

MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. “Significant effect on the environment” means a substantial or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

PROJECT NAME: 425 S. Winchester Boulevard Project

PROJECT FILE NUMBERS: GPT23-001, GP23-007, SP23-005, C23-099

PROJECT DESCRIPTION: The applicant proposes General Plan Amendment, General Plan Text Amendment, Conforming Rezoning and a Special Use Permit to construct a seven-story hotel building with 176 rooms with a maximum height of 85 feet. The proposed Project would include approximately 60,130 square feet of guest room space; the ground level would contain approximately 5,000 square feet of amenities including dining space; and the second floor would contain approximately 4,270 square feet of pool deck and fitness space. On-site parking would include a total of 45 parking spaces on site, and the remainder of required parking would be provided off site via valet. The Project would include changes to the land use designation and zoning for the adjacent parcel, located at 390 Spar Avenue, and both 425 S. Winchester Boulevard and 390 Spar Avenue parcels are part of the “Project” for the purposes of CEQA.

PROJECT LOCATION: The approximately 0.55-gross acre Project site is located at 425 South Winchester Boulevard in the City of San José. The Project site is on the northwest corner of South Winchester Boulevard and Olin Avenue. The project also includes changes to the land use designation and zoning for the adjacent parcel, located at 390 Spar Avenue.

ASSESSORS PARCEL NOS.: 303-39-044, 303-39-001

COUNCIL DISTRICT: 1

APPLICANT CONTACT INFORMATION: Olin Avenue, LLC (Attn: Mark Tersini), 21710 Stevens Creek Boulevard, Suite 200, San José, CA, 95014, Mttersini@kturban.com

FINDING

The Director of Planning, Building and Code Enforcement finds the project described above would not have a significant effect on the environment if certain mitigation measures are incorporated into the project. The attached Initial Study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this Mitigated Negative Declaration (MND), has made or agrees to make project revisions that will clearly mitigate the potentially significant effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- A. **AESTHETICS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- B. **AGRICULTURE AND FORESTRY RESOURCES** – The project would not have a significant

impact on this resource, therefore no mitigation is required.

C. AIR QUALITY.

Impact AQ-1: Construction activities associated with the proposed Project could expose sensitive receptors near the Project site to cancer risk due to toxic air contaminants (TAC) emissions that could exceed the BAAQMD threshold for cancer risk of 10 per million by 77 per million.

MM AQ-1: Prior to issuance of any demolition, grading, and/or building permits (whichever occurs earliest), the project applicant shall prepare and submit a construction operations plan that includes specifications of the equipment to be used during construction to the Director of Planning, Building and Code Enforcement or the Director's Designee. 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 below.

- For all construction equipment larger than 25 horsepower operating on the site for more than two days continuously or 20 total hours, shall, at a minimum meet U.S. EPA Tier 4 Final emission standards.
- If Tier 4 Final 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 and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve an 85 percent reduction in particulate matter exhaust and 40 percent reduction in NOX in comparison to uncontrolled equipment.

The construction operations plan prepared by the construction contractor that outlines how the contractor will achieve the requirements outlined in this mitigation measure. 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 the issuance of any demolition, grading and/or building permits (whichever occurs earliest). The plan shall include, but not be limited to the following:

- List of activities and estimated timing.
- Equipment that will be used for each activity.
- Manufacturer's specifications for each equipment that provides the emissions level; or the manufacturer's specifications for devices that would be added to each piece of equipment to ensure the emissions level meet the thresholds in the mitigation measure.
- How the construction contractor will ensure that the measures listed are monitored.
- How the construction contractor will remedy any exceedance of the thresholds.
- How often and the method the construction contractor will use to report compliance with this mitigation measure.

D. BIOLOGICAL RESOURCES.

Impact BIO-1: Construction activities on the Project site could potentially result in disturbance of nesting raptors and other migratory birds.

MM BIO-1: Initial site disturbance activities, including vegetation removal, shall not occur during the general avian nesting season (February 1 through August 31, inclusive). If construction activities cannot be scheduled to avoid nesting season, the Project applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and status of nests on or adjacent to the Project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to avoid direct and indirect impacts to nesting birds. To avoid the destruction of active nests and protect

the reproductive success of birds protected by the Migratory Bird Treaty Act and California Fish and Game Code, nesting bird surveys shall be performed not more than 14 days prior to vegetation clearance and structure demolition.

Following commencement of construction activities, no additional nesting bird surveys would be required. If active nests are discovered, a 300-foot radius avoidance buffer for raptors, and 50-foot radius avoidance buffers for other birds, shall be established around such active nests and no construction shall be allowed within the buffer areas until a qualified biologist has determined the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground disturbing activities shall occur within this buffer until the qualified biologist has confirmed breeding/nesting is complete and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between September 1 and January 31, inclusive.

The survey report shall be submitted to the Director of Planning, Building, and Code Enforcement or Director's Designee within 14 days prior to beginning construction.

- E. CULTURAL RESOURCES** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- F. ENERGY** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- G. GEOLOGY AND SOILS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- H. GREENHOUSE GAS EMISSIONS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- I. HAZARDS AND HAZARDOUS MATERIALS.**

Impact HAZ-1: Construction activities on the Project site could result in encountering residual concentrations of contaminants in soil and groundwater that could potentially exceed environmental screening levels, posing an exposure risk to construction workers, neighboring uses, and the environment.

MM HAZ-1: This property has a history of a former Leaking Underground Storage Tank Case. After demolition but prior to issuance of any grading and building permits, a thorough Phase II Investigation of the property needs to be performed to determine if past site uses (e.g., gas station and agricultural history) have impacted the property and need to be addressed prior to excavation of the property for the underground parking garage. Shallow soil samples will be taken in the near surface soil within the proposed project area and tested for organochlorine pesticides and pesticide-based metals such as arsenic and lead. The purpose is to determine construction worker safety issues and potential impact to the environment. A copy of the proposed Phase II sampling plan and the results of the Phase II Investigation shall be provided in a Report to the Director of

Planning, Building and Code Enforcement or Director's Designee and the Municipal Compliance Officer of the City of San José Environmental Services Department for review.

If the Phase II indicates that residual contaminants are found and are above the Regional Water Quality Control Board environmental screening levels (ESLs) for construction worker safety, then a Site Health & Safety Plan must be completed to address measures to protect construction worker safety. If contamination exceeds residential ESLs, then the applicant must contact the Santa Clara County Department of Environmental Health (SCCDEH) to determine next steps. Next steps may include entering the Site Cleanup Program with the SCCDEH. The SCCDEH may require the project proponent to implement appropriate management procedures, such as removal of the contaminated soil and implementation of a Site Management Plan (SMP), Removal Action Workplan (RAP), or equivalent document. Copies of all environmental investigations and evidence of SCCDEH oversight shall be submitted to the Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement and the Supervising Environmental Compliance Officer in the City of San José's Environmental Services Department.

MM HAZ-2: Prior to any Underground Storage Tank (UST) removal activities including excavation, the project applicant shall obtain permits from the San José Fire Department (SJFD) and the SCCDEH. The permits include an Underground Storage Tank System Closure Permit Application with the SCCDEH and an Underground Storage Tank System Closure Application (UN-003) with the SJFD.

The SCCDEH and SJFD will be present during the tank removals and the SCCDEH will direct the applicant to collect soil samples in the former tank pit after the tanks have been removed. The soil samples will be tested, and depending upon the results, the SCCDEH will determine if the former USTs have leaked. If the USTs have leaked, the SCCDEH will designate the site as a leaking underground fuel leak case and require follow-up investigations and remediation, if necessary.

- J. HYDROLOGY AND WATER QUALITY** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- K. LAND USE AND PLANNING** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- L. MINERAL RESOURCES** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- M. NOISE** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- N. POPULATION AND HOUSING** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- O. PUBLIC SERVICES** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- P. RECREATION** – The project would not have a significant impact on this resource, therefore no mitigation is required.

- Q. TRANSPORTATION** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- R. TRIBAL CULTURAL RESOURCES** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- S. UTILITIES AND SERVICE SYSTEMS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- T. WILDFIRE** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- U. MANDATORY FINDINGS OF SIGNIFICANCE**

Cumulative impacts would be less than significant. The proposed Project would implement the identified mitigation measures and would have either have no impacts or less-than-significant impacts on air quality, biological resources, and hazards and hazardous materials. Therefore, the proposed Project would not contribute to any cumulative impact for these resources. The Project would not cause changes in the environment that have any potential to cause substantial adverse direct or indirect effects on human beings.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **Tuesday, October 31st, 2023**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
2. Submit written comments regarding the information and analysis in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Christopher Burton, Director
 Planning, Building and Code Enforcement



10/5/23

Date

Deputy

Cort Hitchens
 Environmental Project Manager

Circulation period: October 11, 2023 to October 31, 2023