protect construction workers and will require a Remediation Work Plan, Site Management Plan (SMP), or other similar report to document the</p>	<p>Enter into the SCCDEH Voluntary Cleanup Program to mitigate contamination.</p> <p>Retain qualified consultant to prepare and implement a Health & Safety Plan, Remediation Work Plan, Site Management Plan (SMP), or other similar reports as required by the regulatory agency.</p>	<p>Prior to issuance of grading permits and based on results of MM HAZ-1.1</p>	<p>City's Supervising Environmental Planner and SCCDEH.</p>	<p>Receive copy of No Further Action letter from SCCDEH.</p>	<p>Prior to issuance of grading permits.</p>



Planning, Building and Code Enforcement
ROSALYNN HUGHEY, ACTING DIRECTOR

EXHIBIT "A"
(File Nos. PDC17-050; PD17-024; PT17-054)

Murphy Villas Subdivision
File Nos. PDC17-050, PD17-024,
PT17-054

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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mitigation. The SCCDEH will issue a final No Further Action letter or equivalent after the remediation has been satisfactorily completed, which must be provided to the City's Supervising Environmental Planner prior to issuance of any grading permit.					

Source: Murphy Villas Subdivision Initial Study/Mitigated Negative Declaration, May 2018