

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE EVERGREEN VILLAGE TOWNHOMES PROJECT MITIGATED NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, AND A RELATED MITIGATION MONITORING AND REPORTING PROGRAM, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED

WHEREAS, prior to the adoption of this Resolution, the Director of Planning, Building and Code Enforcement of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the Evergreen Village Townhomes Project under Planning File Nos. PDC21-036, PD21-020, T23-010 & ER21-281 (the “Initial Study/Mitigated Negative Declaration”), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

WHEREAS, the Evergreen Village Townhomes Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a Planned Development Rezoning, Planned Development Permit and Tentative Map to construct 16 new multi-family residential units (townhomes) in three buildings on an approximately 1.5-gross acre site consisting of two parcels with unassigned addresses located at Evergreen Village Square and Classico Avenue (Assessor’s Parcel Numbers 659-57-015 & 659-84-093) in San José, California; and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project would not result in any significant effects on the environment; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the “Mitigation Monitoring and Reporting Program”); 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 Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are 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, is available for inspection by any interested person at that location and electronically on the Department of Planning, Building and Code Enforcement webpage, and is, by this reference, incorporated into this Resolution as if fully set forth herein;

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

THAT THE CITY COUNCIL does hereby incorporate the foregoing recitals into this Resolution.

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/Mitigated Negative Declaration 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 Mitigated Negative Declaration prepared for the Project (Planning File Nos. PDC21-036, PD21-020, T23-010 & ER21-281). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program 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 electronically on the Department of Planning, Building and Code Enforcement webpage and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

Evergreen Village Townhome Project File Nos. PDC21-036, PD21-020, T23-010, ER21-281 January 2025



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 Initial Study/Mitigated Negative Declaration prepared for the Evergreen Village Townhome 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.

This document does *not* discuss those subjects for which the Initial Study/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant. The mitigation measures enumerated in this document would reduce the level of impact of potential environmental effects of the proposed action. In all cases, these mitigation measures would reduce the impact of effects determined to be significant prior to mitigation to less-than-significant levels.

I, Reyad Katwan, the applicant, on the behalf of The Katwan Living Trust, hereby agree to implement the mitigation measures described below which have been developed in conjunction with the preparation of an Initial Study/Mitigated Negative Declaration 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 May 16, 2025

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
Biological Resources					
Impact BIO-1: Construction activities associated with the project could result in the loss of fertile eggs of nesting raptors or other migratory birds, or nest abandonment.					
<p>MM BIO-1: 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).</p> <p>If demolition and construction cannot be scheduled to occur between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist or biologist 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/biologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.</p> <p>If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist/biologist, in consultation with the</p>	<p>Schedule demolition and construction activities to avoid the nesting season (February 1st through August 31st, inclusive)</p> <p>If not feasible, retain qualified ornithologist or biologist to conduct pre-construction surveys for nesting birds.</p> <p>If active nest is discovered, establish buffer zones on coordination with California Department of Fish and Wildlife.</p> <p>Submit a report indicating the results of the survey and any designated buffer zones</p>	<p>Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first).</p>	<p>Director of Planning, Building, and Code Enforcement or the Director's designee.</p>	<p>Review report indicating the results of the survey and any designated buffer zones (if one is prepared)</p>	<p>Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first).</p>

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<p>California Department of Fish and Wildlife, 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.</p> <p>Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning, Building, and Code Enforcement or the Director's designee.</p>					
Impact BIO-2: Construction activities associated with the project could impact burrowing owls if they are present on the site at the time of construction.					
<p>MM BIO-2: Prior to issuance of any grading or building permits, the project applicant shall incorporate the following measures.</p> <ul style="list-style-type: none"> <u>Preconstruction Surveys:</u> Prior to issuance of any grading or building permits, preconstruction surveys shall be conducted for burrowing owls regardless of whether impacts are to occur during the breeding or non-breeding season. These surveys consist of a minimum of two surveys conducted for a minimum of a 3-hour period within 1 hour of sunrise and/or sunset, with the first survey no more than 14 days prior to initial construction activities (i.e., vegetation removal, grading, excavation, etc.) and the second survey 	Retain a qualified biologist to conduct preconstruction surveys for burrowing owls, regardless of breeding season and provide letter report of findings.	Prior to issuance of any grading or building permits.	Director of Planning, Building, and Code Enforcement or Director's designee.	Review and approve letter report of survey findings for burrowing owl.	Prior to issuance of any grading or building permits (all components).

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<p>conducted no more than two days prior to initial construction activities. The survey shall ensure complete visual coverage of the site and a 250-foot radius of the site. These survey results shall be documented in a letter report to be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee for review and approval.</p> <ul style="list-style-type: none"> • <u>Burrowing Owl Monitoring Plan:</u> If burrowing owls are observed during the preconstruction surveys, occupied burrows shall be identified by the qualified biologist and a buffer shall be established. The qualified biologist shall submit a Burrowing Owl Monitoring Plan that shall include, but would not be limited to, the following: <ul style="list-style-type: none"> ○ Identification of appropriate non-disturbance buffers (i.e., 250-foot) around all active burrows as identified and defined by a qualified biologist. ○ Determination of nests and occupancy (i.e., vacant or not) ○ Determination of protocols to relocate nests, collapse suitable vacant burrows, or other equivalent protocol to ensure the safety of owls and habitat, consistent with Santa Clara Valley Habitat Plan (SCVHP) protocols. ○ Protocols for monitoring during non-nesting seasons if owls are found. ○ Protocols for avoidance measures. 	Retain a qualified biologist to prepare a Burrowing Owl Monitoring Plan if burrowing owls are observed during surveys.	Following completion of surveys.	Director of Planning, Building, and Code Enforcement or Director's designee.	Review and approve Burrowing Owl Monitoring Plan.	

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<ul style="list-style-type: none"> ○ Protocols for on-going reporting to the necessary agency. Only after the biologist determines that the active burrow has become vacant can the non-disturbance buffer zone be removed. This Monitoring Plan shall be documented in a letter report to be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee for review and approval. ● <u>Non-nesting Season Avoidance Measures:</u> Should a burrowing owl be located onsite in the non-breeding season (September 1 through January 31, inclusive), construction activities would not be allowed within the 250-foot buffer of the active burrow(s) used by any burrowing owl unless the following avoidance measures are adhered to. These include, but are not limited to, the following: <ul style="list-style-type: none"> ○ The qualified biologist monitors the owls for at least 3 days prior to construction to determine baseline nesting and foraging behavior (i.e., behavior without construction). ○ The qualified biologist monitors the owls during construction and finds no change in owl nesting and foraging behavior in response to construction activities, ending the monitoring requirement. ○ However, if the qualified biologist finds that there is any change in owl nesting and 	Establish buffer for construction activities from any active burrows OR implement avoidance measures, if burrowing owls are discovered. Provide letter report of avoidance measurements.	Non-nesting season.	Director of Planning, Building, and Code Enforcement or Director's designee.	Review and approve letter report of avoidance measures for burrowing owl.	

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<p>foraging behavior as a result of construction activities, these activities will cease within the 250-foot buffer. Construction cannot resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site. The results of this evaluation shall be documented in a letter report to be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee.</p> <ul style="list-style-type: none"> ○ If monitoring indicates that the nest is abandoned prior to the end of nesting season and the burrow is no longer in use by owls, the non-disturbance buffer zone may be removed. The biologist will excavate the burrow to prevent reoccupation after receiving approval from the Wildlife Agencies. <p>These avoidance measures shall be documented in a letter report to be submitted to the Director of Planning, Building, and Code Enforcement or Director's designee for review and approval.</p> <ul style="list-style-type: none"> ● <u>Nesting Season Reduced Buffer Exception:</u> For permission to engage in construction activities within 250 feet of such burrows during the nesting season (February 1 through August 31, inclusive), an Avoidance, Minimization, and Monitoring Plan shall be prepared by a qualified biologist and approved by the SCVHP Implementing Agency (i.e., the City of San José) and the Wildlife 	<p>Retain a qualified biologist to prepare an Avoidance, Minimization, and Monitoring Plan.</p>	<p>Nesting season</p>	<p>Director of Planning, Building, and Code Enforcement or Director's designee and wildlife agencies (e.g., CDFW).</p>	<p>Review and approve Avoidance, Minimization, and Monitoring Plan.</p>	

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Agencies prior to such encroachment. The plan shall ensure that burrowing owls and active nests are not impacted by the encroachment, based on the professional judgement of the qualified biologist, and shall include the same criteria for non-nesting season encroachment.					
Hazards and Hazardous Materials					
Impact HAZ-1 Due to historical use of the project site for agricultural purposes, the project site may contain soils with residual pesticide contamination.					
MM HAZ-1: Prior to issuance of any grading permits, the applicant shall retain a qualified consultant to collect shallow soil samples that will be taken in the near surface soil in the proposed project area and tested for organochlorine pesticides and pesticide-based metals such as arsenic and lead to determine if contaminants from previous agricultural operations occur at concentrations above established construction worker safety and residential standard environmental screening levels. The sampling methodology should follow the Department of Toxic Substances (DTSC) Interim Guidance for Sampling Agricultural Properties (Third Revision) dated August 7, 2008. The result of soil sampling and testing will be provided to the Director of Planning, Building and Code Enforcement or the Director's designee and the Environmental Compliance Officer in the City of San José's Environmental Services Department. If pesticide contaminated soils are found in concentrations above the appropriate regulatory	Retain a qualified consultant to conduct shallow soil samples and test for organochlorine pesticides and pesticide-based metals such as arsenic and lead. If pesticide contaminated soils are found in concentrations above the appropriate regulatory environmental screening levels, applicant shall retain a qualified hazardous materials consultant to prepare an SMP, RAP, or equivalent document.	Prior to issuance of any grading permits.	Director of Planning, Building and Code Enforcement or Director's designee and the Environmental Compliance Officer of the City's Environmental Services Department.	Review sampling and testing results.	Prior to issuance of any grading permits.

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<p>environmental screening levels for the proposed project the applicant shall obtain regulatory oversight from the Santa Clara County Department of Environmental Health (or Department of Toxic Substances Control) under their Site Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document must be prepared by a qualified hazardous materials consultant. The plan must establish remedial measures and/or soil management practices to ensure construction worker safety and the health of future workers and visitors. The Plan and evidence of regulatory oversight shall be provided to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José’s Environmental Services Department.</p>					

Source: Initial Study/Mitigated Negative Declaration, Evergreen Village Townhome Project, City of San José, January 2025.