

MITIGATION MONITORING AND REPORTING PROGRAM

Stockton Avenue Hotel and Condominiums Project

File Nos. C19-039 and SP19-063

November 2019



PREFACE

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

The Initial Study (IS) in support of the Addendum to the Diridon Station Area Plan Final Environmental Impact Report (FEIR) prepared for the Stockton Avenue Hotel and Condominiums 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 IS concluded that the impacts from implementation of the project would be less than significant.

I, Deven Roy, the applicant, on the behalf of Diridon Hospitality, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of the Initial Study in support of the Addendum to the Diridon Station Area Plan FEIR for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level.

Project Applicant's Signature 

Date 12/4/19

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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AIR QUALITY					
Impact AIR-1: Exhaust from diesel powered construction equipment would exceed the regulatory toxic air contaminant threshold and predicted cancer risk at the nearest sensitive receptors.					
<p>MM AIR-1.1: Prior to issuance of a grading permit, the project applicant shall develop a plan demonstrating that the off-road equipment used to construct the project would achieve a fleet-wide average 82 percent reduction in diesel particulate matter (DPM) emissions. Measures that can be implemented to achieve this reduction include, but are not limited to, the following:</p> <ul style="list-style-type: none"> 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 U.S. Environmental Protection Agency (U.S. EPA) particulate matter emissions standards for Tier 4 engines or equivalent. Alternatively, the use of equipment that meets U.S. EPA Tier 3 standards and includes CARB-certified Level 3 Diesel Particulate Filters¹⁹ would also meet this requirement. Alternatively, 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 	<p>Use of diesel-powered off-road equipment, as described, having engines that meet EPA particulate matter standards for Tier 4.</p> <p>Prior to the issuance of any grading permit the construction operations plan shall be submitted to the Director of Planning, Building and Code Enforcement (PBCE) or Director’s designee and, if applicable, be accompanied by a letter signed by an air quality specialist verifying the equipment included in the plan meets the standards set forth in this mitigation measure.</p>	<p>Prior to the issuance of any grading or building permits (whichever occurs earliest).</p>	<p>Director of Planning, Building and Code Enforcement or Director’s designee</p>	<p>Review and approve the construction operations plan and letter.</p>	<p>Prior to the issuance of any grading, and/or building permits (whichever occurs earliest).</p>

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<p>approved by the City and demonstrated to reduce community risk impacts to less than significant.</p> <ul style="list-style-type: none"> The proposed plan to achieve a fleet-wide average 82 percent reduction in diesel particulate matter (DPM) emissions shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee prior to issuance of any grading permits. 					
BIOLOGICAL RESOURCES					
Impact BIO-1: Construction activities associated with the proposed project, such as tree trimming, could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.					
<p>MM BIO-1.1: The project applicant shall schedule all construction activities, such as tree removals and grading, 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 the nesting season between September 1st and January 31st, inclusive, a qualified ornithologist shall complete pre-construction surveys to identify active raptor or other migratory birds’ 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</p>	<p>Avoidance of construction activities during the nesting season or completion of a pre-construction nesting bird survey conducted by a qualified ornithologist and, in consultation with the California Department of Fish and Wildlife, a construction-free buffer zone shall be designated around any discovered nest.</p> <p>The applicant shall submit the ornithologist’s report</p>	<p>Prior to issuance of any tree removal, grading, and/or building permit or activities.</p>	<p>Director of Planning, Building and Code Enforcement or Director’s designee</p>	<p>Confirm that construction activities are scheduled outside of the nesting season.</p> <p>-or-</p> <p>Review report indicating the results of the survey (or any other environmental</p>	<p>Prior to issuance of any tree removal, grading, and/or building permit or activities.</p>

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<p>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 qualified ornithologist shall designate a construction-free buffer zone (typically 250 feet) to be established around the nest, in consultation with California Department of Fish and Wildlife (CDFW). The buffer would ensure that raptor or migratory bird nests shall not be disturbed during project construction.</p> <p>Prior to approval of any ground disturbance activity, including issuance of any tree removal, grading, or building permit (whichever comes first), the project applicant shall submit a report indicating the results of the survey and any designated buffer zones for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee.</p>	<p>indicating the results of the survey and any designated buffer zones to the City's Director of PBCE or Director's designee.</p>			<p>investigation reports, if applicable) and any designated buffer zones.</p>	

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CULTURAL RESOURCES					
Impact CUL-1: The construction and associated vibration of the proposed project may indirectly impact the Julian Street Underpass.					
<p>MM CUL-1.1: Prior to final off-site improvement design, and site and off-site construction, a qualified historic architect shall undertake an existing conditions visual study of the Julian Street Underpass as directed by the City, to establish the baseline condition of the structure prior to construction of both on-site and off-site improvements. The study shall include the preparation of preconstruction documentation of portions of the West Julian Street Underpass considered to be at risk from the construction of the project, including a review of off-site improvements necessary to implement the project. The documentation shall take the form of detailed written descriptions and visual illustrations and/or photos, including those physical characteristics that conveys its historic significance. The documentation shall be reviewed and approved by the City of San José’s Historic Preservation Officer.</p> <p>MM CUL-1.2: A Historic Resources Protection Plan shall be prepared by a qualified historic architect who meets the Secretary of Interior’s Professional Qualifications Standards to protect the Julian Street Underpass from indirect impacts during construction activities (i.e., due to damage from operation of</p>	<p>A qualified historian shall perform a pre-construction survey and prepare pre-construction documentation and a Historic Resources Protection Plan. The historian shall make periodic site visits to monitor the condition of the historic resources and shall consult with a structural engineer if any problems arise. Any repair work must comply with the Secretary of the Interior’s Standards for the Treatment of Historic Properties to restore the character-defining features of the resource in a way that does not affect the eligibility of the structure as a historic resource.</p>	<p>Prior to any ground disturbing activities and/or issuance of a grading permit.</p>	<p>Director of Planning, Building and Code Enforcement or Director’s designee</p>	<p>Review and approve preconstruction documentation and/or the Historic Resources Protection Plan.</p>	<p>Prior to any ground disturbing activities.</p>

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<p>construction equipment). The project applicant shall, prior to any construction activities including any ground-disturbing work, have a plan prepared that establishes procedures to protect this resource. The project applicant shall ensure the contractor follows this plan while working at or near this historic resource. At a minimum, the plan shall include:</p> <ul style="list-style-type: none"> Guidelines for operation of construction equipment at or adjacent to the historic resource; Requirements for monitoring and documenting compliance with the plan. And education/training of construction workers about the significance of the historical resources around which they would be working. <p>MM CUL-1.3: Utilizing the visual study recommended in MM CUL-1.1 above, the Historic Architect shall make periodic site visits to monitor the condition of the historic resources identified in the Historical Resources Protection Plan, including monitoring of any instruments such as crack gauges if necessary, or reviewing vibration monitoring required by other construction monitoring processes required under the City’s permit processes.</p>					

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<p>The Historic Architect shall consult with a structural engineer if any problems with character-defining features of the West Julian Street Underpass are discovered. If, in the opinion of the Historic Architect, substantial adverse impacts related to construction activities are found during construction, the Historic Architect shall so inform the project applicant or applicant’s designated representative responsible for construction activities. The project sponsor shall then respond accordingly to the Historic Architect’s recommendations for corrective measures, including halting construction in situations where construction activities would imminently endanger historic resources. The monitoring team shall prepare site visit reports for submittal to the City’s Planning Division monthly.</p> <p>MM CUL-1.4: In the event of damage to the West Julian Street Underpass during construction, repair work must comply with the Secretary of the Interior’s Standards for the Treatment of Historic Properties to restore the character-defining features of the resource in a way that does not affect the eligibility of the structure as a historic resource.</p>					

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Impact CUL-2: Construction of the proposed project could result in significant impacts to known and potentially present archaeological and/or tribal cultural resources.					
<p>MM CUL-2.1: The project applicant shall implement the following mitigation program:</p> <ul style="list-style-type: none"> • A Native American and an archaeologist trained in identifying and managing historic-era and Native American resources shall monitor the remediation efforts conducted by the project engineers. The monitoring efforts would depend on the level of toxicity, the types of soils removed, and evidence from disturbance from prior development. The archaeologist and Native American monitor shall determine the duration of each party’s monitoring in coordination with the remediation contract. • If any ground disturbing activities at the project site and adjacent areas are required, such as for potholing, to locate and to remove previous utilities or connect with utilities in adjacent roadways, or other similar activities, the archaeologist and Native American monitor must be present and observing at all times. • Mechanical presence/absence exploration for both Native American and historic-era resources shall be completed after the remediation efforts have cleared the remaining contaminated soils. The exploration work shall be conducted by qualified archaeologist(s) trained in both local prehistoric and historical archaeology. Accompanied by a 	<p>A qualified archaeologist and Native American monitor shall monitor any preconstruction ground disturbing activity. Subsurface testing shall be completed by a qualified archaeologist prior to the start of construction. The archaeologist and Native American shall supervise any ground disturbing activities. A final report verifying completion of the mitigation program shall be submitted to the City’s Director of PBCE or the Director’s designee for approval prior to release of a Certificate of Occupancy.</p>	<p>Prior to any ground disturbing activities and/or issuance of any grading permits.</p>	<p>Director of Planning, Building and Code Enforcement or Director’s designee</p>	<p>Submittal of the archaeological investigation to the NWIC. Receive final report.</p>	<p>Prior to any ground disturbing activities and/or issuance of any grading permits. Prior to issuance of Certificate of Occupancy.</p>

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<p>local Native American monitor, mechanical trenching shall sample the parcel with careful consideration given to the potential for additional archaeological resources. To explore for the potential for archaeological resources, deeper trenches shall be placed beyond the areas considered sensitive for historic-era resources and dug to a depth commensurate with proposed impacts or until the soils and sediments are identified as reliably culturally sterile. The most sensitive areas for historical deposits would be near the former back fences that historically divided the four Stockton and West Julian houses that were present in the late 1800s and early 1900s. Exploring for historic-era features should consist of creating shallow, wide trenches down to the historic surface. If any archaeological resources or human remains are exposed, these shall be briefly documented, tarped for protection, and left in place. These resources shall be covered by construction plate(s) to protect them from harm until a qualified archaeologist, and if appropriate, a Native American monitor or Most Likely Descendant (MLD), can further investigate the deposit(s), feature(s), or burial(s).</p> <ul style="list-style-type: none"> All work within 50 feet of archaeological resources shall be carefully excavated under the 					

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<p>supervision of an archaeologist and a Native American monitor. All construction workers and their supervisors shall be given cultural sensitivity training by the archaeologist and Native American monitor so they can better assist with exposing any cultural resources that are present while minimizing additional impacts.</p> <ul style="list-style-type: none"> • If Native American human remains are exposed, an archaeologist shall review the remains in combination with the archaeological site record. Should any human remains be encountered, all work in the vicinity shall be halted and the area covered by construction plates to protect the burial. The County Coroner shall be contacted pursuant to Health and Safety Code § 7050.5 and Public Resources Code § 5097.94 of the State of California, and would be responsible for notifying the Native American Heritage Commission (NAHC) which is empowered to assign an MLD for this project. • Once an MLD is assigned, consultation can begin with the MLD, the property owner, and a representative of the City. Contingent upon the outcome, the archaeologist shall prepare a burial plan to address the removal and reburial of any human remains. The plan shall be approved by the City’s Director of Planning, Building and Code 					

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<p>Enforcement or the Director’s designee before the human remains can be further addressed.</p> <ul style="list-style-type: none"> • Native American human remains and any associated burial goods shall be reburied in a location agreed upon by the MLD and the City’s Director of Planning, Building and Code Enforcement or the Director’s designee per the burial agreement. • If no satisfactory agreement can be reached as to the disposition of the remains pursuant to State law, then the landowner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance • If archaeological deposits or features that appear potentially eligible to the California Register of Historical Resources are identified during any stage of exploration or monitoring, an archaeological research design and work plan shall be prepared. If historic-era resources are unearthed, these resources shall be recorded as a separate archaeological site. This plan shall be approved by the City’s Director of Planning, Building and Code Enforcement or the Director’s designee before the archaeological deposits or features can be excavated. 					

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<ul style="list-style-type: none"> • If unearthed, all features, archaeological deposits, and cultural material would be excavated according to current archaeological standards detailed in the approved research design and treatment plan. For Native American deposits and cultural materials, the Native American monitor and an MLD, if required, would assist. • All features, archaeological deposits, and cultural material shall be cleaned, analyzed and evaluated for their eligibility to the California Register of Historical Resources. The archaeologist shall submit a report(s) describing the testing program and subsequent results, to the satisfaction of the City’s Director of Planning, Building and Code Enforcement or the Director’s designee. The report(s) shall identify any program mitigation that the developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources). • The City is fiscally responsible for the curation of all artifacts deemed archival by current archaeological standards at History San José, except for any human remains and associated burial goods. The archaeologist shall prepare the artifacts and dietary remains in archival quality 					

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<p>bags with artifact identification tags, provide two copies of a final artifact catalog for the items submitted, and two copies of the final archaeological report. Additional requirements by History San José shall also be addressed.</p> <ul style="list-style-type: none"> • The archaeologist shall prepare a supplemental site record for the archaeological resource documenting its removal. Any additional Native American resources identified shall be documented and the archaeological site boundaries modified. • In the event that buried, or previously unknown archaeological deposits or materials of any kind are inadvertently exposed during any construction activity, work within 50 feet of the find shall cease until a qualified archaeologist can assess the find and provide recommendations for further treatment, if warranted. Construction and potential impacts to the area(s) within a radius determined by the archaeologist shall not recommence until the assessment is complete. • A final report verifying completion of the mitigation program shall be submitted to the City’s Director of Planning, Building and Code Enforcement or the Director’s designee for approval prior to release of a Certificate of Occupancy. This report shall contain a description of the mitigation programs and results of the 					

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mitigation, including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources.					
ENERGY					
Impact EN-1: The proposed project may increase emissions associated with vehicle travel.					
MM EN-1.1: To reduce emissions associated with vehicle travel, the project applicant shall be required to implement a transportation demand management (TDM) program. The TDM program may incorporate the following Transportation Control Measures (TCMs): shuttle service, proximity to major transit, electric vehicle charging, bicycle facilities, and pedestrian connections. The TDM program shall be approved by the Director of Planning, Building and Code Enforcement or Director’s designee.	Prepare and implement a TDM program.	Prior to the issuance of any grading permits.	Director of Planning, Building and Code Enforcement or Director’s designee	Approval of TDM program.	Prior to issuance of any grading permits.
HAZARDS AND HAZARDOUS MATERIALS					
Impact HAZ-1: Project soils on the site contain elevated levels of metals that could be released to the environment during project construction and expose construction workers, sensitive receptors, and the public.					
MM HAZ-1.1: Prior to the issuance of a demolition or grading permit, the project applicant shall contact the Santa Clara County Department of Environmental	Submittal of Phase I and Geotechnical Investigation results to the SCCDEH. If	Prior to the issuance of any grading permits.	Director of Planning, Building and Code	Review of SMP and proof of	Prior to the issuance of any grading permits.

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<p>Health (SCCDEH) to discuss the proposed development project and perform any other necessary investigations and studies to address the residual contamination as deemed necessary by the SCCDEH. The project applicant shall share the results of the Phase I completed by Envirocare Associates, Inc. (May 2017) and the limited soil sampling results from the Geotechnical Investigation completed by BAGG Engineers (March 15, 2019) with the SCCDEH. The regulatory agency may require a Site Management Plan (SMP) or similar document to manage the cleanup of contaminated soils. If applicable, a SMP shall be prepared prior to construction to reduce or eliminate exposure risk to human health and the environment, specifically, potential risks associated with the presence of contaminated soils.</p> <p>At a minimum, the SMP shall include the following:</p> <ul style="list-style-type: none"> • Stockpile management including dust control, sampling, stormwater pollution prevention and the installation of BMPs • Proper disposal procedures of contaminated materials • Monitoring, reporting, and regulatory oversight notifications 	<p>applicable, implementation of a SMP.</p>		<p>Enforcement or Director’s designee</p> <p>City of San José Environmental Compliance Officer</p>	<p>approval by SCCDEH.</p>	

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<ul style="list-style-type: none"> A health and safety plan for each contractor working at the site that addresses the safety and health hazards of each phase of site operations with the requirements and procedures for employee protection The health and safety plan will also outline proper soil/ and or groundwater handling procedures and health and safety requirements to minimize worker and public exposure to contaminated soil/and or groundwater during construction. <p>Evidence of the applicant’s meeting with the SCCDEH such as an email or letter along with a copy of the SMP approved by the SCCDEH (if applicable) shall be provided to the City’s Director of Planning, Building and Code Enforcement or the Director’s designee, and the City’s Environmental Compliance Officer in the City of San Jose’s Environmental Services Department.</p>					
Impact HAZ-2: Groundwater on the site contains elevated levels of benzopyrene and selenium that could be toxic to fish species if discharged into local waterways.					
MM HAZ-2.1: The project applicant shall ensure that groundwater at the site is not directly discharged into the storm drain by complying with the NPDES permit requirements.	Any water discharge shall comply with NPDES permit requirements or wastewater discharge permit conditions to the sanitary sewer. All investigations and plans	Prior to the issuance of any grading permits.	City of San José Environmental Compliance Officer Regulatory oversight agencies	Review of NPDES permit or wastewater discharge permit conditions to the sanitary sewer.	Prior to the issuance of any grading permits.

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<p>MM HAZ-2.2: To avoid the spread of harmful levels of contamination, the discharge of any water from dewatering activities shall be required to comply with NPDES permit requirements or wastewater discharge permit conditions to the sanitary sewer, which may involve installation of a treatment system(s) at the dewatering location.</p> <p>MM HAZ-2.3: All investigations and plans shall be completed by a qualified hazardous materials consultant, in conformance with State and local guidelines and regulations. The investigations and plans shall be subject to review and approval by the appropriate regulatory oversight agencies and the City's Environmental Compliance Officer through the City's development review process.</p>	shall be completed by a qualified hazardous materials consultant.				
NOISE					
Impact NOI-1: Construction activity associated with the proposed project may impact adjacent structures including the West Julian Street Underpass and the data center facility.					
MM NOI-1.1: The project applicant shall submit a construction vibration mitigation plan prepared by an acoustical and/or structural engineer and other appropriate qualified professional such as a historic preservation professional for City review and approval that establishes levels of ground vibration that could damage the structure and/or substantially interfere with activities at the West Julian Street Underpass and the 250 Stockton Avenue (data center). Common	Submission and approval of a construction vibration mitigation plan prepared by an acoustical and/or structural engineer and other qualified professional such as a historic preservation professional.	Prior to issuance of any grading permits.	Director of Planning, Building and Code Enforcement or Director's designee	Review of construction vibration mitigation plan.	Prior to issuance of any grading permits.

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<p>thresholds include, for sensitive historic structures, a vibration limit of 0.08 inches/second PPV to minimize the potential for cosmetic damage to a building and a vibration limit of 0.2 inches/second PPV to minimize the potential for cosmetic damage at buildings of normal conventional construction. The level at which ground vibration would significantly affect data center operations shall be based on appropriate published guidelines or equipment manufacturer’s specifications for the data center equipment. The construction vibration mitigation plan shall define means and methods of construction that shall be utilized in order to not exceed the thresholds and shall be reviewed by the Director of Planning, Building, and Code Enforcement Department or the Director’s designee prior to issuance of a grading permit. To ensure that vibration levels do not exceed the established thresholds, the project sponsor shall monitor vibration levels at each structure and shall prohibit vibratory construction activities that generate vibration levels in excess of the thresholds. Protocols for responding to elevated vibration levels that cause damage or operational interference would include stopping work and repairing damage to the structures. Baseline and construction period inspections of the West Julian Street Underpass historic features shall be conducted as per the requirements of the Cultural Resources mitigation measures.</p>					

Source: City of San José. Initial Study for the Stockton Avenue Hotel and Condominiums Project, November 2019.