

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN JOSE ADOPTING THE VIRGINIA STUDIOS  
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 Virginia Studios Project under Planning File Nos. H17-019 and C17-012 (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 Virginia Studios Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a rezoning from the A(PD) Planned Development Zoning District to R-M Multiple Residence Zoning District and Site Development Permit to allow the construction of the five-story, below market-rate senior housing with 301 studio units and, in accordance with the State’s Density Bonus Law (Government Code Section 65915), to allow three concessions (front and side setbacks and motorcycle parking) and two waivers (building height and private open space) on an approximately 1.8-acre site located at the northwest corner of East Virginia Street and South 7th Street, (Assessor’s Parcel Number 472-25-092), in the City of San José, California, and to obtain a street vacation from the City for the northern segment of South 6th Street, between Interstate 280 and East Virginia Street; 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. H17-019 and C17-012). 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**

**Virginia Studios Project**

**File Nos. C17-012 and H17-019**

**CITY OF SAN JOSE**

**October 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 Virginia Studios Project concluded that 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.

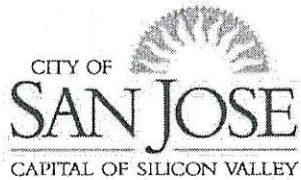
This document does *not* discuss those subjects for which the Initial Study/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant.

I, Alexis Gevorgian, the applicant, on the behalf of AMG + Associates, LLC, 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 the proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with the development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level.

Project Applicant Signature \_\_\_\_\_

Date 10-25-18



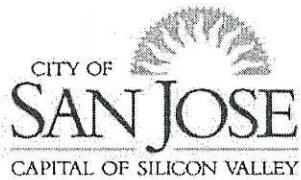


*Planning, Building and Code Enforcement*

ROSALYNN HUGHEY, DIRECTOR

Virginia Studios Project  
File Nos. C17-012 & H17-019

| MITIGATIONS  | MONITORING AND REPORTING PROGRAM   |   |  |  |   |
|--|--|---|--|--|---|
|  | Documentation of Compliance<br>[Project Applicant/Proponent Responsibility]  |   | Documentation of Compliance<br>[Lead Agency Responsibility]  |  |   |
|  | Method of Compliance<br>Or Mitigation Action   | Timing of<br>Compliance                                   | Oversight<br>Responsibility  | Actions/Reports  | Monitoring<br>Timing or<br>Schedule                   |
| <b>AIR QUALITY</b>   |  |   |  |  |   |
| <b>Impact AIR-1: Project construction activities would result in health risks above Bay Area Air Quality Management District thresholds at nearby sensitive receptors.</b>   |  |   |  |  |   |
| <b>MM AIR-1.1:</b> Prior to issuance of any grading permits, the project applicant shall develop a written plan demonstrating that mobile off-road equipment larger than 25 horsepower and operating at the site for more than two days continuously shall meet U.S. Environmental Protection Agency (USEPA) particulate matter emissions standards for Tier 4 engines or equivalent and all stationary pieces of construction equipment shall use best available control technology to reduce diesel particulate matter (DPM) or shall be gasoline- or alternative-energy powered. Tier 2 engines that have exhaust systems equipped with California Air Resources Board (CARB) Level 3 verified diesel emission control system shall also meet this requirement. | <p>All measures shall be printed on all construction documents, contracts, and project plans.</p> <p>The Diesel Particulate Matter (DPM) Emissions Reduction Plan shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement for review and approval.</p> | Prior to issuance of any grading permits.                 | Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement  | <p>Ensure that all measures are printed on all construction documents, contracts, and project plans.</p> <p>Review and approve the DPM Emissions Reduction Plan.</p> | Prior to issuance of any grading permits.             |
| <b>BIOLOGICAL RESOURCES</b>  |  |   |  |  |   |
| <b>Impact BIO-1: Development of the project would impact nesting birds and raptors, if present on-site or in the immediate vicinity.</b>   |  |   |  |  |   |
| <b>MM BIO-1.1:</b> <u>Avoidance and Inhibit Nesting.</u> Construction and tree removal/pruning activities shall be scheduled to avoid the nesting season. Tree removal and/or pruning shall be completed before the start of the nesting season to help preclude nesting. The nesting season for most birds and raptors in the San Francisco Bay Area extends from February 1st through August 31st, inclusive.  | All measures shall be printed on all construction documents, contracts, and project plans.   | Prior to the issuance of any grading or building permits. | Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement. | Ensure that all measures are printed on all construction documents, contracts, and project plans.  | Prior to issuance of any grading or building permits. |



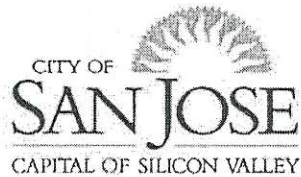
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Virginia Studios Project  
File Nos. C17-012 & H17-019

| MITIGATIONS  | MONITORING AND REPORTING PROGRAM  |                         |   |                 |                                     |
|--|---|-------------------------|---|-----------------|-------------------------------------|
|  | Documentation of Compliance<br>[Project Applicant/Proponent Responsibility]   |                         | Documentation of Compliance<br>[Lead Agency Responsibility] |                 |                                     |
|  | Method of Compliance<br>Or Mitigation Action  | Timing of<br>Compliance | Oversight<br>Responsibility                                 | Actions/Reports | Monitoring<br>Timing or<br>Schedule |
| <p><b>MM BIO-1.2: Preconstruction Survey(s).</b> If construction activities cannot be scheduled between September 1st and January 31<sup>st</sup>, inclusive, then a qualified ornithologist shall conduct a preconstruction survey for nesting raptors and other migratory birds within on-site trees as well as all trees within 250 feet of the site to identify active bird nests that may be disturbed during project construction. This survey shall be completed no more than fourteen (14) days prior to the initiation of demolition/construction activities (including tree removal and pruning). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests.</p> <p>If the survey does not identify any nesting birds that would be affected by construction activities, no further mitigation is required.</p> <p>If an active nest is found sufficiently close to work areas to be disturbed by these activities, the ornithologist, in consultation with the California Department of Fish and Wildlife (CDFW), shall designate a construction-free buffer zone to be established around the nest to ensure that no nests of species protected by the federal Migratory Bird Treaty Act (MBTA) and California Fish and Game Code are disturbed during construction activities. The buffer shall remain in place until a qualified ornithologist has determined that the nest is no longer active.</p> | <p>Avoid construction activities during nesting season. If construction activities cannot be scheduled outside of the nesting season, conduct pre-construction surveys by a qualified ornithologist and designate construction-free buffer zones around active nests.</p> |                         |   |                 |                                     |



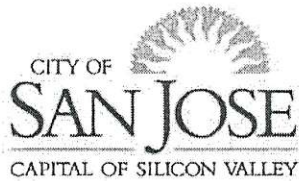


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Virginia Studios Project  
File Nos. C17-012 & H17-019

| MITIGATIONS   | MONITORING AND REPORTING PROGRAM   |  |   |  |   |
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|   | Documentation of Compliance<br>[Project Applicant/Proponent Responsibility]  |  | Documentation of Compliance<br>[Lead Agency Responsibility] |  | Monitoring<br>Timing or<br>Schedule                   |
|   | Method of Compliance<br>Or Mitigation Action   | Timing of<br>Compliance                              | Oversight<br>Responsibility                                 | Actions/Reports  |   |
| <b>MM BIO-1.3: Reporting.</b> A final written report on nesting birds and raptors, including survey methodology, survey date(s), map of identified active nests (if any), and protection measures (if required), shall be submitted to the City's Supervising Environmental Planner and be completed to the satisfaction of the Director of Planning, Building, and Code Enforcement prior to the issuance of any grading permits.  | Submit a report with the results of the preconstruction survey and any designated buffer zones to the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement. |  |   | Review and approve pre-construction survey report.   |   |
| <b>HAZARDS &amp; HAZARDOUS MATERIALS</b>  |  |  |   |  |   |
| <b>Impact HAZ-1: Project implementation (e.g., excavation) could release as yet undetected residual hazardous waste which could expose construction workers, future residents, and/or the environment to a significant health risk during earthwork activities.</b>   |  |  |   |  |   |
| <b>MM HAZ-1.1:</b> The project applicant shall submit the following completed hazardous materials investigations to the Santa Clara County Department of Environmental Health (SCCDEH) for review: <ul style="list-style-type: none"> <li>Phase I Environmental Site Assessment (ESA) prepared by <i>KCE Matrix</i> on July 3, 2014.</li> <li>Subsurface ESA prepared by <i>KCE Matrix</i> on September 10, 2014.</li> <li>Technical Memorandum prepared by <i>Environmental Partners, Inc.</i> on June 4, 2015.</li> </ul> | Submit all hazardous materials investigations completed to date to SCCDEH for review and complete all work and steps required to obtain approval by SCCDEH.  | Prior to issuance of any grading or building permits | SCCDEH.   | Review and approve all hazardous materials investigations completed to date and subsequent work and steps required for approval. | Prior to issuance of any grading or building permits. |



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| <ul style="list-style-type: none"> <li>Remedial Action Report prepared by <i>Environmental Partners, Inc.</i> on November 19, 2017).</li> </ul> <p>The SCCDEH shall review the reports and determine if the site investigation is complete or if further remediation and/or investigation is required. The project applicant shall complete the necessary steps to obtain regulatory closure for the property, pursuant to SCCDEH direction.</p> <p>Final approval that the site is suitable for residential development shall be issued by SCCDEH which shall be submitted to the City of San José Supervising Environmental Planner prior to issuance of any grading permits for project construction.</p> | Submit a copy of SCCDEH final approval that the site is cleared for residential development to the City of San José Supervising Environmental Planner, Department of Planning, Building and Code Enforcement. |                         | Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement. | Receive a copy of SCCDEH final approval that site is cleared for residential development. |                                     |

**Source:** Final Initial Study for the Virginia Studios Project, October 2018.