

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE ADDENDUM TO THE MITZI PLACE APARTMENTS PROJECT INITIAL STUDY/MITIGATED NEGATIVE DECLARATION, AND ADOPTING 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, 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”), prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the Mitzi Place Apartments Project under Planning File No. SP18-033 (the “Initial Study/Mitigated Negative Declaration”), which analyzed the environmental impacts of the removal of 34 trees, the relocation and conversion of a historic residence into a multi-family building with six units, and the construction of an approximately 28,629-square-foot four-story residential building with 40 units above a subterranean garage and an alternative parking arrangement (puzzle parking lift), on an approximately 0.63-gross acre site located at 4146 Mitzi Drive (Accessor’s Parcel Number 299-16-001) in San José, California; and

**WHEREAS**, the Director of Planning, Building and Code Enforcement of the City of San José adopted said Mitzi Place Apartments Initial Study/Mitigated Negative Declaration at a public hearing on October 7, 2020, which certification was not appealed; and

**WHEREAS**, prior to the adoption of this Resolution, the Director of Planning, Building and Code Enforcement of the City of San José prepared and approved an Addendum to the Mitzi Place Apartments Project Initial Study/Mitigated Negative Declaration under

Planning File Nos. PDC22-088, PD22-020, T22-030, and ER22-195 (the “Addendum”), all in accordance with CEQA; and

**WHEREAS**, the Mitzi Place Condominiums Project (the “Project”) analyzed under the Addendum consists of a Planned Development Rezoning, Planned Development Permit, and Tentative Map to allow the removal of 33 trees (13 ordinance-size, 20 non-ordinance-size, 7 replacement trees) and construction of up to 14 multifamily residential units including the reconstruction and conversion of an existing single-family house into a duplex and the construction of 12 townhouses configured in four three-story buildings on an approximately 0.63-gross acre site located on the northeast corner Mitzi Drive and Ranchero Way at 4146 Mitzi Drive, (Accessor’s Parcel Number 299-16-001) 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 adopted Mitzi Place Apartments Project Initial Study/Mitigated Negative Declaration, nor will the Project result in an increase in the severity of significant effects identified in the Mitzi Place Apartments Project Initial Study/Mitigated Negative Declaration, 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 the mitigation measures from the previously adopted Mitzi Place Apartments Project Initial Study/Mitigated Negative Declaration; 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 Mitzi Place Apartments Project Initial Study/Mitigated Negative Declaration and the Addendum, including the 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 Mitzi Place Apartments Project Initial Study/Mitigated Negative Declaration and the Addendum thereto 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, and 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 COUNCIL OF THE CITY OF SAN JOSE:

**THAT THE CITY COUNCIL** does hereby incorporate the foregoing recitals by reference into the body of this Resolution.

**THAT THE CITY COUNCIL** does hereby make the following findings: (1) it has independently reviewed and analyzed the Mitzi Place Apartments Project Initial Study/Mitigated Negative Declaration, as modified by the Addendum, as well as other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Addendum modifying the Mitzi Place Apartments Project 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 Addendum modifying the Mitzi Place Apartments Project 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 Addendum and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File Nos. PDC22-088, PD22-020, T22-030, and ER22-195). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Mitzi Place Apartments Project Initial Study/Mitigated Negative Declaration, Addendum, and 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 City of San José's Department of Planning, Building and Code Enforcement website, and (2) available for inspection by any interested person.

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ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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Matt Mahan  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

# MITIGATION MONITORING AND REPORTING PROGRAM

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**4146 MITZI DRIVE  
MITZI PLACE CONDOMINIUMS  
FILE NO. PDC22-088, PD22-020, T22-030, ER22-195  
AUGUST 2023**

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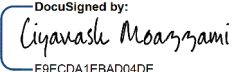
# PREFACE

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 previously adopted Initial Study/Mitigated Negative Declaration prepared for Mitzi Place Apartments Project (File No. PDC22-088, PD22-020, T22-030, ER22-195) 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 identifies those measures and how and when they will be implemented.

This document does *not* discuss those subjects for which the Addendum to the Initial Study/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant.

I, Ciyavash Moazzami, the applicant, on the behalf of Edge Development Group, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of the Addendum to the 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, where feasible.

Project Applicant's Signature  \_\_\_\_\_

Date 8/7/2023 \_\_\_\_\_



*Planning, Building and Code Enforcement*  
 ROSALYNN HUGHEY, DIRECTOR

**Project: Mitzi Place Apartments**  
**File No. PDC22-088, PD22-020,**  
**T22-030, ER22-195**

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 AQ-1:</b> Project construction would result in an infant cancer risk of 133.3 in one million and a PM <sub>2.5</sub> concentration of 0.82 µg/m <sup>3</sup> at the maximally exposed individual (MEI), which exceed BAAQMD’s cancer risk significance threshold of 10 in one million and single-source threshold for PM <sub>2.5</sub> of 0.30 µg/m <sup>3</sup> .					
<p><b>MM AQ-1.1:</b> The project applicant shall prepare a construction operations plan that demonstrates that the off-road equipment used on-site to construct the project would achieve a fleet-wide average 95-percent reduction in diesel particulate matter (DPM) exhaust emissions or more. Specifically, this plan shall include, but is not limited to, the measures identified below:</p> <ul style="list-style-type: none"> <li>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. EPA particulate matter emissions standards for Tier 4 engines with CARB-certified Level 3 Diesel Particulate Filters, or equivalent.</li> <li>Provide electric power to avoid use of diesel-powered generator sets and other portable equipment.</li> </ul> <p>Off-road equipment descriptions and information shall include, but are not limited to, equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, and engine serial number. Prior to the issuance of the any demolition, grading, or building permit (whichever comes first), the project applicant shall submit the construction operations plan and records of compliance to the Director of the</p>	<p>Submit construction operations plan that demonstrates that the off-road equipment used on-site to construct the project would achieve a fleet-wide average 95-percent reduction in diesel particulate matter exhaust, and include in all plans and contracts.</p>	<p>Prior to the issuance of any demolition, grading, or building permits, whichever occur the earliest.</p>	<p>Director of Planning, Building, and Code Enforcement or the Director’s designee.</p>	<p>Review and approve the construction operations plan and requirements to reduce construction equipment DPM.</p>	<p>Prior to issuance of building permit; implement requirements during construction.</p>



*Planning, Building and Code Enforcement*  
 ROSALYNN HUGHEY, DIRECTOR

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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Department of Planning, Building and Code Enforcement or the Director's designee.					
<b>BIOLOGICAL RESOURCES</b>					
<b>Impact BIO-1:</b> 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><b>MM BIO-1:</b> The project applicant shall schedule all construction activities to avoid the nesting season (February 1<sup>st</sup> to August 31<sup>st</sup> inclusive). The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1<sup>st</sup> through August 31<sup>st</sup> (inclusive). Construction activities include any site disturbance such as, but not limited to, tree trimming or removal, demolition, grading, and trenching.</p> <p>If it is not possible to schedule above-mentioned construction activities between September 1<sup>st</sup> and January 31<sup>st</sup> (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist or biologist to ensure that no active nests shall be disturbed during construction activities. 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 1<sup>st</sup> through April 30<sup>th</sup> inclusive) and no more than 30 days prior to the initiation of these activities during the latter part of the breeding season (May 1<sup>st</sup> through August 31<sup>st</sup> inclusive). During this survey, the ornithologist/biologist shall inspect all trees and other possible nesting habitats on-site and within 250 feet of the site for nests.</p>	<p>Schedule construction activities outside of nesting season (between September 1st through January 31st). If it is not possible to schedule construction between September 1st and January 31st, a qualified ornithologist shall conduct preconstruction surveys and establish construction-free buffer zones.</p> <p>The ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the Director of Environmental Planner of Planning, Building, and Code Enforcement or the Director's designee.</p>	<p>Prior to any site disturbance such as tree removal, or approval of grading, building or demolition permits (whichever occurs first).</p>	<p>Director of Environmental Planner of Planning, Building, and Code Enforcement or the Director's designee.</p>	<p>Review report of the results of the survey and any designated buffer zones.</p>	<p>Prior to any tree removal, or approval of any grading, building or demolition permits (whichever occurs first).</p>



*Planning, Building and Code Enforcement*

ROSALYNN HUGHEY, DIRECTOR

EXHIBIT "A"

Project: Mitzi Place Apartments  
 File No. PDC22-088, PD22-020,  
 T22-030, ER22-195

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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<p>If an active nest is found within 250 feet of the project area, to be disturbed by construction, the ornithologist/biologist shall determine the extent of a construction free buffer zone to be established around the nest (typically 250 feet for raptors and 100 feet for other birds) to ensure that raptor or migratory bird nests shall not be disturbed during project construction.</p> <p>Prior to any site disturbance, such as tree removal, or the issuance of any grading, building 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 the Department of Planning, Building and Code Enforcement or the Director's designee.</p>					
<b>HAZARDS &amp; HAZARDOUS MATERIALS</b>					
<b>Impact HAZ-1:</b> Due to the site's agricultural history, agricultural chemicals may be present in onsite soils, which could be disturbed during project development. Release of these hazardous materials could result in exposure during construction or occupancy.					
<p><b>MM HAZ-1.1</b> Prior to issuance of any grading permits, the project applicant shall retain a qualified consultant to take shallow soil samples in the near surface soil to test for organochlorine pesticides and pesticide-based metals (arsenic and lead) to determine if contaminants from previous agricultural operations occur at concentrations above established construction worker safety and residential standard environmental screening levels. The results of the soil sampling testing shall be submitted to the of the City of San José</p>	<p>Applicant shall retain qualified consultant to take shallow soil samples to test for pesticide and metals.</p> <p>If contaminated soils are found, submit evidence of consultation with SCCDEH and work plan.</p>	<p>Prior to issuance of grading permit.</p>	<p>City of San José Department of Planning, Building, and Code Enforcement and the Municipal Compliance Offer of the City of San José Environmental Services Department, and the Santa Clara</p>	<p>Review soil sampling testing, site management plan, removal action plan, and evidence.</p>	<p>Prior to the issuance of grading permit.</p>



*Planning, Building and Code Enforcement*

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<p>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>If contaminated soils are found in concentrations above the appropriate regulatory environmental screening levels for the project, the project applicant shall obtain regulatory oversight from the SCCDEH or Department of Toxic Substances Control under their Voluntary Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified consultant that identifies remedial measures and/or soil management practices to ensure construction worker safety and the health of future occupants. The plan and evidence of regulatory oversight shall be provided to the Director of Planning, Building, and Code Enforcement or Director’s designee and the Environmental Compliance Officer in the City of San José Environmental Services Department.</p>			County Department of Environmental Health.		
<b>NOISE</b>					
<b>Impact NSE-1:</b> Noise from rooftop mechanical equipment could impact noise-sensitive land uses in the immediate project vicinity.					
<b>MM NSE-1:</b> The project applicant shall prepare and implement a construction vibration monitoring plan to document vibration generating construction activities and submit to the Director of Planning, Building and Code Enforcement or the Director’s designee for review. The vibration plan shall address vibration impacts to sensitive historic structures of 0.08 in/sec	Project proponent shall submit and implement a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting and	Prior to the issuance of any grading or demolition permits.	Director of Planning, Building, and Code Enforcement or the Director’s designee.	Review and approval.	Prior to the issuance of any grading or demolition permits.



*Planning, Building and Code Enforcement*

ROSALYNN HUGHEY, DIRECTOR

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>PPV. All tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry accepted standard methods. The construction vibration monitoring plan shall include, but is not limited to, the following measures during construction:</p> <ul style="list-style-type: none"> <li>Place operating equipment on the construction site as far as possible from vibration-sensitive receptors. The project contractor shall avoid using vibratory rollers, packers, and other heavy vibration-generating equipment within 30 feet of sensitive areas surrounding the site, whenever possible.</li> <li>Use smaller equipment to minimize vibration levels below the limits.</li> <li>Modify/design or identify alternative construction methods to reduce vibration levels below the limits.</li> <li>Avoid dropping heavy objects or materials near property lines shared with sensitive receptors.</li> <li>The contractor shall alert heavy equipment operators of the sensitive adjacent structures (i.e., structures within 30 feet of the construction activities) so they can exercise caution.</li> <li>Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such person shall be clearly posted on the construction site.</li> </ul>	notification of construction schedules, equipment to be used and placement, and designation of a noise disturbance coordinator				



*Planning, Building and Code Enforcement*  
 ROSALYNN HUGHEY, DIRECTOR

EXHIBIT "A"

**Project: Mitzi Place Apartments**  
**File No. PDC22-088, PD22-020,**  
**T22-030, ER22-195**

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
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<ul style="list-style-type: none"> <li>The contractor shall retain a qualified firm to conduct a pre- and post-construction cosmetic crack survey of the buildings adjacent to the northern and western boundaries and shall repair or compensate where damage has occurred as a result of construction. The survey shall be submitted to the Director of Planning, Building and Code Enforcement or the Director’s designee.</li> </ul>					

*Source: Addendum to the Initial Study/Mitigated Negative for Mitzi Place Apartments, City of San José, August 2023.*