

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE DELMAS SENIOR LIVING FACILITY PROJECT ADDENDUM TO THE DOWNTOWN STRATEGY 2040 FINAL ENVIRONMENTAL IMPACT REPORT, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, the City of San José (“City”) acting as lead agency under the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”), prepared, completed, and adopted the Final Environmental Impact Report for the Downtown Strategy 2040 (“Downtown Strategy 2040 FEIR”), which updated and replaced the Downtown Strategy 2000 Final Environmental Impact Report, and analyzed the environmental impacts of increased Downtown development capacity to the year 2040 consistent with the General Plan; and

WHEREAS, the Planning Commission of the City certified said Downtown Strategy 2040 FEIR on November 28, 2018; and

WHEREAS, in connection with the adoption of a resolution approving said Downtown Strategy 2040 (Planning File No. PP15-102), the Council of the City of San José (the “City Council”) adopted Resolution No. 78942 on December 18, 2018, setting forth certain findings pertaining to the Downtown Strategy 2040 FEIR and adopting a mitigation monitoring and reporting program, all pursuant to the provisions of CEQA; and

WHEREAS, prior to the adoption of this Resolution, the Director of Planning, Building and Code Enforcement of the City of San José prepared and approved an Addendum to

the Downtown Strategy FEIR for the Delmas Senior Living Facility Project under Planning File Nos. GP19-012, C19-042, CP20-019 and T20-020 (the “Addendum”), all in accordance with CEQA; and

WHEREAS, the proposed Delmas Senior Living Facility Project (the “Project”) includes a General Plan Amendment from Residential Neighborhood to Downtown on approximately 19,200 gross square feet of the total 39,130-square foot project site (APN's 264-20-082, 264-20-083, and 264-20-084), the Rezoning from the LI Light Industrial Zoning District to the DC Downtown Primary Commercial Zoning District on approximately 13,179 gross square feet (APN's 264-20-082, 264-20-083, and 264-20-084), rezoning from the R-2 Two-Family Residence Zoning District to the DC Downtown Primary Commercial Zoning District over approximately 25,951 gross square feet (APNs 264-20-085, 264-20-086, 264-20-087, and 264-20-088) of the total 39,130-square foot project site, a Vesting Tentative Map to consolidate all seven parcels into one parcel; and all to facilitate the demolition of all structures on-site and construction of a six-story building with up 190 beds consisting of 49 memory care units, 116 assisted living units, and four affordable housing units all on a 0.9-acre project site located on the west side of Gifford Avenue and south of West San Carlos Street (APNs: 264-20-082, -083, -084, -085, -086, -087, -088) in downtown San José; and

WHEREAS, as further described in the Addendum, the implementation of the Project would not result in new significant effects on the environment beyond those already identified in the previously approved Downtown Strategy 2040 FEIR, nor will the Project result in an increase in the severity of significant effects identified in the Downtown Strategy 2040 FEIR, and identified mitigation measures, as amended, would continue to reduce each of those significant effects to a less-than significant level; and

WHEREAS, the related mitigation measures are described in the Addendum; and

WHEREAS, a related Mitigation Monitoring and Reporting Program (“Mitigation Monitoring and Reporting Program”) was prepared that incorporates certain mitigation measures from the previously certified Downtown Strategy FEIR; and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Downtown Strategy 2040 FEIR and the Addendum, and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the Downtown Strategy 2040 FEIR and the Addendum thereto for the Project are on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José California, 95113, and are available for inspection by any interested person at that location and on the Department of Planning, Building and Code Enforcement website, and are, by this reference, incorporated into this Resolution as if fully set forth herein;

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

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Downtown Strategy 2040 FEIR, as modified by the Addendum, as well as other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Addendum modifying the Downtown Strategy 2040 FEIR prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Addendum modifying the Downtown Strategy 2040 FEIR represents the independent judgment and analysis of the City of

San José, as lead agency for the Project. The City Council designates the Director of Planning, Building and Code Enforcement at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Addendum prepared for the Project (Planning File No. GP19-012, C19-042, CP20-019 & T20-020). The Mitigation Monitoring and Reporting Program is attached hereto as Exhibit "A" and is fully incorporated herein by this reference. The Downtown Strategy 2040 FEIR and the Addendum are: (1) on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and on the Department of Planning, Building and Code Enforcement website, and (2) available for inspection by any interested person.

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ADOPTED this _____ day of _____, 20__, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Delmas Senior Living Project
File Nos. GP19-012, CP20-019, T20-020, & C19-042
November 2020



PREFACE

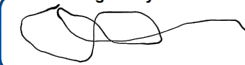
Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the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

The Initial Study/Addendum prepared for the Delmas Senior Living 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 Initial Study/Addendum concluded that the impacts from implementation of the project would be less than significant.

I, Erik Hayden, the applicant, on the behalf of UC TDT JV LLC, hereby agree to implement the mitigation measures described below which have been developed in conjunction with the preparation of an Initial Study/Addendum 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

DocuSigned by:

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11/24/2020

Date



Planning, Building and Code Enforcement

ROSALYNN HUGHEY, DIRECTOR

Delmas Senior Living Project
File Nos. GP19-012, CP20-019, T20-020,
& C19-042

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
AIR QUALITY					
Impact AIR-1: Construction activities associated with the proposed project would result in nearby sensitive receptors being exposed to toxic air contaminant emissions in excess of BAAQMD thresholds (cancer risk and PM _{2.5} concentration).					
<p>MM AIR-1.1: Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall develop a construction operations plan demonstrating that the off-road equipment used on-site to construct the project would achieve a fleet-wide average 70-percent reduction in diesel particulate matter (DPM) exhaust emissions or greater. One feasible plan to achieve this reduction would include the following:</p> <ul style="list-style-type: none"> • All diesel-powered off-road equipment (larger than 25 horsepower) operating on-site for more than two days continuously shall, at a minimum, meet U.S. Environmental Protection Agency (EPA) particulate matter emissions standards for Tier 4 engines or equivalent. • If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 3 engines that include CA Air Resources Board (CARB) certified Level 3 Diesel Particulate Filters or equivalent. Equipment that includes electric or alternatively-fueled equipment (e.g., non-diesel) would also meet this requirement. 	<p>Submit a construction operations plan prepared by the construction contractor that outlines how the contractor shall achieve the measures outlined in the mitigation measure to the City of San José Director of Planning, Building and Code Enforcement or Director's designee for review and approval.</p>	<p>Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).</p>	<p>Director of Planning, Building and Code Enforcement or the Director's designee</p>	<p>Review and approve the construction operations plan.</p>	<p>Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).</p>



Planning, Building and Code Enforcement

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MM AIR-1.2: Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest), the project applicant shall submit a construction operations plan to the Director of Planning or Director's designee of the City of San José Department of Planning, Building and Code Enforcement that includes specifications of the equipment to be used during construction. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth in Mitigation Measure AIR-1.1.					
CUMULATIVE AIR QUALITY					
Impact AIR(C)-1: Construction activities associated with the proposed project would result in nearby sensitive receptors being exposed to toxic air contaminant emissions in excess of BAAQMD thresholds (cancer risk and PM _{2.5} concentration).					
Same mitigation as MM AIR-1.1 and MM AIR-2.1.	Submit a construction operations plan prepared by the construction contractor that outlines how the contractor shall achieve the measures outlined in the mitigation measure to the City of San José Director of Planning, Building and Code Enforcement or Director's designee for review and approval.	Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).	Director of Planning, Building and Code Enforcement or the Director's designee	Review and approve the construction operations plan.	Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).



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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.					
<p>MM BIO-1.1: Tree removal and construction shall be scheduled to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st, inclusive.</p> <p>If tree removals and construction cannot be scheduled outside of nesting season, a qualified ornithologist shall complete pre-construction surveys to identify active raptor nests that may be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period, such as Yellow Warblers. During this survey, the ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests. If an active nest is found in an area that will be disturbed by construction, the ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation</p>	<p>Avoid construction activities during nesting seasons. If construction activities cannot be scheduled outside of nesting season, conduct a pre-construction nesting bird survey by a qualified ornithologist and, in consultation with the California Department of Fish and Wildlife, designate a construction-free buffer zone 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 City's Director of Planning or Director's designee of the San José Department of Planning,</p>	<p>Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities.</p>	<p>City's Director of Planning, Building and Code Enforcement or Director's designee</p>	<p>Confirm that demolition and construction activities are scheduled outside of the nesting season.</p> <p>Review report indicating the results of the survey (or any other environmental investigation reports, if applicable) and any designated buffer zones.</p>	<p>Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities.</p>



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<p>with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests will not be disturbed during project construction.</p> <p>Prior to any tree removal, or approval of any grading or demolition permits, the applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee.</p>	Building and Code Enforcement.				
HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-1: Construction activities associated with the proposed project could expose construction workers and/or nearby residents to residual contamination from former uses of the site.					
<p>MM HAZ-1.1: Prior to the issuance of any demolition or grading permit, the applicant must enter into the Santa Clara County Department of Environment Health (SCCDEH) Site Cleanup Program (SCP) to obtain regulatory oversight from SCCDEH. Any further investigation and remedial actions must be performed under regulatory oversight to mitigate the contamination and make the site suitable for the proposed residential development. A report of the findings and of applicable regulatory oversight shall be provided to the Supervising 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.</p>	<p>Enroll into the Site Cleanup Program with the SCCDEH.</p> <p>Implement the requirements and recommendations of the SCCDEH.</p> <p>Submit the requirements and recommendations of the SCCDEH to the Supervising Planner of the Planning, Building and Code Enforcement Department and the Municipal Compliance Officer of the City of San José</p>	<p>Prior to the issuance of any demolition or grading permit.</p>	<p>SCCDEH</p> <p>Supervising Planner of the Department of Planning, Building and Code Enforcement</p> <p>Municipal Compliance Officer of the City of San José</p>	<p>SCCDEH, Supervising Planner of the Department of Planning, Building and Code Enforcement, and the Municipal Compliance Officer of the City of San José shall review the report of findings.</p>	<p>Prior to the issuance of any demolition or grading permit.</p>



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	Environmental Services Department for review.				
NOISE					
Impact NOI-1: Construction noise would exceed ambient levels by five dBA for a period of more than one year in the vicinity of residential and commercial uses.					
<p>MM NOI-1.1: Prior to the issuance of any grading or demolition permits, the project applicant shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and notification of construction schedules, equipment to be used, and designation of a noise disturbance coordinator. The noise disturbance coordinator shall respond to neighborhood complaints and shall be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The noise logistic plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee prior to the issuance of any grading or demolition permits.</p> <p>As part of the noise logistic plan, construction activities for the proposed project shall include, but are not limited to, the following best management practices:</p> <ul style="list-style-type: none"> Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific 	<p>Preparation of a construction noise logistics plan and adherence to best management practices for noise reduction during construction activities.</p> <p>The noise logistics plan shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee</p>	<p>Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).</p>	<p>Director of Planning, Building and Code Enforcement or Director's designee</p>	<p>Receive and review the construction noise logistics plan.</p>	<p>Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).</p>



Planning, Building and Code Enforcement
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EXHIBIT "A"
(File Nos. GP19-012; CP20-019; T20-020; C19-042)

Delmas Senior Living Project
File Nos. GP19-012, CP20-019, T20-020,
& C19-042

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<p>“construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.</p> <ul style="list-style-type: none"> Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses. Utilize ‘quiet’ models of air compressors and other stationary noise sources where technology exists. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment. Locate all stationary noise-generating equipment, such as air compressors and portable power generators, as far away as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. Prohibit all unnecessary idling of internal combustion engines. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences. 					



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<ul style="list-style-type: none"> If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites. A “noise disturbance coordinator” shall be designated to respond to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., beginning work too early, bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site and include it in the notice sent to neighbors regarding the construction schedule. 					
Impact NOI-2: Construction vibration levels would exceed the 0.2 in/sec PPV threshold for buildings of conventional construction within 20 feet of the project site.					
MM NOI-2.1: The project applicant shall implement a Construction Vibration Monitoring Plan (Plan) to document conditions prior to, during, and after vibration generating construction activities. All Plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The plan shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee for review and approval prior to issuance of a demolition, grading, or building permit, whichever occurs earliest.	Preparation of a construction vibration monitoring plan which includes measures to reduce vibration impacts on nearby structures. The construction vibration monitoring plan shall be submitted to the Director of Planning or Director’s designee of the Department	Prior to, during, and after vibration generating construction activities.	Director of Planning, Building and Code Enforcement or Director’s designee	Receive and review the construction vibration monitoring plan.	Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).



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<p>The Plan shall include, but not be limited to, the following measures:</p> <ul style="list-style-type: none"> • A list of all heavy construction equipment to be used for this project known to produce high vibration levels (e.g. tracked vehicles, vibratory compaction, jackhammers, hoe rams, clam shovel drop, and vibratory roller, etc.) shall be submitted to the City by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort for reducing vibration levels below the thresholds. • Place operating equipment on the construction site as far as possible from vibration-sensitive receptors. • Use smaller equipment to minimize vibration levels below the limits. • Avoid using vibratory rollers and clam shovel drops near sensitive areas. • Select demolition methods not involving impact tools. • Modify/design or identify alternative construction methods to reduce vibration levels below the limits. • Avoid dropping heavy objects or materials. 	<p>of Planning, Building, and Code Enforcement.</p> <p>All plan tasks shall be overseen by a licensed Professional Structural Engineer in the State of California.</p>				

Source: City of San José. Initial Study/Addendum. Delmas Senior Living Project. November 2020.