

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING AN ADDENDUM TO THE 4300 STEVENS CREEK BOULEVARD MIXED-USE PROJECT FINAL ENVIRONMENTAL IMPACT REPORT AND A RELATED MITIGATION MONITORING AND REPORTING PROGRAM, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED**

**WHEREAS**, the City of San José (“City”) acting as lead agency under the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”), prepared, completed and adopted the 4300 Stevens Creek Boulevard Mixed-Use Project Final Environmental Impact Report (FEIR), which analyzed the environmental impacts of a Planned Development Rezoning, a Vesting Tentative Map to subdivide three parcels into four buildable parcels and ten common parcels, and a Planned Development Permit to allow demolition of five existing buildings, removal of 68 ordinance-size trees, and development of four buildings including an office building, a parking structure, a mixed-use building and a residential building for a total of up to 582 residential units, and the relocation of Lopina Way to the east side of the project site; and

**WHEREAS**, a public hearing was held by the Planning Commission on January 16, 2019, and the Planning Commission of the City of San José recommended the Council of the City of San José (“City Council”) certified said 4300 Stevens Creek Boulevard Mixed-Use Project FEIR; and

**WHEREAS**, a public hearing was held on February 26, 2019, by the Council of the City of San José (“City Council”) and the City Council certified the 4300 Stevens Creek Boulevard Mixed-Use Project FEIR (Planning File Nos. PDC16-036, PD17-014, PT17-23) by Resolution No. 78994, setting forth certain findings concerning significant impacts,

mitigation measures, alternatives, and adopting a Statement of Overriding Considerations pertaining to the 4300 Stevens Creek Boulevard Mixed-Use Project FEIR, and adopting a mitigation monitoring and reporting program, all pursuant to the provisions of CEQA; and

**WHEREAS**, prior to the adoption of this Resolution, the Director of Planning, Building and Code Enforcement of the City of San José prepared an Addendum to the 4300 Stevens Creek Boulevard Mixed-Use Project FEIR under Planning File Nos. PDC16-036, PD17-014 and PT17-23, all in accordance with CEQA; and

**WHEREAS**, CEQA recognizes that between the date an environmental document is certified and the date the project is fully implemented, that the project may change; the environmental setting of the project may change; laws, regulations, or policies may change; and/or previously unknown information can arise. CEQA Guidelines Section 15162 provides that when an Environmental Impact Report has been certified or a Negative Declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the Lead Agency determines that substantial changes to the project occur that will require major revisions to the EIR, or that new information which was not previously known or studied indicates that significant impacts on the environment may arise from the development of the revised project; and

**WHEREAS**, the lead agency shall prepare an initial study tiering from a previously certified FEIR if some changes or additions are necessary, but none of the conditions described in CEQA Section 15162 calling for preparation of a subsequent EIR have occurred; and

**WHEREAS**, the Stevens Creek Promenade Project (the "Project") analyzed under the Addendum consists of a rezoning to CP(PD) Planned Development Zoning District, a Vesting Tentative Map to subdivide three parcels into seven parcels with up to 580

condominium units on the Project Site, and a Planned Development Permit to facilitate the demolition of three existing commercial buildings, the removal of 104 ordinance-size trees, and the construction of three multi-family residential buildings with approximately 580 units, including 173 units of affordable housing, and a 250-room hotel with ground floor retail, and associated parking, landscaping and amenities on a 10.0 gross-acre site located at 4300 Stevens Creek Boulevard in San José, California; and

**WHEREAS**, as further described in the Addendum, the implementation of the Project would not result in new significant effects on the environment beyond those already identified in the previously approved 4300 Stevens Creek Boulevard Mixed-Use Project FEIR, and identified mitigation measures, as amended, would continue to reduce each of those significant effects to a less-than significant level; and

**WHEREAS**, the related mitigation measures are described in the Addendum; and

**WHEREAS**, a related Mitigation Monitoring and Reporting Program (“Mitigation Monitoring and Reporting Program”) was prepared that incorporates certain applicable mitigation measures from the previously certified 4300 Stevens Creek Boulevard Mixed-Use Project FEIR; and

**WHEREAS**, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

**WHEREAS**, the City Council has reviewed and considered the 4300 Stevens Creek Boulevard Mixed-Use Project FEIR and the Addendum, and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

**WHEREAS**, the 4300 Stevens Creek Boulevard Mixed-Use Project FEIR the and Addendum, thereto, for the Project are on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and on the Department of Planning, Building and Code Enforcement website, and are, by this reference, incorporated into this Resolution as if fully set forth herein;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**THAT THE CITY COUNCIL** does hereby make the following findings: (1) it has independently reviewed and analyzed the 4300 Stevens Creek Boulevard Mixed-Use Project FEIR, as modified by the Addendum, as well as other information in the administrative record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Addendum modifying the 4300 Stevens Creek Boulevard Mixed-Use Project FEIR prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Addendum modifying the 4300 Stevens Creek Boulevard Mixed-Use Project FEIR represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning, Building and Code Enforcement at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

**THAT THE CITY COUNCIL** does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Addendum prepared for the Project (Planning File Nos. PDC20-021, PT21-001 and PD20-006). The Mitigation Monitoring and Reporting Program is attached hereto as

Exhibit A and is fully incorporated herein by this reference. The 4300 Stevens Creek Boulevard Mixed-Use Project FEIR and the Addendum are: (1) on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and on the Department of Planning, Building and Code Enforcement's website, and (2) available for inspection by any interested person.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

**UPDATED**  
**MITIGATION MONITORING AND REPORTING PROGRAM**

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**Stevens Creek Promenade Project Addendum**  
**File Nos. PDC20-021, PT21-001, PD20-012, ER21-006**  
**August 2022**

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## PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program 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 Addendum to the Final Environmental Impact Report prepared for the Stevens Creek Promenade (formerly known as 4300 Stevens Creek Boulevard Mixed Use) 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 Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

As part of the Addendum process some mitigation measures were consolidated or no longer relevant to the revised project and these have been updated to reflect these changes.

This document does *not* discuss those subjects for which the Final Environmental Impact Report concluded that the impacts from implementation of the project would be less than significant.

I, PERRY HARRIS, the applicant, on the behalf of MPG STEVENS CREEK OWNER, LLC, a Delaware LLC, hereby agree to fully implement the mitigation measures described below which have been developed in conjunction with the preparation of an Addendum to the Final Environmental Impact Report for my proposed project and 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

Perry Harris  
8/18/22

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<b>AIR QUALITY</b>					
<b>Impact AIR-1:</b> The proposed modified project would create construction emissions resulting in the exceedance of BAAQMD cancer risk thresholds (18.63 cases per million which exceeds the excess cancer risk level of more than 10 cases in one million) for the MEI (Maximally Exposed Individual), similar to the approved project.					
<p><b>MM AIR-1.1:</b> Prior to the issuance of any demolition, grading and/or building permits (whichever occurs earliest), the project applicant shall prepare a construction operations plan that includes specifications of the equipment to be used during construction. The plan shall be accompanied by a letter signed by a qualified air quality specialist, verifying that the equipment included in the plan meets the standards set forth below.</p> <ul style="list-style-type: none"> <li>For all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total, use equipment that meet U.S. Environmental Protection Agency (EPA) Tier 4 emission standards for NO<sub>x</sub> and PM (PM<sub>10</sub> and PM<sub>2.5</sub>).</li> <li>If Tier 4 equipment is not available, all construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA emission standards for Tier 2 or 3 engines and include particulate matter emissions control equivalent to CARB verifiable diesel emission control devices that altogether achieve a 50 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment.</li> </ul>	<p>Prepare and submit a construction operations plan that includes specifications of equipment to be used during construction. The plan shall be accompanied by a letter signed by a qualified air quality specialist confirming the construction equipment meets the standards in MM AIR 1.1</p>	<p>Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).</p>	<p>Supervising Environmental Planner of the Department of Planning, Building and Code Enforcement.</p>	<p>Review the construction operations plan and letter.</p>	<p>Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest).</p>



<ul style="list-style-type: none"> <li>• Use of alternatively fueled or electric equipment may be used in combination with or in place of diesel- powered equipment to achieve the same percentage reduction in particulate matter exhaust.</li> <li>• Use of electrical or non-diesel equipment with lower NO<sub>x</sub> emissions that meet the NO<sub>x</sub> and PM reduction requirements above.</li> </ul> <p>Alternatively, the project applicant could develop a plan that reduces on- and near-site construction diesel particulate matter emissions by a minimum of 50 percent or greater. The plan shall be reviewed and approved by the Director of Planning or Director's designee of the City of San José Department of Planning, Building and Code Enforcement prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).</p> <p>Prior to the issuance of any demolition, grading, and/or building permits (whichever occurs earliest), the project applicant shall submit the construction operations plan and confirmation letter from the qualified air quality specialist to the Director of Planning, Building and Code Enforcement or Director's designee, for review and approval.</p> <p>With implementation of these conditions and the mitigation measure, the cancer risk would be reduced by 86 percent to 2.51 cases per million.</p> <p>Implementation of the above mitigation measure(s) will avoid or reduce the potential environmental impact stated above to a less than significant level.</p>					
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**BIOLOGICAL RESOURCES**

**Impact BIO-1:** Construction activities associated with the proposed project could result in an impact to nesting migratory birds due to the loss of fertile eggs or nest abandonment.

<p><b>MM BIO-1.1:</b> Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities (whichever occurs first, the project applicant shall schedule demolition and construction activities to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in</p>	<p>Avoidance of construction activities during nesting season. If construction activities cannot avoid the nesting season, a pre-construction nesting bird survey shall be completed by</p>	<p>Prior to issuance of any tree removal, grading, demolition, and/or building permit or activities (whichever occurs first).</p>	<p>Supervising Environmental Planner of the San José Department of Planning, Building and Code Enforcement.</p>	<p>Confirm that demolition and construction activities are scheduled outside of the nesting season.</p>	<p>Prior to issuance of any tree removal, grading, demolition, and/or building permit or</p>
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<p>the San Francisco Bay area, extends from February 1st through August 31st (inclusive).</p> <p><b>MM BIO-1.2:</b> If demolition and construction activities cannot be scheduled to occur outside of the breeding season (September 1st to January 31st inclusive), pre-construction surveys for nesting birds following the California Department of Fish &amp; Wildlife (CDFW) bird survey protocols shall be completed by a qualified ornithologist to ensure that no nests are disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of grading, tree removal, or other demolition or 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 qualified ornithologist shall inspect all trees and other possible nesting habitats within 250 feet of the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with 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 will not be disturbed during project construction.</p> <p>Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the qualified 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.</p> <p>Implementation of the above mitigation measure(s) will avoid or reduce the potential environmental impact stated above to a less than significant level.</p>	<p>a qualified ornithologist and construction-free buffer zones shall be designated around any discovered nest.</p> <p>The qualified ornithologist shall submit a report indicating the results of the survey and any designated buffer zones.</p>			<p>Review report indicating the results of the survey (or any other environmental investigation reports, if applicable) and any designated buffer zones.</p>	<p>activities (whichever occurs first).</p>
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**HAZARDS AND HAZARDOUS MATERIALS**

**Impact HAZ-1:** Implementation of the proposed project could release pesticide chemicals from on-site soils into the environment, and expose construction workers to residual agricultural soil contamination.

<p><b>MM HAZ-1.1:</b> After demolition but prior to the issuance of any grading permits, a qualified</p>	<p>Prepare a soil sampling analysis and submit a report</p>	<p>After demolition but prior to the</p>	<p>Supervising Environmental Planner</p>	<p>Review and approve soil</p>	<p>After demolition but prior to the</p>
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<p>environmental specialist shall collect shallow soil samples from the native soil layers within the surface lots and have the samples analyzed to determine if contaminated soil from previous agricultural operations is located on-site with concentrations above established construction/ trench worker thresholds. Once the soil sampling analysis is complete, a report of the findings 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.</p> <p><b>MM HAZ-1.2:</b> 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) to formalize regulatory oversight for remediation of contaminated soil to ensure the site is safe for construction workers and the public after development. The project applicant must remove contaminated soil in order to achieve detection levels below the applicable environmental screening levels and acceptable to the SCCDEH. With approval of the SCCDEH, some of the contaminated soil may be allowed to be left in-place buried under hardscape and/or several feet of clean soil.</p> <p>The project applicant shall prepare and implement a Removal Action Plan, Soil Mitigation Plan or other similar report describing the remediation process and to document the removal and /or capping of contaminated soil. All work and reports produced shall be performed under the regulatory oversight and approval of the SCCDEH.</p> <p>Implementation of the above mitigation measure(s) will avoid or reduce the potential environmental impact stated above to a less than significant level.</p>	<p>of the findings to the City of San José Supervising Environmental Planner for review.</p> <p>Enter into the SCCDEH Voluntary Cleanup Program and remove contaminated soil to acceptable SCCDEH levels or, with approval of the SCCDEH, bury soils on-site.</p> <p>Prepare and implement a Removal Action Plan, Soil Mitigation Plan, or other similar report to document removal and/or capping of contaminated soil.</p>	<p>issuance of any grading permits.</p> <p>After demolition but prior to the issuance of any grading permits.</p>	<p>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.</p> <p>Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement.</p> <p>The Municipal Compliance Officer of the City of San José Environmental Services Department.</p> <p>Santa Clara County Department of Environmental Health.</p>	<p>sampling analysis report.</p> <p>Confirm compliance with the Santa Clara County Department of Environmental Health prior to issuance of any grading permits.</p>	<p>issuance of any grading permits.</p> <p>After demolition but prior to the issuance of any grading permits.</p>
<b>NOISE AND VIBRATION</b>					
<p><b>Impact NOI-1:</b> The proposed modified project would result in a vibratory impact (0.268 in/sec exceeding thresholds of 0.2 in/sec) on commercial land uses to the west of the project site and the medical buildings on the project site.</p>					

<p><b>MM-NOI-1.1</b> A Construction Vibration Monitoring Plan shall be implemented to document conditions prior to, during, and after vibration generating construction activities. The plan shall be submitted to the Supervising Environmental Planner of City of San José Department of Planning, Building, and Code Enforcement for review and approval. The Plan shall address vibration impacts to adjacent structures. The plan shall include, but is not limited to:</p> <ul style="list-style-type: none"> <li>• A list of all heavy construction equipment to be used for this project and the anticipated time duration of using equipment that has been known to produce high vibration levels (tracked vehicles, vibratory compaction, jackhammers, hoe rams, etc.)</li> <li>• Avoidance methodology to avoid and/or reduce impact to the adjacent property.</li> </ul> <p><b>MM NOI-1.2:</b> The project applicant shall include the following measures as part of the approved construction plans prior to the issuance of any demolition or grading permits:</p> <ul style="list-style-type: none"> <li>• Construction crews shall avoid dropping heavy objects or equipment within 30 feet of any adjacent structure.</li> <li>• The project applicant shall ensure that all contractors follow the prescribed vibration mitigation measures.</li> <li>• The project applicant shall designate a specific person responsible for registering and investigating claims of excessive vibration. The contact information shall be clearly posted on the construction site so as to be seen from all street frontages.</li> <li>• If cosmetic or structure structural damage to the adjacent buildings is determined to be caused directly or indirectly by project construction, the project applicant shall make the necessary repairs and provide adequate documentation of the repairs to the Director of Planning, Building and Code Enforcement prior to issuance of any occupancy permits.</li> </ul>	<p>Prepare and implement a Construction Vibration Monitoring Plan which shall include a list of all heavy construction equipment to be used for this project, as well as avoidance methodology to avoid and/or reduce impact to the adjacent property.</p> <p>Include measures in the approved construction plans.</p>	<p>Prior to issuance of any grading permit.</p> <p>Prior to the issuance of any demolition or grading permits.</p>	<p>The Supervising Environmental Planner of City of San José Department of Planning, Building, and Code Enforcement.</p> <p>The Supervising Environmental Planner of City of San José Department of Planning, Building, and Code Enforcement and the designated person responsible for registering and investigating claims of excessive vibration.</p>	<p>Review and approve the Construction Vibration Monitoring Plan.</p> <p>Receive documentation of conditions</p> <p>Review and approve the measures for the construction plans.</p>	<p>Construction Vibration Monitoring Plan shall be approved prior to issuance of any grading permits.</p> <p>Documentation of conditions prior to, during, and after vibration generating construction activities.</p> <p>Prior to the issuance of any demolition or grading permits.</p>
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Implementation of the above mitigation measure(s) will avoid or reduce the potential environmental impact stated above to a less than significant level.					
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*Source:* City of San José. Stevens Creek Promenade Addendum. August 2022