

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CERTIFYING THE AVALON WEST VALLEY EXPANSION PROJECT ENVIRONMENTAL IMPACT REPORT AND MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT IMPACTS, MITIGATION MEASURES AND ALTERNATIVES, AND A MITIGATION MONITORING AND REPORTING PROGRAM, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED

WHEREAS, the proposed Avalon West Valley Expansion Project includes 1) Planned Development Rezoning from the RM Multiple Residence and RM(PD) Planned Development Zoning District to the RM(PD) Planned Development Zoning District to allow for a mixed-use development, 2) Planned Development Permit to effectuate the Planned Development Rezoning to allow for the demolition of the existing parking garages, pool area, and leasing/amenity building and construction of two new buildings with up to 307 new residential units and 17,800 square feet ground floor retail/commercial space, new swimming pools , a new stand-alone parking garage with up to 742 parking spaces, and 129,687 square feet of open space, 3) Vesting Tentative Tract Map to merge seven parcels and to subdivide the merged parcel into no more than two parcels; all located on an approximately 18.9 gross acre site located on the east side of Saratoga Avenue, between Blackford Avenue and Manzanita Drive in the City in San José, California (collectively referred to herein as the "Project"); and

WHEREAS, approval of the Avalon West Valley Expansion Project would constitute a project under the provisions of the California Environmental Quality Act of 1970, together with related state and local implementation guidelines and policies promulgated thereunder, all as amended to date (collectively, "CEQA"); and

WHEREAS, the City is the lead agency for the Project, and has prepared a Final Environmental Impact Report for the Project pursuant to and in accordance with CEQA, which the Final Environmental Impact Report is comprised of the Draft Environmental Impact Report for the Project (the “Draft EIR”), together with the First Amendment to the Draft EIR (collectively, all of said documents are referred to herein as the “FEIR”); and

WHEREAS, on May 22, 2019, the Planning Commission of the City of San José reviewed the FEIR prepared for the Avalon West Valley Expansion Project, and recommended to the City Council that it find the environmental clearance for the proposed Project was completed in accordance with the requirements of CEQA and further recommended the City Council adopt this Resolution; and

WHEREAS, CEQA requires that, in connection with the approval of a project for which an environmental impact report has been prepared which identifies one or more significant environmental effects of the project, the decision-making body of a public agency make certain findings regarding those effects and adopt a mitigation or monitoring program and overriding statement of consideration for any impact that may not be reduced to a less than significant level.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

1. That the above recitals are true and correct; and
2. That the City Council does hereby find and certify that the FEIR has been prepared and completed in compliance with CEQA; and
3. The City Council was presented with, and has independently reviewed and analyzed, the FEIR and other information in the record and has considered the information contained therein, including the written and oral comments received at the public hearings on the FEIR and the Project, prior to acting upon or approving the Project, and has found that the FEIR represents the independent judgment of the City of San José (“City”) as lead agency for the Project, and designated 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 record of proceedings on which the decision of the City is based; and

4. That the City Council does hereby find and recognize that the FEIR contains additions, clarifications, modifications, and other information in its response to comments on the Draft EIR or obtained by the City after the Draft EIR was issued and circulated for public review and does hereby find that such changes and additional information are not significant new information as that phrase is described under CEQA because such changes and additional information do not indicate that any of the following would result from approval and implementation of the Project: (i) any new significant environmental impact or substantially more severe environmental impact not already disclosed and evaluated in the Draft EIR, (ii) any feasible mitigation measure considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented, or (iii) any feasible alternative considerably different from those analyzed in the Draft EIR that would lessen a significant environmental impact of the Project has been proposed and would not be implemented; and
5. That the City Council does hereby find and determine that recirculation of the FEIR for further public review and comment is not warranted or required under the provisions of CEQA; and
6. The City Council does hereby make the following findings with respect to the significant effects of the environment of the Project, as identified in the FEIR, with the understanding that all of the information in this Resolution is intended as a summary of the full administrative record supporting the FEIR, which full administrative record should be consulted for the full details supporting these findings.

AVALON WEST VALLEY EXPANSION PROJECT SIGNIFICANT ENVIRONMENTAL IMPACTS

Air Quality

Impact: **Impact AIR-1:** Construction activities associated with the proposed project would expose infants near the construction zones and in proximity to the project site to temporary toxic air contaminant (TAC) emissions in excess of BAAQMD's significance threshold of 10 per one million for cancer risk,

and would expose sensitive receptors to particulate matter of 2.5 microns (PM_{2.5}) emissions in excess of 0.3 µ/m³ for the annual PM_{2.5} threshold.

Mitigation: **MM AIR-1.1:** All mobile diesel-powered off-road equipment operating on-site for more than two days and larger than 25 horsepower shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) particulate matter emissions standards for Tier 4 engines or equivalent. Alternatively, the use of equipment that includes CARB certified Level 3 Diesel Particulate Filters or alternatively-fueled equipment (i.e., non-diesel) could meet this requirement.

MM AIR-1.2: 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 Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement for review and approval. The plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards set forth in these mitigation measures.

Finding: With the implementation of Mitigation Measures MM AIR-1.1 and MM AIR-1.2, air quality impacts resulting from construction activities associated with the project would be reduced to a less than significant level. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: Implementation of the City's standard project conditions for construction air quality, which incorporate Best Management Practices (BMPs) from the Bay Area Air Quality Management District (BAAQMD), would reduce exhaust emissions during construction. Combined with mitigation measures MM AIR-1.1 and MM AIR-1.2, the maximum excess residential cancer risk from construction of the Project would be reduced to seven cancer cases per million and the annual PM_{2.5} concentration to 0.12 micrograms per cubic meter air (µ/m³), which is less than the BAAQMD threshold of 10 cancer cases per million and single-source significance threshold of 0.3 µ/m³. As a result, the required mitigation measures and BMPs would reduce the temporary construction emissions impact to a less than significant level.

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Biological Resources

Impact: **Impact BIO-1:** Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.

Mitigation: **MM BIO-1.1:** 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 demolition and construction cannot be scheduled 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 are 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 (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 shall not be disturbed during project construction.

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.

Finding: Implementation of Mitigation Measure MM BIO-1.1 would reduce impacts to nesting raptors and other migratory birds to a less than significant level.
(Less Than Significant with Mitigation Incorporated)

Facts in Support of Finding: Conducting pre-construction surveys and implementing a construction-free buffer zone around any migratory bird nests (if found) would ensure that raptor or migratory bird nests are not disturbed during Project construction, consistent with the Migratory Bird Treaty Act and California Fish and Game Code. The size of the buffer zones would be determined by consultation between the qualified ornithologist and the CDFW, and based on scientific evidence and best management practices.

Compliance with Mitigation Measure MM BIO-1.1 would avoid impacts to nesting birds.

Hazards and Hazardous Materials

Impact: **Impact HAZ-1:** Implementation of the proposed project could expose construction workers to residual agricultural soil contamination.

Mitigation: **MM HAZ-1.1:** Prior to issuance of any grading permits, a qualified hazardous materials specialist shall collect shallow soil samples within the near surface soil and test for organochlorine pesticides and pesticide-based metals arsenic and lead to determine if contaminants from previous agricultural operations have occurred at concentrations above established construction worker safety and residential environmental screening levels. The results of the soil sampling and testing shall be provided to the City's Supervising Planner and Municipal Environmental Compliance Officer for review, approval, and/or referral.

MM HAZ-1.2: If sampling analysis shows contaminated soils are found in concentrations above established regulatory environmental screening levels, the project applicant shall enter into the Santa Clara County Department of Environmental Health's (SCCDEH) Voluntary Cleanup Program (VCP), or equivalent, to formalize regulatory oversight of the mitigation of contaminated soil to ensure the site is safe for construction workers and the public after development. The applicant must remove contaminated soil to levels acceptable to the SCCDEH (or equivalent oversight agency). It is also possible that some of the contaminated soil may be left in-place buried under hardscape and/or several feet of clean soil under the approval of the SCCDEH (or equivalent oversight agency).

A Removal Action Plan, Soil Mitigation Plan or other similarly titled report describing the remediation shall be prepared and implemented to document the removal and /or capping of contaminated soil, prior to the issuance of any demolition, grading and/or building permits, whichever occurs earliest. A copy of these reports shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the Municipal Compliance Officer of the City of San José Environmental Services Department. All work and reports produced shall be performed under the regulatory oversight and approval of the SCCDEH (or equivalent oversight agency).

Finding: With implementation of Mitigation Measures MM HAZ-1.1 through 1.2, the project would have a less than significant hazardous materials impact to

construction workers and nearby residential receptors. **(Less Than Significant with Mitigation Incorporated)**

Facts in Support of Finding: The project site was historically used as agricultural land for at least 30 years. Although the existing complex was constructed in 1969, there could remain residual agricultural soil contamination to which construction workers and future site occupants could be exposed. The required soil sampling would determine if soil contamination is found in concentrations above established regulatory environmental screening levels. If soil contamination exceeds these environmental screening levels, remediation of the site would be required in accordance with the Santa Clara County Department of Environmental Health with the approval of a Removal Action Plan, Soil Mitigation Plan or other similar report to ensure potential impacts to construction workers on the site are reduced to a less than significant level.

Noise

Impact: **Impact NOI-1:** Concrete pours during the evening hours (7:00 PM to 7:00 AM) would exceed the City's allowable noise levels.

Mitigation: **MM NOI-1.1:** To reduce construction noise levels to nearby residences during evening hours, the following mitigation measures shall be implemented by the project applicant prior to the start of any evening construction activity:

- The project applicant shall notify by mail all sensitive receptors and residences within 200 feet of the construction sites at least two weeks prior to the night-time concrete pours. In addition to mailing, notification methodology shall also include online and on-site posting. All notifications shall provide specific details on the schedule of the dates, times, duration, and proposed activities of all construction work occurring outside of the City's allowable hours of construction (7:00 AM to 7:00 PM, Monday through Friday). Notices shall provide tips on reducing noise intrusion, for example, by closing windows facing the planned construction. Any modifications made to the dates, times, and duration of the concrete pours will require new noticing.
- The project applicant shall designate a construction noise coordinator to respond to concerns of neighboring receptors about noise construction disturbance. The construction noise coordinator shall be available for responding to any construction noise complaints during the hours that construction is to take place. A toll-

free telephone number and email address shall be provided in all notices (mailed, online website, and construction site postings) for receiving questions or complaints during construction and shall also include procedures that the construction noise coordinator will do for responding to callers and email messages. Procedures for reaching the public liaison officer via telephone or in person shall be included in the above notices and also posted at the construction site(s).

- The project applicant shall implement one of the following two options to control night-time construction noise occurring between the hours of 10:00 PM and 7:00 AM to reduce the occurrence of sleep disturbance to nearby residents:
 - Option 1:
 - Install temporary sound walls or acoustic blankets to shield adjacent residences from all night-time concrete pours. The sound walls or acoustic blankets shall have a height of no less than three feet higher than noise-generating piece(s) or parts of equipment, a Sound Transmission Class (STC) of 27 or greater, and a surface with a solid face from top to bottom without any openings or cutouts along the face or at the base of the barrier; and
 - Offer to temporarily relocate occupants of residences that are located within 75 feet of evening construction activities by offering hotel vouchers to all affected residents. A minimum of one week notice of the offer shall be provided.
 - Option 2:
 - Offer to temporarily relocate occupants of residences within 200 feet of evening construction activities by offering hotel vouchers to all affected residents. A minimum of one week notice of the offer shall be provided.

MM NOI-1.2: Prior to the issuance of any grading permits, the project applicant shall submit a construction plan to the Supervising Environmental Planner for review and approval. The construction plan shall include, but is not limited to, the following information:

- A proposed construction schedule, list of equipment to be used during construction activities, and the equipment specifications.

- Contact information of the construction noise coordinator and a description of the coordinator's specified roles and responsibilities.
- An example notification template for the evening hour concrete pours that the project applicant will use.
- Confirmation of which option, identified in NOI-1.1, the project applicant shall implement.
- Notification radius and addresses of all sensitive receptors and residences within 200 feet of the construction sites.

Finding: The project proposes extended construction hours on Saturdays from 9:00 a.m. to 5:00 p.m., and twice a month and up to 10 days of 24-hour construction to allow concrete pours. The Noise Study prepared for the project found that while noise and vibration would not result in a significant impact during the daytime with standard conditions incorporated, evening time construction (after 7:00 p.m.) for concrete pours would result in exceedance of maximum instantaneous noise levels that exceeds 50 dBA Lmax in bedrooms and 55 Dba in other rooms that could cause a sleep disturbance to residences. With implementation of Mitigation Measures MM NOI-1.1 and MM NOI-1.2, the Project would have a less than significant evening construction impact. **(Less Than Significant Impact with Mitigation Incorporated)**

Facts in Support of Finding: Chapter 20.100.450 of the Municipal Code establishes allowable hours of construction within 500 feet of a residential unit between 7:00 am and 7:00 pm Monday through Friday unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence. Construction noise during the allowable hours pursuant to Chapter 20.100.450 of the Municipal Code would not result in significant unavoidable impact with the implementation of all standard permit conditions to reduce temporary construction noise.

Additionally, the project proposes construction hours outside of the allowable hours specified in the San José Municipal Code, including construction activity on Saturdays, twice a month, between the hours 9:00 am to 5:00 pm, and 24-hour construction operations on up to 10 days to accommodate large concrete pours. A total of 29 concrete pours is anticipated. Each concrete pour is estimated to take 8 hours and would require two to four trucks per hour to deliver concrete. Each concrete pour would involve three trucks at a time; a pump truck, a delivery truck

connected to the pump truck, and another delivery truck waiting to be connected.

Federal Highway Administration (FHWA) software – Roadway Construction Noise Model (RCNM) was used to calculate noise generated by a concrete mixing truck, a pump truck and a delivery truck. The nearest residences are located as close as 50 feet from the concrete pour locations. At a distance of 50 feet, concrete pour activities would generate noise levels of 79 dBA Leq and 81 dBA Lmax. Construction noise would drop off at a rate of 6 dBA per doubling of distance. Shielding by intervening structures would be anticipated to provide 10 to 20 dBA of additional noise reduction.

The Noise Assessment prepared for the site (Illingworth and Rodkin, May 22, 2018) found that noise levels and impacts generated during morning Saturday construction noise levels would be similar to those during the allowable hours by the Chapter 20.100.450 of the Municipal Code. However, nighttime construction noise levels that would exceed General Plan Policy EC-1.9 could result in sleep disturbance to nearby residents.

Standard residential construction provides approximately 15 dBA of exterior-to-interior noise reduction, assuming the windows are partially open for ventilation; fully closed windows provide approximately 20 to 25 dBA of noise reduction in interior spaces (Illingworth and Rodkin, 2018). Therefore, at an unshielded distance of 50 feet, interior noise levels within residences would be anticipated to be 64 dBA Leq and 66 dBA Lmax with windows partially open and 54 to 59 dBA Leq and 56 to 61 dBA Lmax with windows closed. These noise levels would be anticipated to result in sleep disturbance to occupants.

Given that only up to 10 nighttime events are requested, it may be reasonable to assume occupants could keep windows closed for periods where nighttime construction would occur. With construction of a 15-foot high temporary barrier, interior noise levels at adjacent residences would be below the 50 dBA Lmax sleep disturbance threshold, assuming windows are kept in the closed position. However, they would continue to be above the 45 dBA Leq threshold. With construction of a 15-foot high barrier, residences within about 75 feet of construction could also be provided with offers to relocate (e.g., hotel vouchers) during periods of nighttime construction. Alternately, without the inclusion of the temporary barrier, occupants of residences with unshielded façades within about 200 feet of nighttime construction could be provided with offers to relocate during periods of nighttime construction.

Therefore, mitigation includes a notification methodology to inform residences of potential construction hours and identification of a coordinator to receive inquiries and complaints. In addition, mitigation includes one of two relocation options for residences within a certain distance from the construction location. The implementation of notification, coordination, and relocation of residences within 75 or 200 feet from the construction site (depending on whether sound barriers are constructed) would reduce potential noise impacts to the nearby residences during evening construction hours.

FINDINGS CONCERNING ALTERNATIVES

In order to comply with the purposes of CEQA, it is important to identify alternatives that reduce the significant impacts that are anticipated to occur if the project is implemented and to try to meet as many of the project's objectives as possible. The CEQA Guidelines emphasize a common-sense approach -- the alternatives should be reasonable, should "foster informed decision making and public participation," and should focus on alternatives that avoid or substantially lessen the significant impacts.

The alternatives analyzed in the FEIR were developed with the goal of being at least potentially feasible, given Project objectives and site constraints, while avoiding or reducing the Project's identified environmental effects. The following are evaluated as alternatives to the proposed project:

1. No Project – No Development Alternative
2. Existing Zoning Alternative
3. Reduced Density Alternative

1. No Project – No Development Alternative

- A. Description of Alternative:** The No Project – No Development Alternative would retain the existing residential site as it is. If the project site were to remain as is, there would be no new impacts.
- B. Comparison of Environmental Impacts:** The No Project – No Development Alternative would avoid all of the environmental impacts identified in the FEIR.
- C. Finding:** The No Project - No Development Alternative would avoid the Project's construction impacts as there would be no ground disturbance activities. The No Project - No Development Alternative would not meet any of the proposed Project's specific objectives, including supporting the San José

General Plan policies to intensify housing units in Urban Villages, repair and upgrade existing structures to replace again, unattractive and dilapidated parking garages with new and modern development. Therefore, this alternative is rejected.

2. Existing Zoning Alternative

- A. Description of Alternative:** The project site is currently designated Mixed Use Neighborhood in the General Plan, which allows for a maximum FAR of 2.0 (3.5 stories) and is currently zoned R-M Multiple Residence. The purpose of the R-M zoning district is to reserve land for the construction, use and occupancy of higher density residential development and higher density residential commercial mixed-use development.

This alternative would allow for construction of residential and mixed-use development, based on an allowable height of 45 feet (3.5 stories). The No Project – Existing Zoning Alternative assumes a project is built consistent with the sites' Mixed Use Neighborhood General Plan Land Use/Transportation Diagram designation and R-M Multiple Residence Zoning District. This alternative would continue to allow for a mixed-use development, but would be on a lower density than the proposed project. If the Avalon Building were to be constructed under the Existing Zoning Alternative, the building would retain the ground floor retail and include up to 84 residential units, resulting in a loss of 168 residential units compared to the proposed project. Since the number of residential units in the Avalon Building would be reduced by more than half under this alternative, a reduction in parking would also occur.

- B. Comparison of Environmental Impacts:** The No Project – Existing Zoning Alternative would likely result in the same types of impacts as the proposed Project. Construction would still occur with this alternative. The less than significant construction-related TAC and noise impacts would be lessened with this smaller project due to a shorter construction timeframe and reduction in total excavation required for the below-grade parking. However, impacts such as biological and cultural resources, hazardous materials, and noise impacts would not be avoided.
- C. Finding:** The No Project – Existing Zoning Alternative would meet some Project objectives, including those for the development of higher density residential units on the project site within an Urban Village. However, the basic objectives related to the provision of high-density, transit-oriented uses addressing the region's housing would not be met due to the reduced number of residential units. This alternative would also not meet the City's objectives to intensify development within the Saratoga Urban Village or to provide on-site

retail opportunities to property residents and surrounding neighbors. Therefore, this alternative is rejected.

3. Reduced Density Alternative

- A. Description of Alternative:** As most of the impacts are associated with construction activities, any projects that would be smaller than the proposed project, but larger than the Existing Zoning Alternative qualifies for a Reduced Density Alternative. Because the project is a mix of residential and commercial land uses, there is a substantive number of possible development scenarios. As such, it is not possible to define them all. Nevertheless, any development scenario with a smaller project of any size would involve a shorter construction timeframe and less heavy equipment on-site, which would lessen the construction toxic air contaminants and noise impacts as compared with the proposed project.
- B. Comparison of Environmental Impacts:** Any of the Reduced Density Alternatives that has a smaller project size would involve a shorter construction timeframe and less heavy equipment on-site, which would lessen the construction toxic air contaminant and noise impacts as compared to the proposed project. There would be no measurable change in the level of impact for hazardous materials from the reduced density scenario compared to the proposed project, as both projects would require grading and excavation that would disturb potentially contaminated soils. It is reasonable to assume that the reduced density alternative would still remove all the trees currently on the project site to accommodate redevelopment of the site, resulting in a potential impact to nesting migratory birds. Therefore, a smaller project of any size would not fully reduce all construction impacts.
- C. Finding:** The Reduced Density Alternative would represent an overall reduction in commercial and residential development compared to the proposed project. The Reduced Density Alternative would be generally consistent with most of the identified objectives of the proposed project and would comply with the development policies of the Envision San José 2040 General Plan.

Based on the above discussion, the environmentally superior alternative is the No Project – No Development Alternative as it would avoid all construction impacts. However, this alternative would not meet any project objectives. Therefore, the Existing Zoning Alternative was considered. The Existing Zoning Alternative would lessen the severity of both of the already less than significant construction-related toxic air contaminants and construction noise impacts. This alternative would result in the construction of approximately 84 residential units within the Avalon Building and 55 residential units

within the Manzanita Building, which is less than half the number of units for the proposed project. This alternative would lessen construction-related toxic air contaminants and noise impacts due to a shorter construction timeframe. In addition, one level of below-grade parking would be removed due to the reduction in the number of proposed units. The Existing Zoning Alternative would be the environmentally superior alternative to the proposed project.

However, while the Existing Zoning Alternative would continue to support most of the objectives with regards to adding more housing units to the 18.9 acre site with improvements for aging amenities (i.e., pool, parking garages, open spaces), this alternative would not fully meet the goal of intensification of new housing in Urban Villages or meet many of the objectives to provide on-site retail opportunities to serve the neighborhood, which is an Urban Village goal and would prevent the planned growth in the Envision San José 2040 General Plan of 4,500 jobs and 3,860 dwelling units. Therefore, this alternative is rejected.

MITIGATION MONITORING AND REPORTING PROGRAM

Attached to this Resolution as Exhibit “A” and incorporated and adopted as part of this Resolution herein is the Mitigation Monitoring and Reporting Program (“MMRP”) for the Project required under Section 21081.6 of the CEQA Statute and Section 15097(b) of the CEQA Guidelines. The MMRP identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

STATEMENT OF OVERRIDING CONSIDERATIONS

The project has identified that temporary construction activities would result in potential significant impact to the Air Quality, Biological Resources, Hazards and Hazardous Materials, and Noise environmental resources. With the implementation of mitigation measures such as AIR-1.1, AIR-1.2, BIO-1.1, HAZ-1.1, HAZ-1.2, NOI-1.1, NOI-1.2 and permit conditions, the temporary construction impacts would reduce to less than significant. Therefore, the project would not require a Statement of Overriding Consideration as the project would not result in significant unavoidable impacts.

LOCATION AND CUSTODIAN OF RECORDS

The documents and other materials that constitute the record of proceedings on which the City Council based the foregoing findings and approval of the Project are located at the City’s Department of Planning, Building and Code Enforcement, San José City Hall,

200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113. The City Council hereby designates the City's 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.

ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Avalon West Valley Expansion Project
File Nos. PDC17-056 and PD17-027
April 2019



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 Environmental Impact Report (EIR) prepared for the Avalon West Valley Expansion 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 EIR concluded that the impacts from implementation of the project would be less than significant.

I, JOE KIRCHOFER, the applicant, on the behalf of AVALON Bay COMMUNITIES, 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



Date

4/22/19



Planning, Building and Code Enforcement
 ROSALYNN HUGHEY, DIRECTOR

Avalon West Valley Expansion
 File Nos. PDC17-056 and PD17-027

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 expose infants near the construction zones and in proximity to the project site to temporary TAC emissions in excess of acceptable thresholds, and would expose sensitive receptors to PM _{2.5} emissions in excess of acceptable thresholds.					
MM AIR-1.1: All mobile diesel-powered off-road equipment operating on-site for more than two days and larger than 25 horsepower shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) particulate matter emissions standards for Tier 4 engines or equivalent. Alternatively, the use of equipment that includes CARB certified Level 3 Diesel Particulate Filters or alternatively-fueled equipment (i.e., non-diesel) could meet this requirement.		Allow only mobile diesel -powered off-road equipment, as described, having engines that meet EPA Tier 4 particulate matter emissions standards or equivalent.	Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).	Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement	Receive the construction operations plan and letter. Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).
MM AIR-1.2: 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 Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement for review and approval. The plan shall be accompanied by a letter signed by an air quality specialist, verifying that the equipment included in the plan meets the standards set forth in these mitigation measures.		Prepare a construction operations plan that includes specifications of equipment to be used during construction. The plan shall be accompanied by a letter signed by an air quality specialist.			



Planning, Building and Code Enforcement
 ROSALYNN HUGHEY, DIRECTOR

Avalon West Valley Expansion
 File Nos. PDC17-056 and PD17-027

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
		Submit the operations plan to the Supervising Environmental Planner, Department of Planning, Building and Code Enforcement for review and approval.			
BIOLOGICAL RESOURCES					
Impact BIO-1: Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.					
MM BIO-1.1: 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 1 st through August 31 st (inclusive). If demolition and construction cannot be scheduled between September 1 st and January 31 st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests are 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 st through April 30 th , inclusive) and no more than 30 days prior to the initiation of		Avoidance of construction activities during nesting seasons. If avoidance of construction activities during nesting seasons is not feasible, a pre-construction nesting bird survey shall be conducted by a qualified	Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities.	Supervising Environmental Planner of the San José Department of Planning, Building and Code Enforcement	Confirm that demolition and construction activities are scheduled outside of the nesting season. Review report indicating the results of the survey (or any
					Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities.



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MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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<p>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 (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 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>	<p>ornithologist and, in consultation with the California Department of Fish and Wildlife, a construction-free buffer zone shall be designated around any discovered nest.</p> <p>The ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the Supervising Environmental Planner of the San José Department of Planning, Building and Code Enforcement.</p>			<p>other environmental investigation reports, if applicable) and any designated buffer zones.</p>	



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HAZARDOUS MATERIALS					
Impact HAZ-1: Implementation of the proposed project could expose construction workers to residual agricultural soil contamination.					
MM HAZ-1.1: Prior to issuance of any grading permits, the qualified hazardous materials specialist shall collect shallow soil samples within the near surface soil and test for organochlorine pesticides and pesticide-based metals arsenic and lead to determine if contaminants from previous agricultural operations have occurred at concentrations above established construction worker safety and residential environmental screening levels. The results of the soil sampling and testing shall be provided to the City's Supervising Planner and Municipal Environmental Compliance Officer for review, approval, and/or referral.		A qualified hazardous materials specialist shall collect and analyze shallow soil samples from the near surface soil and test for organochlorine pesticides and pesticide-based metals arsenic and lead.	Prior to the issuance of any demolition, grading and/or building permits, whichever occurs earliest.	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement Municipal Compliance Officer of the City of San José Environmental Services Department	Receive and approve, or referral to appropriate agency, as stated in HAZ-1.2 Prior to the issuance of any demolition, grading, and/or building permits, whichever occurs earliest.
MM HAZ-1.2: If sampling analysis shows contaminated soils are found in concentrations above established regulatory environmental screening levels, the project applicant shall enter into the Santa Clara County Department of Environmental Health's (SCCDEH) Voluntary Cleanup Program (VCP), or equivalent, to formalize regulatory oversight of the mitigation of contaminated soil to ensure the site is safe for construction workers and the public after development. The applicant must remove contaminated soil to levels acceptable to the SCCDEH (or equivalent oversight agency). It is also possible that some of the		If contaminated soils are found in concentrations above established screening levels, enter into an agreement with Santa Clara County Department of Environmental	Prior to the issuance of any demolition, grading and/or building permits, whichever occurs earliest.	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement Municipal Compliance Officer of the City of San José	Receive a copy of the Santa Clara County Department of Environmental Health or equivalent regulatory agency approved Soil Management Plan. Prior to the issuance of any demolition, grading and/or building permits, whichever occurs earliest.



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<p>contaminated soil may be left in-place buried under hardscape and/or several feet of clean soil under the approval of the SCCDEH (or equivalent oversight agency).</p> <p>A Removal Action Plan, Soil Mitigation Plan or other similarly titled report describing the remediation shall be prepared and implemented to document the removal and /or capping of contaminated soil, prior to the issuance of any demolition, grading and/or building permits, whichever occurs earliest. A copy of these reports shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the Municipal Compliance Officer of the City of San José Environmental Services Department. All work and reports produced shall be performed under the regulatory oversight and approval of the SCCDEH (or equivalent oversight agency).</p>	<p>Health to obtain regulatory oversight under the Voluntary Cleanup Program.</p> <p>Develop a Removal Action Plan, Soil Mitigation Plan, or other similarly report.</p>		<p>Environmental Services Department</p> <p>Santa Clara County Department of Environmental Health (or equivalent regulatory agency)</p>	<p>Copies of the Soil Management Plan shall be provided to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement and the Municipal Compliance Officer of the City of San José Environmental Services Department for review and approval</p>	
NOISE					
Impact NOISE-1: Concrete pours during the evening hours (7:00 PM to 7:00 AM) would exceed the City's allowable noise levels of 50 dBA Lmax in bedrooms and 55 dBA Lmax in other rooms.					
MM NOI-1.1: To reduce construction noise levels during evening hours work to nearby residences, the following mitigation	Notify all sensitive receptors and	At least two weeks prior to	Supervising Environmental Planner of the Department of	Receive notification of evening	At least two weeks prior to any evening



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measures shall be implemented by the project applicant prior to the start of any evening construction activity: <ul style="list-style-type: none"> The project applicant shall notify by mail all sensitive receptors and residences within 200 feet of the construction sites at least two weeks prior to the night-time concrete pours. In addition to mailing, notification methodology shall also include online and on-site posting. All notifications shall provide specific details on the schedule of the dates, times, duration, and proposed activities of all construction work occurring outside of the City's allowable hours of construction (7:00 AM to 7:00 PM, Monday through Friday). Notices shall provide tips on reducing noise intrusion, for example, by closing windows facing the planned construction. Any modifications made to the dates, times, and duration of the concrete pours will require new noticing. The project applicant shall designate a construction noise coordinator to respond to concerns of neighboring receptors about noise construction disturbance. The construction noise coordinator shall be available for responding to any construction noise complaints during the hours that construction is to take place. A toll-free telephone number and email address shall be provided in all notices (mailed, online website, and construction site postings) for receiving questions or complaints during construction and shall also include procedures that the 	residences within 200 feet of construction sites, designate a construction noise coordinator, and implement option 1 or 2 as indicated in the measure.	any evening hours work.	Planning, Building, and Code Enforcement	construction plans and hours.	construction activities and during ground disturbance activities.



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<p>construction noise coordinator will do for responding to callers and email messages. Procedures for reaching the public liaison officer via telephone or in person shall be included in the above notices and also posted at the construction site(s).</p> <ul style="list-style-type: none"> • The project applicant shall implement one of the following two options to control night-time construction noise occurring between the hours of 10:00 PM and 7:00 AM to reduce the occurrence of sleep disturbance to nearby residents: <ul style="list-style-type: none"> ○ Option 1: <ul style="list-style-type: none"> ▪ Install temporary sound walls or acoustic blankets to shield adjacent residences from all night-time concrete pours. The sound walls or acoustic blankets shall have a height of no less than three feet higher than noise-generating piece(s) or parts of equipment, a Sound Transmission Class (STC) of 27 or greater, and a surface with a solid face from top to bottom without any openings or cutouts along the face or at the base of the barrier; and ▪ Offer to temporarily relocate occupants of residences that are located within 75 					



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feet of evening construction activities by offering hotel vouchers to all affected residents. A minimum of one week notice of the offer shall be provided. ○ Option 2: <ul style="list-style-type: none"> ▪ Offer to temporarily relocate occupants of residences within 200 feet of evening construction activities by offering hotel vouchers to all affected residents. A minimum of one week notice of the offer shall be provided. 					
MM NOI-1.2: Prior to the issuance of any grading permits, the project applicant shall submit a construction plan to the Supervising Environmental Planner for review and approval. The construction plan shall include, but is not limited to, the following information: <ul style="list-style-type: none"> • A proposed construction schedule, list of equipment to be used during construction activities, and the equipment specifications. • Contact information of the construction noise coordinator and a description of the coordinator's specified roles and responsibilities. 	Submit a construction plan prior to the issuance of any grading permits.	Prior to the issuance of any grading permits.	Supervising Environmental Planner of the Department of Planning, Building, and Code Enforcement	Review construction plan.	Prior to the issuance of any grading permits.



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<ul style="list-style-type: none"> • An example notification template for the evening hour concrete pours that the project applicant will use. • Confirmation of which option, identified in NOI-1.1, the project applicant shall implement. • Notification radius and addresses of all sensitive receptors and residences within 200 feet of the construction sites. • 					

Source: City of San José. Environmental Impact Report. Avalon West Valley Expansion Project. December 2018.