

## 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.

**NAME OF PROJECT:** Topgolf @ Terra Project

**PROJECT FILE NUMBER:** PDC16-013, GPT16-001

### PROJECT DESCRIPTION:

**File No. PDC16-013.** Planned Development Rezoning from the CIC Combined Industrial Commercial and R-M Multiple Residence Residential Zoning Districts to the CIC(PD) Planned Development Zoning District to allow up approximately 110,000 square feet of commercial/retail space, a 200 room hotel, approximately 72,000 square feet of indoor/outdoor recreation use (Topgolf) and late night use.

**File No. GPT16-001.** General Plan Text Amendment to amend the Alviso Specific Plan to change the development standards for height under the "Village Area Guidelines for Commercial Development" to include a maximum allowable building height of 65 feet in certain areas and a maximum allowable non-building structure height of 170 feet in certain areas.

**PROJECT LOCATION:** a 36-acre site located on the south side of North First Street, between Highway 237 and Gold Street, in the Alviso area of San Jose.

**ASSESSORS PARCEL NO.:** 015-39-026, -020, 015-03-012, -018, -027, and -031

**COUNCIL DISTRICT:** 4

**APPLICANT CONTACT INFORMATION:** Jag Kapoor, Terra Hospitality, Inc., 461 South Milpitas Boulevard, Suite 1, Milpitas, CA 95035 [jagkapoor@gmail.com](mailto:jagkapoor@gmail.com)

### FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the 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 will not have a significant impact on this resource, therefore no mitigation is required.
- B. **AGRICULTURE AND FOREST RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- C. **AIR QUALITY.**

**Impact AQ-1:** Air quality impacts resulting from construction, particularly emissions of NOx and generation of construction dust, could cause significant adverse effects.

**Impact AQ-2:** Construction of the proposed project could expose offsite sensitive receptors to substantial risks and hazards related to TACs.

**MM AQ-1.1:** All diesel-powered construction equipment larger than 50 horsepower and operating on site for more than two (2) continuous days shall meet U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent.

**MM AQ-1.2:** Consistent with City policies, the project shall be developed in conformance with the following standard Bay Area Air Quality Management District (BAAQMD) dust control measures during all phases of construction on the project site to reduce dustfall emissions:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.

- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- The name and phone number of the Construction/Disturbance coordinator, the phone number of the Air District, the hours of construction limitations, City File Number PDC16-013, and the City of San Jose's Code Enforcement Division phone number (408-535-7770), shall be displayed on a weatherproof sign posted at each entrance to the project site. A local phone number with answering service shall be maintained during the duration of project construction.

#### **D. BIOLOGICAL RESOURCES.**

**Impact BIO-1:** The project could result in significant impacts to Congdon's Tarplant.

**MM BIO-1.1:** Prior to any construction, a focused survey for Congdon's Tarplant shall be conducted by a qualified biologist in the California annual grassland habitat within the project's permanent impact area. The survey shall be conducted during the species' blooming period (May-November), and shall be submitted to the City's Supervising Environmental Planner for review and approval.

**MM BIO-1.2:** If a population of Congdon's Tarplant is identified in the project impact area, mitigation for loss of individuals shall be conducted. Mitigation shall be achieved by establishing a new population of Congdon's tarplant in the diked brackish marsh and California annual grassland habitats that occur in the basins at the south portion of the site. This area shall not be developed by the Project and contains suitable habitat types for establishing a new population. Mitigation shall be a 1:1 ratio (impact:mitigation) of plant establishment on an acreage basis.

Annual monitoring shall include quantitative sampling of the Congdon's population to determine the number of plants that have germinated and set seed. This monitoring shall continue annually or until success criteria have been met; once annual monitoring has documented that a self-sustaining population of this annual species has been successfully established on site, this mitigation measure shall be determined to have been met and the project applicant released from further responsibility.

Establishment of the plant population shall be subject to a Habitat Mitigation and Monitoring Plan (HMMP). To ensure the success of mitigation sites required for compensation of permanent impacts on Congdon's tarplant, the Project proponent shall retain a qualified biologist to prepare an HMMP. The HMMP shall be submitted to the City's Supervising Environmental Planner for review and approval prior to the start of construction. The HMMP shall include, at a minimum, the following information:

- A summary of habitat and species impacts and the proposed mitigation for each element.

- A description of the location and boundaries of the mitigation site(s) and description of existing site conditions.
- A description of any measures to be undertaken to enhance (e.g., through focused management) the mitigation site for special-status species.
- Identification of an adequate funding mechanism for long-term management
- A description of management and maintenance measures intended to maintain and enhance habitat for the target species (e.g., weed control, fencing maintenance).
- A description of habitat and species monitoring measures on the mitigation site, including specific, objective performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc. Monitoring will document compliance with each element requiring habitat compensation or management. At a minimum, performance criteria will include a minimum 1:1 mitigation ratio for the number of plants in the impacted population (at least one plant preserved for each plant impacted).
- A contingency plan for mitigation elements that do not meet performance or final success criteria within described periods; the plan will include specific triggers for remediation if performance criteria are not met and a description of the process by which remediation of problems with the mitigation site (e.g., presence of noxious weeds) will occur.
- A requirement that the project proponent will be responsible for monitoring, as specified in the HMMP, for at least three (3) years post-construction; during this period, annual reporting will be provided to the City's Supervising Environmental Planner.

**Impact BIO-2:** The project could result in significant impacts to Burrowing Owls.

**MM BIO-2.1:** The project proponent shall implement Condition 15 of the Habitat Conservation Plan (HCP) and pay burrowing owl impact fees to the Santa Clara Valley Habitat Agency. Pursuant to Condition 15, a qualified biologist shall conduct pre-construction surveys in all suitable habitat areas. To maximize the likelihood of detecting owls, the preconstruction survey will last a minimum of three hours. The survey will begin one hour before sunrise and continue until two hours after sunrise (for three hours total) or begin two hours before sunset and continue until one hour after sunset. Additional time may be required for large project sites. A minimum of two surveys will be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed will be counted and their locations will be mapped. Surveys will conclude no more than two calendar days prior to construction. Therefore, the project proponent must begin surveys no more than four days prior to construction (two days of surveying plus up to two days between surveys and construction). To avoid last-minute changes in schedule or contracting that may occur if burrowing owls are found, the project proponent may also conduct a preliminary survey up to fourteen (14) days before construction. This preliminary survey may count as the first of the two required surveys

as long as the second survey concludes no more than two calendar days in advance of construction.

If evidence of western burrowing owls is found during the breeding season (February 1–August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young. Avoidance will include establishment of a 250-foot non-disturbance buffer zone around nests. Construction may occur outside of the 250-foot non-disturbance buffer zone. Construction may occur inside of the 250-foot non-disturbance buffer during the breeding season if:

- the nest is not disturbed, and
- the project proponent develops an avoidance, minimization, and monitoring plan is approved by the Santa Clara Valley Habitat Agency and the Wildlife Agencies prior to project construction.

If evidence of western burrowing owls is found during the non-breeding season (September 1–January 31), the project proponent will establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of this 250-foot buffer are allowed. Construction activities within the non-disturbance buffer are allowed if the certain criteria are met, as outlined in the HCP Conditions Implementation Guide, in order to prevent owls from abandoning important overwintering sites.

The project proponent and/or contractor shall submit evidence of compliance with the HCP to the City's Supervising Environmental Planner prior to issuance of any grading permits.

**Impact BIO-3:** Construction of the project could result in impacts to nesting migratory birds.

**MM BIO-3.1:** Construction and tree removal/pruning activities shall be scheduled to avoid the nesting season to the extent feasible. If feasible, tree removal and/or pruning shall be completed before the start of nesting season to help preclude nesting. The nesting season for most birds and raptors in the San Francisco Bay area extends from February 1 through August 31.

**MM BIO-3.2:** If it is not possible to schedule construction activities between September 1 and January 31, a qualified ornithologist shall conduct a pre-construction survey for nesting raptors and other migratory breeding birds of the onsite trees as well as all trees within 250 feet of the site to identify active bird nests that may be disturbed during project construction.

Between February 1 and April 30, the pre-construction survey shall be completed no more than 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.

If the survey does not identify any nesting birds that would be affected by construction activities, no further mitigation is required.

**MM BIO-3.3:** If an active nest is found close to work areas to be disturbed by these activities, the ornithologist (in consultation with the California Department of Fish and Wildlife) shall designate a construction-free buffer zone (typically 300 feet for raptors and 100 feet for non-raptors) 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 will be disturbed during construction activities. The buffer shall remain in place until the breeding season has ended and/or a qualified ornithologist has determined that the nest is no longer active.

**Impact BIO-4:** The proposed project could result in the introduction or spread of invasive weeds.

**MM BIO-4.1:** All seeds and straw materials used on site shall be composed of weed-free rice (or similar material acceptable to the City) straw, and all gravel and fill material shall be certified weed free. Proof of certification, in the form of a California Department of Food and Agriculture Form 66-079 "Certificate of Quarantine Compliance (CQC)", or equivalent certification, shall be submitted to the City's Supervising Environmental Planner prior to issuance of a grading permit.

**MM BIO-4.2:** During construction of the proposed project, vehicles and all equipment shall be washed (including wheels, undercarriages, and bumpers) before leaving and after entering the proposed project footprint. Vehicles shall be cleaned at existing construction yards or legally operating car washes.

**MM BIO-4.3:** Following construction of the proposed project, temporary impact zones, on any disturbed ground that will not be under hardscape, landscaped, or maintained, shall be reseeded with a native seed mixture. Seed mixtures applied for erosion control shall be composed of native species appropriate for the site in order to provide long-term erosion control and slow colonization by invasive nonnatives.

**Impact BIO-5:** The project could result in substantial adverse effects on federally protected wetlands.

**MM BIO-5.1:** The project proponent shall implement Conditions 3 and 12 of the HCP to minimize reduce construction impacts to streams, wetlands, and riparian habitat. These HCP conditions require avoidance of wetlands and require construction setbacks for streams and riparian area during construction.

Condition 3. This condition consists of avoidance and minimization measures outlined in Table 6-2 of the Habitat Plan. All personnel working within or adjacent to the stream

setback (i.e., those people operating ground-disturbing equipment) will be trained by a qualified biologist in these avoidance and minimization measures, in the permit obligations under U.S. Army Corps of Engineers (USACE), and permit obligations under the HCP. Training materials shall be submitted to the City's Supervising Environmental Planner upon request.

Condition 12. The following conditions shall be printed on all plans and contract documents for the Project, and implemented by the project proponent or contractors during construction:

- All wetlands and ponds to be avoided by covered activities shall be temporarily staked in the field by a qualified biologist to ensure that construction equipment and personnel avoid these features.
- Fencing shall be erected along the outer edge of the project area, between the project area and a wetland or pond.
- Appropriate erosion control measures (e.g., fiber rolls, filter fences, vegetative buffer strips) shall be used on site to reduce siltation and runoff of contaminants into wetlands, ponds, streams, or riparian woodland/scrub. Filter fences and mesh shall be of material that will not trap reptiles and amphibians. Erosion control blankets shall be used as a last resort because of their tendency to biodegrade slowly and trap reptiles and amphibians.
- Erosion-control measures shall be placed between the wetland or pond and the outer edge of the project site. Fiber rolls used for erosion control shall be certified as free of noxious weed seed.
- Vehicles and equipment shall be parked on pavement, existing roads, and previously disturbed areas.
- No construction or maintenance vehicles shall be refueled within 200 feet of avoided wetlands and ponds unless a bermed and lined refueling area is constructed and hazardous material absorbent pads are available in the event of a spill.
- All organic matter shall be removed from nets, traps, boots, vehicle tires, and all other surfaces that have come into contact with ponds, wetlands, or potentially contaminated sediments. Items should be rinsed with clean water before leaving each site.
- Used cleaning materials (e.g., liquids) shall be disposed of safely, and if necessary, taken off site for proper disposal. Used disposable gloves should be retained for safe disposal in sealed bags.

**MM BIO-5.2:** Prior to any construction activities, the project proponent shall complete a formal wetland delineation for the site that shall be submitted to the USACE for verification. If determined necessary by the USACE, the project shall obtain a Section 404 fill discharge permit from the USACE, and Section 401 Water Quality Certification from the Regional Water Quality Control Board (RWQCB).

**Impact BIO-6:** The project could result in significant impacts to birds as a result of bird strikes on the proposed Topgolf and hotel buildings.

**MM BIO-6.1:** The project proponent shall incorporate the following bird-safe features into the building design, to the satisfaction of the Director of PBCE:

- *Façade Treatments.* No more than 10 percent of the surface area of façades between the ground and 60 feet above ground shall have untreated glazing. Examples of bird-friendly glazing treatments include the use of opaque glass, the covering of clear glass surface with patterns, the use of paned glass with fenestration patterns, and the use of external screens over non-reflective glass.
- *Funneling of flight paths.* The design of the buildings shall avoid the funneling of flight paths along buildings or trees towards a building façade.
- *Skyways, walkways, or glass walls.* Glass skyways or walkways and freestanding glass walls shall not be incorporated into the buildings' design.

**Impact BIO-7:** The project could result in significant impacts to birds as a result of bird strikes on the proposed Topgolf netting.

**MM BIO-7.1:** The project proponent shall place net marking devices, such as FireFlies or BirdMark BM-AG, along all sections of the netting perimeter rope and rib lines to form vertical rows of flight diverters in the center of each area of netting between support poles. The maximum distance between such marking devices, and/or between such marking devices and support poles, shall be 15 feet.

## **E. CULTURAL RESOURCES.**

**Impact CR-1:** Construction of the proposed project could impact unknown buried archaeological resources and human remains, if present on site.

**MM CR-1.1:** Treatment Plan: Prior to the issuance of any grading permit, a project-specific Cultural Resources Treatment Plan (Treatment Plan) shall be prepared by a qualified archaeologist. The Treatment Plan shall reflect permit-level detail pertaining to depths and locations of all ground disturbing activities. The Treatment Plan shall be prepared and submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement prior to approval of any grading permit. The Treatment Plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.
- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).



- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).
- Detailed field strategy used to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc.

**MM CR-1.2: Investigation:** Prior to project grading and excavation, the project applicant shall complete a preliminary field investigation program in conformance with the project-specific Cultural Resources Treatment Plan required under Mitigation Measure MM CR-1.1. The locations of subsurface testing and exploratory trenching shall be determined prior to issuance of any grading permit based on the Cultural Resources Treatment Plan recommendations. A qualified archaeologist shall complete a presence/absence exploration with a backhoe once the existing improvements planned for removal (i.e., dry cleaners, parking lot) are cleared from the site. If it is not possible to conduct presence/absence subsurface testing across the entire study area because of remediation or preservation plans for the historic building facades, then a combination of presence/absence exploration, where possible, along with archaeological monitoring shall be required. Results of the investigation shall be provided to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement prior to issuance of any grading permit.

If any finds were discovered during the preliminary field investigation, the project shall implement MM CR-1.4 for evaluation and recovery methodologies. The results of the preliminary field investigation and program 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 prior to issuance of any grading permit.

**MM CR-1.3: Construction Monitoring and Protection Measures:** Although the data recovery and treatment program is expected to recover potentially significant materials and information from the areas impacted by the project prior to grading, it is possible that additional resources could remain on-site. Therefore, all ground-disturbing activities (e.g., grading and excavation) shall be completed under the observation of a qualified archaeologist.

The qualified archaeologist shall have authority to halt construction activities temporarily in the immediate vicinity of an unanticipated find. If, for any reasons, the qualified archaeologist is not present but construction crews encounter a cultural resource, all work shall stop temporarily within 50 feet of the find until a qualified archaeologist has been contacted to determine the proper course of action. The Supervising Environmental Planner and Historic Preservation Officer of the City of San José Department of

Planning, Building, and Code Enforcement shall be notified of any finds during the grading or other construction activities. Any human remains encountered during construction shall be treated according to the protocol identified in MM CR-1.5.

**MM CR-1.4: Evaluation and Data Recovery:** The Supervising Environmental Planner and Historic Preservation Officer of the City of San José Department of Planning, Building, and Code Enforcement shall be notified of any finds during the preliminary field investigation, grading, or other construction activities. Any historic or prehistoric material identified in the project area during the preliminary field investigation and during grading or other construction activities shall be evaluated for eligibility for listing in the California Register of Historic Resources. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation.

The techniques used for data recovery shall follow the protocols identified in the project-specific Cultural Resources Treatment Plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation.

**MM CR-1.5: Human Remains:** Native American coordination shall follow the protocols established under Assembly Bill 52, State of California Code, and applicable City of San José procedures.

If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Project Applicant shall immediately notify the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the qualified archaeologist, who will then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his/her authority, the Coroner shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American.

If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD, will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts.

If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.
- The descendant identified fails to make a recommendation; or
- The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

**MM CR-1.6: Site Security:** At the discretion of the Supervising Environmental Planner and Historic Preservation Officer of the City of San José Department of Planning, Building, and Code Enforcement, site fencing shall be installed on-site during the investigation, grading, building, or other construction activities to avoid destruction and/or theft of potential cultural resources. The responsible qualified archaeologist shall advise the Supervising Environmental Planner and Historic Preservation Officer of the City of San José Department of Planning, Building, and Code Enforcement as to the necessity for a guard. The purpose of the security guard shall be to ensure the safety of any potential cultural resources (including human remains) that are left exposed overnight. The Director of PBCE shall have the final discretion to authorize the use of a security guard at the project site.

**MM CR-1.7: Final Reporting:** Once all analyses and studies required by the project-specific Cultural Resources Treatment Plan have been completed, the project applicant, or representative, shall prepare a final report summarizing the results of the field investigation, data recovery activities and results, and compliance with the Cultural Resources Treatment Plan during all demolition, grading, building, and other construction activities. The report shall document the results of field and laboratory investigations and shall meet the Secretary of the Interior's Standards for Archaeological Documentation. The contents of the report shall be consistent with the protocol included in the project-specific Cultural Resources Treatment Plan. The report shall be submitted to the Director of Planning, Building, and Code Enforcement for review and approval prior to issuance of any Certificates of Occupancy (temporary or final). Once approved, the final documentation shall be submitted to the Northwest Information Center at Sonoma State University, as appropriate.

**MM CR-1.8: Curation:** Upon completion of the final report required by the project-specific Cultural Resources Treatment Plan, all recovered archaeological materials shall be transferred to a long-term curation facility. Any curation facility used shall meet the standards outlined in the National Park Services' Curation of Federally Owned and Administered Archaeological Collections (36 CFR 79). The project applicant shall notify the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement of the selected curation facility prior to the issuance of any Certificates of Occupancy (temporary or final).

Treatment of materials to be curated shall be consistent with the protocols included in the project-specific Cultural Resources Treatment Plan.

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

**Impact HAZ-1:** Residual soil and groundwater contamination could expose construction workers and members of the public to hazardous materials during construction activities.

**MM HAZ-1.1: Sampling.** The project applicant shall retain a qualified hazardous materials professional to conduct focused sampling and analysis for contamination of soil, soil vapor, and/or groundwater on-site prior to issuance of any grading permit. Sampling on the site shall be under the oversight of the Santa Clara County Department of Environmental Health, or equivalent regulatory agency, in accordance with a Work Plan prepared by a qualified professional and approved by the Santa Clara County Department of Environmental Health or equivalent regulatory agency such as the California Department of Toxic Substances Control, or the California Regional Water Quality Control Board, (hereafter referred to as the “Agency”).

**MM HAZ-1.2: Work Plan.** The approved Work Plan shall describe sample methodology, sample locations, the quality assurance/quality control plan, reporting, and schedule. The Work Plan shall be implemented by the project and the results of the sampling shall be submitted to the Santa Clara County Department of Environmental Health (or equivalent regulatory agency). If additional investigation is required to sufficiently delineate the contaminants of concern, additional sampling shall be proposed and reviewed and approved by the Santa Clara County Department of Environmental Health (or equivalent regulatory agency).

A letter (or equivalent assurance) from Santa Clara County Department of Environmental Health (or equivalent regulatory agency) documenting completion of the Work Plan for on-site sampling to the satisfaction of the Santa Clara County Department of Environmental Health (or equivalent regulatory agency) shall be provided to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the Compliance Officer/Hazardous Materials Specialist of the City of San José Department of Environmental Services. In the event no further testing or remediation is required, a No Further Action letter (or equivalent assurance) from Santa Clara County Department of Environmental Health (or equivalent regulatory agency) shall be provided prior to issuance of any grading permit.

**MM HAZ-1.3: Site Management Plan.** A Site Management Plan shall be prepared by a qualified hazardous materials consultant to establish management practices for handling contaminated soil or other materials encountered during construction activities. The sampling results shall be compared to appropriate risk-based screening levels in the Site

Management Plan. The Site Management Plan shall identify potential health, safety, and environmental exposure considerations associated with redevelopment activities and shall identify appropriate mitigation measures. The Site Management Plan shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and Santa Clara County Department of Environmental Health (or equivalent regulatory agency) for approval prior to commencing construction activities. The Site Management Plan shall include, but is not limited to, the following:

- Proper mitigation as needed for demolition of existing structures;
- Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program;
- Management of underground structures encountered, including utilities and/or underground storage tanks;
- Procedures to follow if evidence of an unknown historic release of hazardous materials (e.g., underground storage tanks, polychlorinated biphenyls [PCBs], asbestos containing materials, lead-based paint, etc.) is discovered during excavation or demolition activities;
- Traffic control during site improvements;
- Noise, work hours, and other relevant City regulations;
- Mitigation of soil vapors (if required);
- Procedures for proper disposal of contaminated materials (if required); and
- Monitoring, reporting, and regulatory oversight arrangements.

**MM HAZ-1.4: Health and Safety Plan.** A site-specific Health and Safety Plan shall be prepared by the project applicant prior to issuance of any grading permit for project construction to address potential health and safety hazards associated with implementation of the Work Plan and proposed redevelopment activities (e.g., site preparation, demolition, grading and construction). The Health and Safety shall govern activities of all personnel present during field activities. Any contractor performing a task not covered in the Health and Safety shall be required to develop a job hazard analysis (JHA) specific to that task prior to performing the task. The Health and Safety Plan shall be submitted to Santa Clara County Department of Environmental Health (or equivalent regulatory agency) for review and approval prior to commencing construction activities. A copy of the Santa Clara County Department of Environmental Health (or equivalent regulatory agency) approval shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and the Compliance Officer/Hazardous Materials Specialist of the City of San José Department of Environmental Services.

**MM HAZ-1.5:** Should asbestos be detected in soil samples taken on the site, the project applicant shall prepare an Asbestos Dust Mitigation Plan and submit the plan to the Bay Area Air Quality Management District (BAAQMD) for review and approval prior to

grading activities. The plan must describe dust control measures during grading as well as long term dust control measures. The plan shall include, at a minimum, the following measures:

- Track-out prevention and control measures;
- Active stockpiles shall be adequately wetted or covered with tarps;
- Control for disturbed surface areas and storage piles that remain inactive for more than seven days;
- Control for traffic on unpaved roads, parking lots, and staging areas;
- Control for earthmoving activities; and,
- Control for off-site transport.

**I. HYDROLOGY AND WATER QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**J. LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**K. MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**L. NOISE.**

**Impact NOI-1:** The project could result in significant noise impacts to nearby residences during construction.

**MM NOI-1.1:** The project proponent shall implement the following noise reduction measures during construction activities:

- Noise-generating construction operations shall be limited to the hours between 7:00 AM and 7:00 PM Monday through Friday, unless otherwise expressly allowed in a development permit. This includes the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project.
- All construction equipment and equipment staging areas shall be located as far as possible from nearby noise-sensitive land uses.
- All construction equipment shall be properly maintained and equipped with noise-reduction intake and exhaust mufflers and engine shrouds, in accordance with manufacturers' recommendations. Equipment engine shrouds shall be closed during equipment operation.
- All motorized construction equipment shall be shut down when not in use to prevent idling.

- Contractors shall be required to use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used at the project site, as well as at off-site locations with project construction, shall be equipped with adequate muffling devices. All equipment shall be in good mechanical condition, to minimize noise created by faulty or poorly maintained engine, drive-train and other components.
- The contractor shall schedule on-site and off-site construction activities in shifts to avoid high noise levels caused by simultaneously operating several pieces of noise-generating equipment.
- Temporary berms or noise barriers, such as lumber, or other material stockpiles shall be installed during construction activities.
- The following equipment shall be used during construction
  - Earth Removal: Use scrapers as much as possible for earth removal, rather than the noisier loaders and hauling trucks.
  - Backfilling: Use a backhoe for backfilling, as it is less costly and quieter than either noisier bulldozers or loaders.
  - Ground Preparation: Use a motor grader rather than a bulldozer for final grading.
  - Building Construction: Power saws should be shielded or enclosed where practical to decrease noise emissions. Nail guns should be used where possible, as they are less noisy than manual hammering.
- Assembly Area. Workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
- Disturbance Coordinator. A Construction/Disturbance Coordinator shall be identified by the developer for this project. The Construction/ Disturbance Coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also compile information regarding construction phasing/operations and keep the neighborhood informed of the stages of development. The coordinator shall also listen and respond to neighborhood concerns regarding construction, determine the cause of the concern (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem in a timely manner. The coordinator shall maintain a log of calls and shall make that log available to the City of San Jose upon request.
- Posting of Telephone Number. The name and phone number of the Construction/Disturbance coordinator, the hours of construction limitations, City File Number PDC16-013, and the City of San Jose’s Code Enforcement Division phone number (408-535-7770), shall be displayed on a weatherproof sign posted at each entrance to the project site. A local phone number with

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.

Harry Freitas, Director  
Planning, Building and Code Enforcement



A handwritten signature in blue ink, consisting of stylized initials and a surname, is written over a horizontal line.

Circulated on: **September 16, 2016**

Deputy