

**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:** Baywood Hotel Project

**PROJECT FILE NUMBER:** SP18-048

**PROJECT DESCRIPTION:** Site Development Permit to allow the demolition of existing residential structures and the construction of an eleven-story hotel with 105 guest rooms on a 0.30-gross acre site. The hotel would also include guest amenities on the third through fifth floors, including a fitness room and sauna, conference rooms, and a library. An outdoor recreational area would be located on the 11th floor. The maximum height of the building would be 120 feet at the top of the roof and 128 feet at the top of the mechanical area and elevator service room.

**PROJECT LOCATION:** 375 and 383 South Baywood Avenue, San Jose, CA 95128

**ASSESSORS PARCEL NO.:** 277-34-038 and 277-34-039.

**COUNCIL DISTRICT:** 6

**APPLICANT CONTACT INFORMATION:** Adam Askari, 554 Glen Alto Drive, Los Altos, CA 94022; (619) 234-2212

**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 AIR-1:** Construction of the proposed project would result in a temporary community risk impact.

**MM AIR-1.1:** Prior to the 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 Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement. 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 below.

- All diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet the U.S. Environmental Protection Agency (EPA) particulate matter emissions standards for Tier 3 engines with CARB-certified Level 3 Diesel Particulate Filters or equivalent. The use of equipment meeting U.S. EPA Tier 4 standards for particulate matter would meet this requirement.
- If Tier 4 equipment is not readily available, the use of equipment that includes alternatively-fueled equipment (i.e., non-diesel) would meet this requirement. Other measures may be the use of added exhaust devices, or a combination of measures, provided that these measures are approved by the City and demonstrated to reduce community risk impacts to a less than significant level.

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

**Impact BIO-1:** Demolition, grading, and construction activities and tree removal during the nesting season could impact migratory birds.

**MM BIO-1.1:** Avoidance: 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).

**MM BIO-1.2:** Nesting Bird Surveys: If demolition and construction activities 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 shall be 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.

**MM BIO-1.3:** Buffer Zones: 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.

**MM BIO-1.4:** Reporting: 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.

#### **E. CULTURAL RESOURCES – The project would not have a significant impact on this resource,**

therefore no mitigation is required.

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

**Impact HAZ-1:** Construction workers and adjacent residences could be exposed to residual agricultural contaminants.

**MM HAZ-1.1:** After demolition but prior to the issuance of grading permits, shallow soil samples shall be taken from the near surface soil and tested for organochlorine pesticides and pesticide-based metals arsenic and lead to determine if contaminants from previous agricultural operations occur at concentrations above established construction worker safety and residential environmental screening levels. The result of soil sampling and testing shall be provided 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 for review.

**MM HAZ-1.2:** If 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 project applicant must remove contaminated soil to levels acceptable to the SCCDEH (or equivalent oversight agency). The SCCDEH (or equivalent oversight agency) may also approve in-place some of the contaminated soil if the contaminated soil will be buried under hardscape and/or several feet of clean soil.

A Removal Action Plan, Soil Mitigation Plan or other similarly titled report describing the remediation must be prepared and implemented to document the removal and /or capping of contaminated soil. A copy of any reports prepared 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).

- I. **HYDROLOGY AND WATER QUALITY** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- J. **LAND USE AND PLANNING** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- K. **MINERAL RESOURCES** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- L. **NOISE.**

**Impact NOI-1:** Sensitive receptors in the project area would be intermittently exposed to high noise levels during project construction.

**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.

As a part of the noise logistic plan and project, construction activities for the proposed project shall include, but is not limited to, the following best management practices:

- Construction activities shall be limited to the hours 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 (San José Municipal Code Section 20.100.450).
- Construct temporary noise barriers, where feasible, to screen mobile and stationary construction equipment. The temporary noise barrier fences would provide noise reduction if the noise barrier interrupts the line-of-sight between the noise source and receiver and if the barrier is constructed in a manner that eliminates any cracks or gaps.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- Unnecessary idling of internal combustion engines should be strictly prohibited.
- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- Utilize "quiet" air compressors and other stationary noise sources where technology exists.
- Construction staging areas shall be established at locations that would create the greatest distance between the construction-related noise source and noise-sensitive receptors nearest the project site during all project construction.
- A temporary noise control blanket barrier could be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- Locate material stockpiles, as well as maintenance/equipment staging and parking areas, as far as feasible from residential receptors.
- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.
- The project applicant shall prepare a detailed construction schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with adjacent residential land uses so that construction activities can be scheduled to minimize noise disturbance.
- Designate a "disturbance coordinator" who would be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the

disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.

**Impact NOI-2:** Implementation of the proposed project would result in significant construction related to groundborne vibration impacts at the nearest structures.

**MM NOI-2.1:** The project applicant shall implement a construction vibration monitoring 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 construction vibration monitoring plan shall include, but not be limited to, the following measures:

- The report shall include a description of measurement methods, equipment used, calibration certificates, and graphics as required to clearly identify vibration-monitoring locations.
- A list of all heavy construction equipment to be used for this project and the anticipated time duration of using the equipment that is known to produce high vibration levels (clam shovel drops, vibratory rollers, hoe rams, large bulldozers, caisson drillings, loaded trucks, jackhammers, etc.) shall be submitted 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 required for continuous vibration monitoring. Where possible, use of the heavy vibration-generating construction equipment shall be prohibited within 25 feet of any adjacent building.
- Identification of the sensitivity of nearby structures to groundborne vibration. Vibration limits should be applied to all vibration-sensitive structures located within 50 feet of construction activities identified as sources of high vibration levels.
- Preconstruction condition surveys of the structures within 50 feet of construction activities identified as source of high vibrations shall be completed with the agreement of the property owner.
- Surveys shall be performed prior to any construction activity, in regular interval during construction and after project completion
- At a minimum, vibration monitoring should be conducted during demolition and excavation activities.
- If vibration levels approach limits, suspend construction and implement contingency measures to either lower vibration levels or secure the affected structures.
- Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.
- Conduct post-survey on structures where either monitoring has indicated high levels or complaints of damage has been made. Make appropriate repairs or compensation where damage has occurred as a result of construction activities.

The construction vibration plan shall be submitted to the Supervising Environmental Planner prior to the issuance of any demolition permits and grading permits. The associated monitoring reports shall be submitted after substantial completion of each phase identified in the project schedule to the Supervising Environmental Planner. An explanation of all events that exceeded vibration limits shall be included together with proper documentation of any exceedance event.

**M. POPULATION AND HOUSING** – The project would not have a significant impact on this resource, therefore no mitigation is required.

- N. **PUBLIC SERVICES** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- O. **RECREATION** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- P. **TRANSPORTATION / TRAFFIC** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- Q. **UTILITIES AND SERVICE SYSTEMS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- R. **MANDATORY FINDINGS OF SIGNIFICANCE**

The project would not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

**PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **Wednesday January 9, 2019** 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.

Thai-Chau Le  
Environmental Project Manager

Rosalynn Hughey, Director  
Planning, Building and Code Enforcement

12/10/18

Date



Deputy

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