

RESOLUTION NUMBER R- 312873

DATE OF FINAL PASSAGE MAR 09 2020

ITEM # 203A
3/9/20

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO ADOPTING MITIGATED NEGATIVE DECLARATION NO. 588751 AND THE MITIGATION, MONITORING, AND REPORTING PROGRAM FOR THE 4TH AVENUE APARTMENTS – PROJECT NO. 588751.

WHEREAS, on May 16, 2018, Fourth and Laurel, LP and Richard Simis submitted an application to the Development Services Department to allow the construction of a 36-dwelling unit mixed-use development known as the 4th Avenue Apartments project (Project); and

WHEREAS, the Project was submitted to the San Diego County Regional Airport Authority (SDCRAA), serving as the Airport Land Use Commission (ALUC), for a consistency determination with San Diego International Airport (SDIA) Airport Land Use Compatibility Plan (ALUCP) because of the Project's proposed density and location within SDIA-Review Area 1; and

WHEREAS, at its meeting on October 4, 2018, the SDCRAA, acting in its capacity as the ALUC, reviewed the Project and determined it inconsistent with the ALUCP because it exceeds the ALUCP's allowable intensity factor for mixed-use development with respect to residential density for the area in which it is located, Safety Zone 3 Northeast (3NE); and

WHEREAS, California Public Utilities Code (CPUC) section 21676.5(a) grants the City Council the authority to overrule a determination of inconsistency from the ALUC if the governing body undertakes a two-part process, with both parts requiring a two-thirds vote as follows: (1) makes proposed findings regarding purpose and intent of Public Utilities Code section 21670, and (2) approved the overrule at a noticed public hearing; and

WHEREAS, San Diego Municipal Code (SDMC) section 132.1555 requires that for the City Council to overrule a determination of inconsistency, it must adopt not only the proposed findings regarding purpose and intent set forth in Public Utilities Code section 21670, but also findings that the development is not detrimental to the public health, safety, and welfare, and that the development will minimize the public's exposure to excessive noise and safety hazards to the extent feasible; and

WHEREAS, the Project also requires a Site Development Permit for the City Council to override the determination of inconsistency with the intensity of the development within Safety Zone 3NE of the ALUCP for SDIA in accordance with SDMC sections 126.0502(e) and 132.0310; and

WHEREAS, the matter was set for a public hearing to be conducted by the Council of the City of San Diego; and

WHEREAS, the issue was heard by the Council of the City of San Diego on March 9, 2020; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing is required by law implicating due process rights of individuals affected by the decision, and the Council is required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the Council of the City of San Diego considered the issues discussed in the Mitigated Negative Declaration No. 588751 (Declaration) prepared for this Project; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that it is certified that the Declaration has been completed in compliance with the California Environmental Quality Act of 1970 (CEQA) (Public Resources Code Section 21000 et seq.), as amended, and the State CEQA Guidelines thereto (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.), that the Declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said Declaration, together with any comments received during the public review process, has been reviewed and considered by the Council of the City of San Diego in connection with the approval of the Project.

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds on the basis of the entire record that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study, that there is no substantial evidence that the Project will have a significant effect on the environment, and therefore, that said Declaration is hereby adopted.

BE IT FURTHER RESOLVED, that pursuant to CEQA Section 21081.6, the Council of the City of San Diego hereby adopts the Mitigation, Monitoring, and Reporting Program, or alterations to implement the changes to the Project as required by this Council of the City of San Diego in order to mitigate or avoid significant effects on the environment, which is attached hereto as Exhibit A.

BE IT FURTHER RESOLVED, that the Declaration and other documents constituting the record of proceedings upon which the approval is based are available to the public at the office of the City Clerk, 202 C Street, San Diego CA 92101.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination with the Clerk of the Board of Supervisors for the County of San Diego regarding the Project.

APPROVED: MARA W. ELLIOTT, City Attorney

By: 

Corrine L. Neuffer
Deputy City Attorney

CLN:als
02/19/2020
Or. Dept: DSD
Doc. No. 2332085

ATTACHMENT: Exhibit A - Mitigation, Monitoring, and Reporting Program

EXHIBIT A

MITIGATION, MONITORING, AND REPORTING PROGRAM

**4TH AVENUE APARTMENTS – PROJECT NO. 588751
SITE DEVELOPMENT PERMIT NO. 2243451**

CITY COUNCIL

This Mitigation, Monitoring, and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation, Monitoring, and Reporting Program will be maintained at the offices of the Entitlements Division, 1222 First Avenue, Fifth Floor, San Diego, CA, 92101. All mitigation measures contained in the Mitigated Negative Declaration No. 588751 shall be made conditions of **Site Development Permit No. 2243451** as may be further described below.

A. GENERAL REQUIREMENTS – PART I Plan Check Phase (prior to permit issuance)

1. Prior to the issuance of a Notice to Proceed (NTP) for a subdivision, or any construction permits, such as Demolition, Grading or Building, or beginning any construction-related activity on-site, the Development Services Department (DSD) Director's Environmental Designee (ED) shall review and approve all Construction Documents (CD; plans, specification, details, etc.) to ensure the Mitigation Monitoring and Reporting Program (MMRP) requirements are incorporated into the design.
2. In addition, the ED shall verify that the MMRP Conditions/Notes that apply **ONLY** to the construction phases of this project are included **VERBATIM**, under the heading, **"ENVIRONMENTAL/MITIGATION REQUIREMENTS."**
3. These notes must be shown within the first three sheets of the construction documents in the format specified for engineering construction document templates as shown on the City website: <http://www.sandiego.gov/development-services/industry/standtemp.shtml>
4. The **TITLE INDEX SHEET** must also show on which pages the "Environmental/Mitigation Requirements" notes are provided.

B. GENERAL REQUIREMENTS – PART II Post Plan Check (After permit issuance/Prior to start of construction)

1. **PRE-CONSTRUCTION MEETING IS REQUIRED TEN (10) WORKING DAYS PRIOR TO BEGINNING ANY WORK ON THIS PROJECT.** The PERMIT HOLDER/OWNER is responsible to arrange and perform this meeting

by contacting the CITY RESIDENT ENGINEER (RE) of the Field Engineering Division and City staff from MITIGATION MONITORING COORDINATION (MMC). Attendees must also include the Permit Holder's Representative(s), Job Site Superintendent and the following consultants: Paleontological Monitor.

Note: Failure of all responsible Permit Holder's representatives and consultants to attend shall require an additional meeting with all parties present.

CONTACT INFORMATION:

- a) The PRIMARY POINT OF CONTACT is the RE at the **Field Engineering Division, 858-627-3200.**
- b) For Clarification of ENVIRONMENTAL REQUIREMENTS, it is also required to call **RE and MMC at 858-627-3360.**

2. **MMRP COMPLIANCE:** This Project, Project Tracking System (PTS) Number 588751 and/or Environmental Document Number 588751, shall conform to the mitigation requirements contained in the associated Environmental Document and implemented to the satisfaction of the DSD's Environmental Designee (MMC) and the City Engineer (RE). The requirements may not be reduced or changed but may be annotated (i.e., to explain when and how compliance is being met and location of verifying proof, etc.). Additional clarifying information may also be added to other relevant plan sheets and/or specifications as appropriate (i.e., specific locations, times of monitoring, methodology, etc).

Note: Permit Holder's Representatives must alert RE and MMC if there are any discrepancies in the plans or notes, or any changes due to field conditions. All conflicts must be approved by RE and MMC BEFORE the work is performed.

3. **OTHER AGENCY REQUIREMENTS:** Evidence of compliance with all other agency requirements or permits shall be submitted to the RE and MMC for review and acceptance prior to the beginning of work or within one week of the Permit Holder obtaining documentation of those permits or requirements. Evidence shall include copies of permits, letters of resolution or other documentation issued by the responsible agency: *Not Applicable*
4. **MONITORING EXHIBITS:** All consultants are required to submit to RE and MMC, a monitoring exhibit on a 11x17 reduction of the appropriate construction plan, such as site plan, grading, landscape, etc., marked to clearly show the specific areas including the **LIMIT OF WORK**, scope of that discipline's work, and notes indicating when in the construction schedule that work will be performed. When necessary for clarification, a detailed methodology of how the work will be performed shall be included.

Note: Surety and Cost Recovery – When deemed necessary by the DSD Director or City Manager, additional surety instruments or bonds from the private Permit Holder may be required to ensure the long-term performance or implementation of required mitigation measures or programs. The City is authorized to recover its cost to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

5. **OTHER SUBMITTALS AND INSPECTIONS:** The Permit Holder/Owner’s representative shall submit all required documentation, verification letters, and requests for all associated inspections to the RE and MMC for approval per the following schedule:

DOCUMENT SUBMITTAL/INSPECTION CHECKLIST		
Issue Area	Document Submittal	Associated Inspection/Approvals/Notes
General	Consultant Qualification Letters	Prior to Preconstruction Meeting
General	Consultant Construction Monitoring Exhibits	Prior to or at Preconstruction Meeting
Noise	Acoustical Reports	Noise Mitigation Features Inspection
Waste Management	Waste Management Reports	Waste Management Inspections
Bond Release	Request for Bond Release Letter	Final Inspections Prior to Bond Release Letter

C. SPECIFIC MMRP ISSUE AREA CONDITIONS/REQUIREMENTS

Noise (Construction)

NOI-1 Construction Noise Limits: Prior to the issuance of a Notice To Proceed for a subdivision, or any construction permits, such as Demolition, Grading, or Building, or beginning any construction-related activity on site, the Development Services Department Director’s Environmental Designee shall ensure the following measures have been incorporated on construction documents:

The project proponent shall require construction activities and contractors to adopt the following measures to control noise generated by construction activities:

- Project construction and related activities shall be limited to daytime hours (7:00 a.m. to 7:00 p.m.).
- Active noise monitoring shall be required during each construction work day to ensure noise levels do not exceed an average sound level of 75 dBA _{LEQ} during the 12-hour period from 7:00 a.m. to 7:00 p.m.

- Construction equipment operating at noise levels exceeding 75 dBA L_{EQ} shall not actively operate for more than 30 minutes of each one-hour period within 30 feet of adjacent sensitive receptors.
- Construction equipment shall be properly maintained per manufacturers' specifications and fitted with the best available noise-suppression devices (e.g., mufflers, silencers, wraps).
- All impact tools shall be shrouded or shielded and all intake and exhaust ports on power equipment shall be muffled or shielded.
- Heavy-duty construction equipment shall be staged and used at the farthest distance feasible from adjacent sensitive receptors.
- Construction equipment shall not be idled for extended periods.
- Fixed/stationary equipment (such as generators, compressors, rock crushers, and cement mixers) shall be located as far as possible from noise-sensitive receptors.
- An on-site coordinator shall be employed by the project applicant/contractor and his or her telephone number along with instructions on how to file a noise complaint shall be posted conspicuously around the project site during construction phases. The coordinator's duties shall include fielding and documenting noise complaints, determining the source of the complaint (e.g., piece of construction equipment), determining whether noise levels are within acceptable limits and according to City standards, and reporting complaints to the City. The coordinator shall contact nearby noise-sensitive receptors, advising them of the construction schedule.
- A summary of construction monitoring results shall be provided to the City following monitoring.

NOI-2 Vibration Monitoring. Prior to the issuance of a Notice To Proceed for a subdivision, or any construction permits, such as Demolition, Grading, or Building, or beginning any construction-related activity on site, the Development Services Department Director's Environmental Designee shall ensure the following measure has been incorporated on construction documents:

- Vibration generated by the project's construction equipment shall not exceed 1.0 inch per second PPV (120 VdB PPV), as measured at the nearest off-site residences. To ensure vibration levels do not exceed these limits, active vibration monitoring shall be provided by a City-approved vibration consultant during excavation activities. Feedback regarding vibration levels shall be provided to the project's contractor, and if levels exceed the vibration threshold, construction shall cease until appropriate vibration-reduction measures are implemented by the construction contractor to ensure vibration levels remain below 1.0 inch per second PPV. A summary of construction monitoring results shall be provided to the City following monitoring.

Passed by the Council of The City of San Diego on MAR 09 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 09 2020.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Atty Beady*, Deputy

Office of the City Clerk, San Diego, California

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