

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: See Below

DATE: September 19, 2024

COUNCIL DISTRICT: 1

SUBJECT: PDC21-032, PD21-017, PT21-039, and ER21-148 - Planned Development Rezoning, Planned Development Permit, Vesting Tentative Map on Certain Real Property Located at 1334 & 1348 Miller Avenue

RECOMMENDATION

Planning Commission motion for recommendation failed (4-4-1; Cantrell, Barocio, Oliverio, and Rosario opposed, Bickford absent).

- (a) Adopt a resolution adopting the 1334 and 1348 Miller Avenue Residential Subdivision Project Mitigated Negative Declaration, for which an initial study was prepared, all in accordance with the California Environmental Quality Act, as amended, and adopting a related Mitigation Monitoring and Reporting Program.
- (b) Approve an ordinance rezoning the Project Site from the R-1-8 Single Family Residence District to the R-1-8(PD) Planned Development Zoning District on an approximately 1.07-gross-acre site.
- (c) Adopt a resolution approving, subject to conditions, a Vesting Tentative Map to subdivide two existing parcels into nine lots, including seven single-family lots, one multifamily lot, and one lot for a private street on an approximately 1.07-gross-acre site.
- (d) Adopt a resolution approving, subject to conditions, a Planned Development Permit to allow the demolition of two single-family residences and two accessory buildings, the removal of 11 ordinance-size and seven non-ordinance-size trees, the construction of five detached single-family residences, two attached single-family residences, and a stacked duplex reserved as affordable to lower-income households, and the granting of State Density Bonus Law waivers (private open space, minimum distance from street to parking, geographic concentration of affordable units, unit size of affordable units, parking equivalence for affordable

units, and affordable unit types) on an approximately 1.07-gross-acre site, including corrections to the Waivers section of the resolution to match the text in the published Staff Report.

SUMMARY AND OUTCOME

If the City Council approves the actions listed above, the approximately 1.07-gross-acre site on the easterly side of the intersection of Miller Avenue and Tucker Drive (1334 & 1348 Miller Avenue) would be rezoned from its current R-1-8 Single-Family Residence District to a R-1-8(PD) Planned Development Zoning District. Additionally, the project applicant will be able to move forward with the process to subdivide the land from two existing parcels into nine lots, including seven single-family lots, one multifamily lot, and a private street, and demolish the two existing single-family residences and accessory buildings, remove 18 trees (11 ordinance-size), and construct five detached single-family residences, two attached single-family residences, and a stacked duplex reserved as affordable to lower-income households.

BACKGROUND

On August 14, 2024, the Planning Commission held a Public Hearing to consider the CEQA exemption, Planned Development Rezoning, Vesting Tentative Map, and Planned Development Permit.

This item was heard during the public hearing portion of the agenda. Commissioner Lardinois made a motion to approve the recommendation. Commissioner Young seconded the motion. The vote on the motion was 4-4-1 (Bhandal, Lardinois, Tordillos, Young in favor; Barocio, Cantrell, Oliverio, Rosario against; Bickford absent). The tie vote by the Planning Commission results in the Planning Commission not making a recommendation for approval or denial to the City Council.

ANALYSIS

Analysis of project impacts pursuant to CEQA, the Planned Development Rezoning, Vesting Tentative Map, and the Planned Development Permit, including conformance with the General Plan, Municipal Code, Citywide Design Guidelines and Standards, State Density Bonus Laws, and City Council policies, is contained in the attached staff report. Analysis with the Single-Family Design Guidelines was also provided for information only. Approval of the actions listed above would increase the density of new development (persons/acre).

HONORABLE MAYOR AND CITY COUNCIL

September 19, 2024

Subject: PDC21-032, PD21-017, PT21-039, & ER21-148 – Planned Development Rezoning, Planned Development Permit, and Vesting Tentative Map, on Certain Real Property Located at 1334 and 1348 Miller Avenue.

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As a result of the vote, no approval or denial recommendation is provided in this memorandum from the Commission.

EVALUATION AND FOLLOW-UP

The City Council is the final decision-making body for this rezoning, vesting tentative map, and permit application. The City Council can approve, deny, or defer the project to a later City Council meeting. If denied, the zoning of the parcel would remain in the R-1-8 Zoning District, and then the applicant would not be able to proceed with the process the project as proposed to subdivide the land into seven single-family lots, a multifamily lot, and a stacked duplex, and would not be able to demolish the two single-family residences and accessory buildings, remove 18 trees (11 ordinance-size), and construct five detached single-family residences, two attached single-family residences, and a stacked duplex reserved as affordable to lower-income households. If approved, the subject site would be rezoned to an R-1-8(PD) Planned Development Zoning District, and the applicant could proceed with the proposed vesting tentative map and project. The rezoning would become effective 30 days after a second reading of the rezoning ordinance at a subsequent City Council meeting.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office and the Housing Department.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the September 11, 2024 City Council meeting.

Additionally, staff followed [Council Policy 6-30: Public Outreach Policy](#) in order to inform the public of the proposed project. An on-site sign was posted at the project frontage on November 18, 2022. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. Additionally, a notice of the public hearing was posted in a newspaper of record (San José Post Record) on July 25, 2024. The staff report is also posted on the City's website. Staff has also been available to respond to questions from the public.

COMMISSION RECOMMENDATION AND INPUT

The project was heard during the Public Hearing agenda of the August 14, 2024 Planning Commission meeting, which proceeded as follows:

Staff Presentation

Jason Lee, staff planner, provided an oral presentation on the proposed project. The presentation included an overview of the application; conformance with the General Plan, Zoning Code, Density Bonus Law, and CEQA. Staff highlighted the Density Bonus Law and explained how it can be used to waive or reduce local development standards, including all local conditions, laws, policies, resolutions, or regulations, such as the City's Inclusionary Housing Ordinance. Staff also summarized the comments made regarding the Initial Study/Mitigated Negative Declaration and impacted resource areas.

Applicant Presentation

The applicant's representative, Melanie Griswold, provided additional background for the project. She explained that the site is in a high-resource area, walkable to excellent schools, and near a bus stop. She noted that the project was submitted originally in 2021 as a six single-family house development without any affordable units; however, the Housing Department notified in subsequent reviews that there was an SB330 replacement unit requirement because the units had been rented to lower-income tenants two months before the development application. Therefore, the project had to be redesigned to provide for the replacement unit obligations and remain economically viable. She stated that the project is unique as it is a small-scale infill project with a mix of unit type, unit size, architectural style, and affordability.

She then described the site plan and mitigation measures, including replanting of 30 24-inch box trees. She also explained that the project conforms to the lot size and size of homes of the neighboring properties on Miller Avenue, Dial Way, and West Walbrook Drive. She also noted that waivers have been requested under State Density Bonus Law for the project to deviate from the City's standards. She highlighted the alternative housing options on the site, including two attached single-family lots, a formally deed-restricted stacked duplex, and five accessory dwelling units.

She stated that the stacked duplex would be offered as a rental due to homeowners' association dues and maintenance fees, and the deed would be restricted for 99 years. One of the units will be restricted at 50% of AMI, while the other will be restricted at 80% of AMI. As part of the California Senate Bill 330 (SB330) replacement unit requirement, relocation assistance will be provided to current tenants, including four years of rental assistance payments.

Public Hearing

No members of the public spoke regarding the project.

Before Commissioner Discussion, Staff noted that an incorrect resolution was posted and attached to the staff report. Specifically, the posted Waivers section was from a prior version of the resolution, whereas the same section was correct in the staff report. Therefore, staff made an additional recommendation that the Commission recommend approval of the resolution but replace the Waivers section of the resolution with the Waivers section in the staff report.

Daniel Zazueta of the City Attorney's Office clarified that a prior draft resolution was attached to the staff report, and the only difference was that the Waivers section in the staff report should also be the one in the resolution. Staff affirmed this. Mr. Zazueta further clarified that the staff is asking the Commissioners to consider the Waivers section of the staff report instead of what was posted in the resolution.

Commissioner Lardinois asked for the changes to be presented. Staff displayed the staff report on the screen in the chambers.

The updated version has been provided to the City Council for consideration.

Commissioner Discussion

Commissioner Rosario noted that the staff report states there were objections to waivers like those requested in this application. He asked for clarification on the six waivers and asked if staff could go over them and explain why they objected. Staff clarified that the objection is only for the four waivers regarding affordable housing design standards, but noted that staff had not made findings to deny their waivers. Staff explained that the four waivers are for (1) geographic distribution (dispersion) of the affordable units because the duplex is at the corner of the site; (2) the design of the affordable units, specifically that the units are configured as a duplex as opposed to single-family; (3) the size of the affordable units, specifically that the affordable units have smaller square footage; and (4) functionally equivalent parking, specifically that the market-rate units have covered garages, while the affordable units have non-covered parking. Staff also briefly covered the other two waivers: one for private open space, which decreases the amount of private open space for a market-rate unit and the affordable unit, and the other for parking space location, for not meeting the minimum distance from the parking space to the street.

Staff explained that the objection to the four waivers regarding affordable units is based on the City's Inclusionary Housing Ordinance (IHO), which includes provisions for projects to have comparable affordable and market-rate units; in this case, the use of waivers makes the affordable housing readily apparent because it is a different type of housing, has different parking, is smaller, and is not accessed off the same street. Staff also emphasized that staff is still recommending project approval despite objecting to using such waivers due to conversations and guidance provided by the State Department of Housing and Community Development (HCD).

Commissioner Rosario asked staff why making low-income housing distinct was an issue. Staff responded that City Council has passed an IHO with design standards meant to integrate affordable housing units with the remainder of the development. Staff stated that an issue with making affordable units identifiable is that there is a stigma attached to affordable housing and that the City's goal, through the IHO, is to have comparable designs for affordable and market-rate units. Staff stated that the base of this concern is with regard to fair housing; however, if there were a fair housing issue under the law, staff would not be able to recommend approval of the project because it would be contrary to state or federal law. Staff stated that in discussions with HCD, HCD stated that the fair housing concerns and comparability requirements in the IHO are a local program and not found in state or federal law, so as a result, the applicant is allowed to use waivers. However, staff still sees these as policies and aspirations that the City ultimately would want in a project to ensure that this is fair housing in the eyes of the policy adopted by the City. Therefore, while staff objects to the application of waivers in this manner, staff is complying with the provisions and required findings in state law. Staff is limited in the findings which can be made to deny waivers, and therefore must recommend approval, but the staff report analysis is to provide transparency in the analysis.

Commissioner Rosario asked about the stigma of affordable housing. Staff responded that the City is trying to avoid accepting low-income units of sub-standard or lower-quality design in the same development. Staff gave the concept of a poor door/back door, where low-income residents of a building must go through a different door because it is a different part of the project. Staff also stated that the goal of the IHO is to reduce the differences as much as possible from an equity standpoint. Commissioner Rosario asked if this project included sub-standard design. Staff responded that the units are different, considering the units' size, access, design, and parking, which make it relatively easy to identify that the affordable units are not comparable to the market-rate units.

Commissioner Rosario said that he was concerned that other families would ostracize the children in the low-income units. The applicant, Ms. Griswold, stated that there will be no label on the homes identifying them as affordable housing units. She further stated that it was ironic that a fee could be paid in lieu of providing affordable housing units under IHO, but when providing affordable housing units, they were told the units were not good enough. She further stated that paying the in-lieu fee under IHO would be cheaper than constructing the affordable units on-site. She also stated that both existing houses face Miller Avenue, that one of the homes is the same size as the proposed affordable units, and that other homes in the area are the same size as the affordable units. She stated that this is a brand new home with the same materials as the other units, so while it does have differences from the rest of the project, it recognizes the practical reality of the cost of constructing affordable units and that requiring a deed-restricted single-family house would ultimately mean that the development would not be constructed. She also stated that the dispersion requirement

is regarding two units, which are dispersed within the overall neighborhood; it is not akin to placing all the affordable units on one side of a large development or within a building. She stated that affordable housing improves neighborhoods, and the developments are not actually creating a stigma around affordable housing.

Vice Chair Cantrell wanted to confirm if the document displayed on the screen is what the staff intends for the Commission to approve in the resolution. Staff confirmed the staff report shown in the chambers was correct, and Vice Chair Cantrell confirmed he had read it.

Vice Chair Cantrell asked if approving the waivers would create a new standard. Staff responded that there were multiple meetings with HCD about the project and that there are three ways to deny a waiver under the Density Bonus Law. Specifically, a waiver would need to be denied through a finding that it (1) is contrary to state or federal law, (2) has an adverse impact to property listed in the California Register of Historical Resources, or (3) has a specific, adverse impact to health and safety. Staff explained that in meetings with staff from HCD, HCD expressed the belief that nothing in state or federal law requires the meeting the standards in the City's IHO, and that approving the waivers would not contradict state or federal law. HCD staff also explained that the potential Health and Safety Code finding in State law is for multifamily units and does not apply to this project because this is a single-family project. Therefore, staff stated to the Commission that the Council would have to make one of the findings to deny the waiver, so if the findings for the waivers cannot be made, the waiver must be accepted. Staff further elaborated that the way to view the request is less whether we agree to the waivers as much as we can or cannot make findings to deny the waivers.

Vice Chair Cantrell stated that he grew up in a federally-funded housing project so he does not believe that the federal government holds a stake in helping the City define what affordable housing should look like since their attempts were horrifying. He further stated that the project looks discriminatory in its nature. He said he understands the mechanics of development but that this is a "bad look." He further stated that the experience that someone is likely to have to be othered because of the aspects of these units, compared to the other units because of their parking, size, and physical makeup. He says he understands that it is not the desire of the developer, but it looks like a half-hearted effort to do what is right. He stated that he would prefer never to be othered or to witness others have that experience.

Commissioner Lardinois stated that he respected the points raised by Commissioner Rosario and Vice Chair Cantrell and that they are valid points in speaking about housing equity, housing justice, and approaches to housing affordability. He stated that it is important that the City prioritizes the dispersion and integration of affordable housing into market-rate housing, especially within multifamily buildings. However, he stated that in a project with only nine units and three different unit types, the ability to disperse is limited and that while respecting that discrimination does exist based on housing type, prejudice is not purely born from the design of housing and exists for a number of

reasons, and will exist regarding of how housing is built. He stated the concerns regarding discrimination based on housing type are valid, and when making decisions to make exceptions to such concerns, the City should be really intentional.

Commissioner Lardinois continued that the project is located in a high-resource neighborhood, and having affordable units in the project will open up educational opportunities for families that would not otherwise have access to these opportunities. He also stated that there are no affordable units in the current housing stock, so any type of affordable housing is a value-add to the community. He then motioned to approve the staff recommendation with the correct waiver language from the staff report. Commissioner Young seconded the motion.

Commissioner Oliverio stated that state law has changed regarding what the City can do regarding approving or disapproving subdivisions, with reference to prior projects in Willow Glen. He asked if someone would be allowed to do a subdivision akin to those projects in Willow Glen or if SB330 was the only path forward because residents lived on the project site. Staff clarified that the portions of SB330 pertinent to this question are regarding the replacement of low-income units. The law requires the City to look at the income of the people living in the units to be demolished, and the developer is obligated to replace those units on-site with the same number of bedrooms. Staff clarified that the two existing units are being replaced by the two units in the stacked duplex under this provision. Therefore, the applicant could not pay in-lieu fees instead of building the units on-site. Staff also answered that a tentative map for eight units could be done without a density bonus request and that a ninth unit in this project could be allowed utilizing a request under the Density Bonus Law.

Commissioner Oliverio asked if there would be an obligation under SB330 if the parcels were sold to someone else while no residents occupied the existing houses. Staff answered that there is a look-back provision of five years and that the developer would still have to try to contact everyone who lived in one of the units for the last five years and determine their income to see what the replacement requirement would be, and that there would be a calculation to estimate the income if any residents could not be reached.

Commissioner Oliverio commented that it would be best to come forward with an application without anyone living on the site, because then a developer would not be subject to SB330. Staff answered that applicants could consider the history over the last five years to determine whether they may want to apply for development. Commissioner Oliverio stated that if the City found out someone rented a house three years ago, the applicant would be under an SB330 obligation. Staff affirmed that if there are any residents, the units will be analyzed under SB330 for any obligation.

Commissioner Oliverio returned to the subdivision projects in Willow Glen and asked staff to clarify that any time a subdivision comes forward, that staff must go through the occupation history of the last five years. Staff answered that the Housing Department would review the application and clarified that the Lincoln Avenue project (File No.

PD22-019) had a replacement requirement and that the applicant proposed using an accessory dwelling unit to satisfy the conditions. Commissioner Oliverio asked if the Housing Department regulated the ADU used as a replacement unit. Staff responded that typically, the Planning Division incorporates conditions that deeds or other restrictions must be recorded on the property, and the current preference is to record it against a deed to ensure that it is an affordable unit if it is rented or sold and Housing would monitor the unit for compliance with the IHO.

Commissioner Oliverio commented that there is no public funding or taxpayer subsidies for the project, so the applicant is trying to do something creative to comply with the law. He further stated that the renderings look nice, but the City is no longer allowed to comment on the design of homes and can only approve the structures.

Chair Tordillos asked the applicant to clarify the current occupancy of the units. Ms. Griswold stated that the units are currently occupied and that the Housing Department has approved a relocation plan. Ms. Griswold stated that the Planning Division used to put conditions regarding replacement units, but now the Housing Department is monitoring and charging a monitoring fee for the affordable units.

Commissioner Rosario stated that the project does try to address the affordable housing crisis in the area and would allow people who would not otherwise be able to afford it to send their children to Lynbrook High School. He stated that there are a lot of very admirable things about this project even though its residents are potentially being othered.

Vice Chair Cantrell stated that the developers made a series of decisions on the project. He stated that he understands that some children will get the opportunity for a better education but that they will certainly get an opportunity to be othered. He stated that in his experience, it is very different and that while the Commission may believe that the children may get an opportunity, it may be in fact, the opposite because it will be obvious that they are lower-income students or families, which carries a great deal of weight in the types of communities that don't typically see lower-income families. He stated that this is one of the reasons why the City has the IHO, as the City would like people to have the same experiences regardless of their income.

Vice Chair Cantrell further stated the developer had made a conscious decision to create expensive housing and did not make a plan to cut back the size of the market-rate units and lower the profitability but instead made a conscious decision to create units that were significantly different than the others to fulfill a requirement. He concluded that this was a business decision to gain from the displacement of other people and that he would not condone or support the project, stating that many choices could have been made, but this option was to exploit and profit.

Commissioner Young called the question. Chair Tordillos called for a vote on whether to end the debate on the item. The motion passed 6-2-1 (Barocio and Oliverio against, Bickford absent).

Chair Tordillos then called for a roll call vote on Commissioner Lardinois' motion. The motion ended with a tied vote of 4-4-1 (Bhandal, Lardinois, Tordillos, Young for; Barocio, Cantrell, Oliverio, Rosario against; Bickford absent).

As the question was called, no further debate took place, and the Planning Commission did not make a recommendation to the City Council on adopting the Mitigated Negative Declaration and associated Mitigation Monitoring and Reporting Plan and approving the Planned Development Zoning, Vesting Tentative Map, and Planned Development Permit.

The Public Record

During the Public Record portion of the Planning Commission agenda, Vice Chair Cantrell wanted to ensure that when the City Council reviews the project, they review the discussion at the Planning Commission. He stated that he hopes they will look beyond a benefit that is likely to be a trojan horse and a gift of an opportunity to be othered. He stated that he believes decisions must be made with a complete understanding of the value given to developers and what is being given in exchange. He stated that this project is a blank check to developers to create low-density homes and make millions of dollars on the backs of tenants who have been relocated to provide profit for the developers. He stated that this was a conscious choice by a developer to other people in affordable housing and that development in the disinterest of others cannot be given a blank check.

CEQA

In accordance with the California Environmental Quality Act (CEQA), the City of San José, as the lead agency for the project, prepared an Initial Study/Mitigated Negative Declaration (MND) in full compliance with CEQA. The MND was circulated for public review and comments from October 27, 2023 to November 16, 2023. Two clarifying comments were received from PG&E and Valley Water during the public circulation period. The Initial Study identified relevant mitigation measures for potential impacts to air quality, biological resources, cultural resources, hazards and hazardous materials, and noise. These impacts would be reduced to less than significant levels with the implementation of mitigation measures included in the Mitigation Monitoring and Reporting Program (MMRP). Therefore, an EIR is not required, and an Initial Study/Mitigated Negative Declaration is the appropriate level of CEQA clearance for the project.

The IS/MND, Response to Comments, and other related environmental documents are available on the Planning web site at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/negative-declaration-initial-studies/1334-and-1348-miller-avenue-residential-project>

HONORABLE MAYOR AND CITY COUNCIL

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PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

CHRISTOPHER BURTON, Secretary
Planning Commission

For questions, please contact the Division Manager of the Planning Division's Development Review Team, John Tu, at (408) 535-6818.

Attachments: Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION

FROM: Christopher Burton

SUBJECT: PDC21-032, PD21-017, PT21-039
& ER21-148

DATE August 14, 2024

COUNCIL DISTRICT: 1

Type of Applications	Planned Development Rezoning, Planned Development Permit, and Vesting Tentative Map
Demolition	Two detached single-family residences and two accessory buildings
Proposed Land Uses	Five detached single-family residences, two attached single-family residences, and a stacked duplex deed-restricted to low-income households
New Residential Units	Nine units
New Non-Residential Square Footage	N/A
Additional Policy Review Items	N/A
Tree Removals	11 ordinance-size and seven non-ordinance-size trees
Project Planner	Jason Lee
CEQA Clearance	Mitigated Negative Declaration, State Clearinghouse No. 2023100847, for the 1334 and 1348 Miller Avenue Residential Subdivision Project
CEQA Planner	Nhu Nguyen

RECOMMENDATION

Staff recommends that the Planning Commission recommend the City Council to take all of the following actions regarding the project site located on the east side of the intersection of Miller Avenue and Tucker Drive (1334 & 1348 Miller Avenue) ("Project Site"):

1. Adopt a Resolution adopting the 1334 and 1348 Miller Avenue Residential Subdivision Project Mitigated Negative Declaration, for which an initial study was prepared, all in accordance with the California Environmental Quality Act, as amended, and adopting a related Mitigation Monitoring and Reporting Program.
2. Approve an Ordinance rezoning the Project Site from the R-1-8 Single Family Residence District to the R-1-8(PD) Planned Development Zoning District on an approximately 1.07-gross-acre site.
3. Adopt a Resolution approving, subject to conditions, a Vesting Tentative Map to subdivide two existing parcels into nine lots, including seven single-family lots, one multifamily lot, and one lot for a private street on an approximately 1.07-gross-acre site.
4. Adopt a Resolution approving, subject to conditions, a Planned Development Permit to allow the

demolition of two single-family residences and two accessory buildings, the removal of 11 ordinance-size and seven non-ordinance-size trees, the construction of five detached-single-family residences, two attached single-family residences, and a stacked duplex reserved as affordable to low-income households, and the granting of State Density Bonus Law waivers (private open space, minimum distance from street to parking, geographic concentration of affordable units, unit size of affordable units, parking equivalence for affordable units, and affordable unit types) on an approximately 1.07-gross-acre site.

PROPERTY INFORMATION

Location	East side of the intersection of Miller Avenue and Tucker Drive (1334 & 1348 Miller Avenue)
Assessor Parcel Nos.	377-25-053 and 377-25-055
General Plan Designation	Residential Neighborhood
Growth Area	N/A
Zoning – Existing	R-1-8 Single-Family Residential Zoning District
Zoning – Proposed	R-1-8(PD) Planned Development Zoning District
Historic Resource	N/A
Annexation Date	December 12, 1957 (Madera No. 13A)
Council District	1
Project Acreage	1.07 gross acres

PROJECT BACKGROUND

As shown on the attached [Vicinity Map \(Exhibit A\)](#), the Project Site is located on the east side of the intersection of Miller Avenue and Tucker Drive (1334 & 1348 Miller Avenue). The approximately 1.07-gross-acre site contains two lots, each developed with a detached single-family residence and an accessory building.

The Project Site is surrounded by single-family residences to the north, south, and west (across Miller Avenue). There is a preschool across Miller Avenue to the northwest, and the project site directly abuts a telecommunications switching facility to the east.

On September 20, 2021, concurrent applications for a Planned Development Zoning, File No. PDC21-032, a Planned Development Permit, File No. PD21-017, and a Vesting Tentative Map, File No. PT21-039, were filed with the City by applicant Melanie Griswold on behalf of the owner, Union Ave LLC by Yi Chun. The Planned Development Zoning would rezone the site from the R-1-8 Single-Family Residence Zoning District to the R-1-8(PD) Planned Development Zoning District. The Planned Development Permit would allow the demolition of two single-family residences and two accessory buildings, the removal of 11 ordinance-size and seven non-ordinance-size trees, and the construction of five detached-single-family residences, two attached single-family residences, and a stacked duplex reserved as affordable to low-income households (two of nine units, or 22% of units, restricted to households with a maximum income of 80% of local area median income (AMI)). The project includes six State Density Bonus Law waivers to provide reduced private open space, reduce the minimum distance from Miller Avenue to off-street parking on the duplex lot, and waive requirements regarding geographic concentration, unit size, unit type, and parking equivalence for affordable units. The Vesting Tentative Map is to subdivide 1.07 gross acres from two existing single-family residential lots to create nine lots, including seven single-family residential lots, one multifamily lot, and one lot for a

private street.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Residential Neighborhood	R-1-8 Single-Family Residence	Single-family residences
East	Residential Neighborhood	R-1-8 Single-Family Residence	Telecommunications switching facility
South	Residential Neighborhood	R-1-8 Single-Family Residence	Single-family residences
West	Residential Neighborhood	R-1-8 Single-Family Residence	Single-family residences
Northwest	Public/Quasi-Public	R-1-8 Single-Family Residence	Preschool

ANALYSIS

The proposed **Planned Development Rezoning, Planned Development Permit, and Vesting Tentative Map** have been analyzed with respect to consistency with:

1. Envision San José 2040 General Plan
2. Municipal Code – Zoning Ordinance
3. Single-Family Design Guidelines
4. Citywide Design Guidelines and Standards
5. State Density Bonus Law (Government Code Section 65915)
6. City Council Policies
7. California Environmental Quality Act (CEQA)

Envision San José 2040 General Plan

As shown in the attached **General Plan Map (Exhibit B)**, the project is within the **Residential Neighborhood** land use designation in the Envision San José 2040 General Plan Land Use/Transportation Diagram Map. The land use designation is applied to established, single-family residential neighborhoods. This designation typically allows a density of up to 8 dwelling units per acre (du/ac), but also allows projects to match the existing neighborhood density if it is greater than 8 du/ac.

New infill development within the Residential Neighborhood land use designation should improve and/or enhance existing neighborhood conditions by completing the existing neighborhood pattern and bringing infill properties into general conformance with the quality and character of the surrounding neighborhood. New infill development should be integrated into the existing neighborhood pattern, continuing and, where applicable, extending or completing the existing street network. The average lot size, orientation, and form of new structures for any new infill development must therefore generally match the typical lot size and building form of any adjacent development,

with particular emphasis given to maintaining consistency with other development that fronts onto a public street to be shared by the proposed new project.

Analysis: State law, pursuant to Senate Bill (SB) 330, limits a local jurisdiction's ability to disapprove a housing development project that complies with applicable, objective general plan, and zoning standards and criteria that were in effect at the time the development application was deemed to be complete. The allowed density standard for the Residential Neighborhood land use designation is up to 8 du/ac if the prevailing average density is less than 8 du/ac. As the prevailing average density has been calculated at less than 8 du/ac, the project is allowed a maximum density of 8 du/ac, or eight units, under the land use designation.

However, this project is subject to the Density Bonus Law, which requires that all fractional units be rounded up to the next whole number. As the density calculation yields 8.56 units, nine dwelling units are allowed on the site. Therefore, the project is allowed and includes nine dwelling units on 1.07 gross acres, which results in a density of 8.4 du/ac. While this exceeds the allowable density of the land use designation, the Density Bonus Law permits this additional density.

The project is consistent with the following key General Plan policies:

Housing Policy H-2.4: Allow affordable residential development at densities beyond the maximum density allowed under an existing Land Use/Transportation Diagram designation, consistent with the minimum requirements of the State Density Bonus Law (Government Code Section 65915) and local ordinances.

Analysis: This project includes affordable housing units to go beyond the maximum density allowed in the Residential Neighborhood designation, as required by the Density Bonus Law.

Implementation Policy IP-8.5: Use the Planned Development zoning process to tailor such regulations as allowed uses, site intensities and development standards to a particular site for which, because of unique circumstances, a Planned Development zoning process will better conform to Envision General Plan goals and policies than may be practical through implementation of a conventional Zoning District.

Analysis: The project includes five detached single-family homes, two attached single-family houses, and a stacked duplex. This is consistent with the surrounding land uses, and duplexes are allowed in single-family areas per state law. Specific development standards are required for the project to be developed at the site while meeting the density allowed by the General Plan and Density Bonus Law. Specifically, the project must modify R-1-8 standards to accommodate the requirement for a hammerhead driveway for fire access, including a reduction of lot area and setbacks, and to explicitly allow a duplex on Lot 8. This Planned Development Zoning allows the project to be compatible with the character and appearance of the adjacent residential development in that the adjacent lots on Dial Way and West Walbrook Drive are established to front on side streets and not on Miller Avenue, and the Planned Development Zoning allows the shared boundaries to be mostly a rear-to-rear configuration with the existing units.

Zoning Ordinance Consistency

The project includes a rezoning from the R-1-8 Single-Family Residence Zoning District to the **R-1-8(PD) Planned Development** Zoning District.

Land Use

Chapter 20.60 of the Zoning Ordinance allows a Planned Development Zoning District to be established through ordinance, including regulations for allowed uses and development standards. The Planned Development zoning can be effectuated through a valid Tentative Map or Planned Development Permit. Per [Section 20.60.040.B](#) of the Zoning Code, when a PD permit has been implemented, the provisions of the permit prevail over the regulations of the base district zoning of the property.

The development standards of the proposed Planned Development Zoning District allow permitted, special, and conditional uses of the R-1 Single-Family Residence Zoning District for Lots 1-7 and the R-2 Two-Family Residence Zoning District for Lot 8. This provision allows a duplex, which is allowed in R-1 districts by state law but not permitted by the City's Zoning Code, to be constructed on Lot 8. The project includes five detached single-family homes, two attached single-family homes, and one stacked duplex, consistent with the development standards of the proposed district.

Development Regulations

The R-1-8 Single-Family Residence Zoning District in [Section 20.30.200](#) of the Zoning Code and the proposed R-1-8(PD) Planned Development Zoning District development standards are compared in the table below, including proposed project compliance with the Planned Development Zoning standards. Lots 1 through 5 are the detached single-family houses, Lots 6 and 7 are the attached single-family houses, and Lot 8 is the stacked duplex.

Development Standard	R-1-8 Zoning District Requirements	R-1-8(PD) Planned Development Zoning District Development Standards	Project Compliance with PD Standards
Minimum Lot Area	5,445 square feet	<u>Lots 1 to 5</u> : 5,445 SF <u>Lots 6 to 8</u> : 2,000 SF	<u>Lots 1 to 5</u> : 6,565 SF <u>Lots 6 to 8</u> : 2,025 SF
Minimum Front Setback	20 feet	<u>Lots 1 to 5</u> : 9 feet* <u>Lots 6 and 7</u> : 6.5 feet* <u>Lot 8</u> : 15 feet*	<u>Lots 1 to 5</u> : 9 ft, 4 in <u>Lots 6 & 7</u> : 6 ft, 6 in <u>Lot 8</u> : 17 feet
Minimum Side Setback (interior)	5 feet	<u>Lots 1 to 5</u> : 5 feet** <u>Lot 6</u> : 5 feet between Lots 5 and 6**; 0 feet between Lots 6 and 7 <u>Lot 7</u> : 0 feet between Lots 6 and 7 <u>Lot 8</u> : 0 feet between Lots 6 and 7 and Lot 8; 5 feet to southern lot line	<u>Lots 1 to 5</u> : 5 feet <u>Lot 6</u> : 5 feet to Lot 5 0 feet to Lot 7 <u>Lot 7</u> : 0 feet to Lot 6 <u>Lot 8</u> : 0 feet to Lots 5 and 6 5 feet to southern lot line
Minimum Side Setback (corner)	12.5 feet	<u>Lots 1 and 7</u> : 12.5 feet** <u>Lots 2 and 5</u> : 4 feet**	<u>Lots 1 & 7</u> : 12.5 feet <u>Lots 2 & 5</u> : 4 ft, 3 in

Minimum Rear Setback	20 feet	<u>Lots 1 to 5: 15 feet**</u> <u>Lots 6 to 8: 5 feet</u>	<u>Lots 1 to 5: 15 feet</u> <u>Lots 6 to 8: 5 feet</u>
Maximum Height	35 feet	35 feet	29 feet
Minimum Driveway Length	18 feet	16 feet	16 feet

* With up to two feet allowed for architectural projections

** With up to three feet allowed for architectural projections

Analysis: As shown on the Planned Development Permit PD21-017 Plan Set, the project conforms with all required setback standards pursuant to the General Development Plan of the R-1-8(PD) Planned Development Zoning District.

Vehicle Parking:

Under Section 20.90.900.B, this project is exempt from Transportation Demand Management (TDM) plan requirements because it consists of fewer than 16 single-family detached housing units, and fewer than 26 units of all other home end uses. Under the City code, no parking is required, and there are no parking requirements within the Planned Development Zoning standards.

Analysis: While there are no parking requirements, this project provides two covered parking spaces for each detached single-family residence, one covered parking space for each attached single-family unit, and one uncovered parking space for each unit of the stacked duplex.

Single-Family Design Guidelines Consistency

The project was analyzed for consistency with the 1991 Single-Family Design Guidelines. These design standards are applicable to Lots 1 through 5, the detached single-family houses. As mentioned above, SB 330 limits a jurisdiction's ability to disapprove a qualify housing development project that complies with applicable, objective general plan, and zoning standards and criteria that were in effect at the time the development application was deemed to be complete. As the Single-Family Design Guidelines are subjective, they cannot be applied as a basis for denying the project; however, the project is consistent with the following key guidelines:

Section 1.C.2. The inclusion of front porches on new houses and remodels is encouraged as a symbol of entry, and to encourage residents to participate in neighborhood activities and develop neighborhood ties.

Analysis: Front porches of varying sizes are included with the single-family houses.

Section 1.C.3. Main entries should be prominent and oriented to the street unless another pattern is well established on the block, and in appropriate scale for the block as well as the individual building.

Analysis: The main entrances of the single-family home designs are prominent and face the private street. All of the main entryways are in appropriate scale for the block and the building, as the entryways are compact, single-story entries integrated within the design of each building.

Section 2.A.3. Building forms should be varied enough to avoid monotony and to be compatible with surrounding houses but should still be simple and elegant.

Analysis: There are four different elevations within the Planned Development Permit Plan Set for the five single-family homes. The designs are varied in color and material, with stucco, wood, and stone, and includes houses designed in modernistic, traditional, and builder contemporary styles. The single-family home designs generally keep to traditional design features, such as symmetric gables and wooden columns and trim, which result in simple and elegant design.

Citywide Design Guidelines and Standards Consistency

The project was analyzed for consistency with applicable Citywide Design Guidelines and Standards. These design standards are applicable to Lots 6 through 8, which contain the attached single-family residences and the stacked duplex. The project includes Density Bonus waivers for private open space (Section 4.2.2, Additional Requirements) and parking space location (Section 2.3.6, Standard S2), which are evaluated in the Density Bonus Law Consistency section below.

The project complies with the following key Citywide Design Standards:

Section 2.2.1, Standard S2. All ground floor residential units fronting a street or paseo must have either one or a combination of (a) a primary front door access from the street or paseo; or (b) a patio, balcony, or similar private open space placed along the street or paseo.

Analysis: All four units have primary front door access from a street.

Section 3.3.1, Standard S1. Articulate all building façades facing a street for at least 80 percent of each façade length. Articulate all other building façades for at least 60 percent of each façade length.

Analysis: For both buildings (the attached single-family residences on Lots 6 and 7 and the stacked duplex on Lot 8), the front façades are articulated across their entire length. For Lots 6 and 7, the side elevations are articulated for over 80 percent of their length through doors, windows, and architectural features, and the rear elevation is articulated over 60 percent of their length through windows. For Lot 8, the side elevations are articulated over 60 percent of their length through the use of plane changes, textured wood siding and windows, and the rear elevation is articulated across its entire length through a rear door and windows.

Section 4.1.2, Standard S1. Include a minimum three-foot-deep frontage zone at building entrances for residential developments.

Analysis: Both buildings include a frontage zone greater than three feet between the building entrances and the public right-of-way.

State Density Bonus Law Consistency (Government Code Section 65915)

The project includes two affordable housing units subject to the Density Bonus Law. Of the nine total units included in the project, two units (22%) are reserved for low-income households (maximum of 80% of AMI), with income limits as defined in California Code Section 65915. The project is therefore eligible for two concessions and unlimited waivers under the provisions of the Density Bonus Law. Waivers are allowed from any development standard or regulation that prevents the project from being developed at the allowed density. The project has requested six waivers.

Density Bonus

As stated above, the allowed density standard for the Residential Neighborhood land use designation is up to 8 du/ac if the prevailing average density is less than 8 du/ac. As the prevailing average density

has been calculated at less than 8 du/ac, the project is allowed a maximum density of 8 du/ac, or eight units, under the land use designation. State Density Bonus Law requires that all fractional units be rounded up to the next whole number for qualified projects. As the density calculation yields 8.56 units, nine dwelling units are allowed on the site. Therefore, the project is allowed and includes nine dwelling units on 1.07 gross acres, which results in a density of 8.4 du/ac, as permitted by the Density Bonus Law.

Waivers

The applicants requested six waivers, including four waivers (Waivers 1 through 4 below) from affordable housing design standards. Per California's Density Bonus Law (Government Code Section 65915(e)(1)), a waiver can only be denied if the waiver or reduction of development standards would have a specific, adverse impact upon the health and safety, as defined in Housing Element Law (Section 65589.5(d)(2)), have an adverse impact on property listed in the California Register of Historical Resources, or be contrary to state or federal law.

While the City will not be making findings for denial, the City objects to the use of waivers, like those included in this application, that reduce the physical size and standards of affordable units. The City's Inclusionary Housing Ordinance ("IHO"). The Ordinance requires that inclusionary units be comparable to market-rate units. The underlying goals of the IHO are to affirmatively further fair housing, create mixed-income communities with shared amenities, and eliminate any stigma associated with affordable housing or its residents because those units are visually identifiable as different or segregated. The Project proposes to use waivers to create affordable units that are of a different type, markedly smaller, easily identifiable, separated from the rest of the development, accessed from a different street, and without covered parking, all of which goes against the comparability requirements of the IHO. However, given the small size and low number of affordable units in this development proposal (two), the City understands the developer's options for dispersion are spatially limited at this project site. While the City encourages the creation of units affordable to lower-income families, the City also encourages design concepts that better integrate the development of affordable units within a Project to promote a more balanced and integrated mixed-income development.

Staff had several meetings with the California Department of Housing and Community Development ("HCD") and determined through these conversations there is no explicit statutory basis to deny the waiver requests under current state law. While the requested waivers raise concerns regarding fair housing, per those conversations, HCD staff shared their belief that state law (i.e. the Housing Accountability Act, Density Bonus Law, Housing Element Law, and Affirmatively Furthering Fair Housing), as well as federal fair housing laws, do not explicitly require affordable units in non-multifamily development to be functionally equivalent to market-rate units, and that there is no requirement that the affordable units be dispersed throughout the development. Therefore, it is HCD's belief that there is no specific basis upon which to deny the waivers as contrary to state or federal law, as neither contains any dispersal or equivalent design requirements that apply to this situation. Additionally, in consultation with HCD, staff determined the state's Health and Safety Code ("HSC") does not apply to this project as HSC Section 17929, (promulgated by AB 491 in 2021) only identifies mixed-income multifamily structures, while this project is a single-family project. Specifically, while, Section 17929 does include sections regarding access to common entrances and dispersion requirements, the section applies only to mixed-income multifamily structures. Despite HSC Section 17929 or AB 491 not applying to the project, this development does isolate the affordable housing

units and does provide separate access to affordable and market-rate units, leading staff to believe that this development does not meet the spirit or intent of existing fair housing law. However, based on the opinions expressed by HCD and the lack of clear unambiguous language in state or federal law, and given the City's significant need for more restricted affordable housing, staff recommends approval of the requested waivers.

Waiver 1: Geographic Concentration of Restricted Affordable Units (Section 20.190.050.B and Section 5.08.470.A). This Standard requires that restricted affordable units be located so as not to create a geographic concentration of restricted affordable units within the housing development. The project creates two affordable units through a stacked duplex at the corner of the site, accessed from Miller Avenue. The project is disconnected from the rest of the development, as all of the market-rate units are accessed from the private street. Complying with this standard would require restructuring the site and relocating the affordable units, and would result in the loss of at least one unit due to required changes in accessing the site.

Waiver 2: Design of Restricted Affordable Units (Section 20.190.050.B and Section 5.08.470.E). This Standard requires that the design of restricted affordable units be functionally equivalent to the non-restricted units. The project creates two affordable units in the form of a stacked duplex that do not have private open space. All of the market-rate units are single-family houses (five detached and two attached) with individual rear yards. Complying with this standard would require redesigning the affordable units so that they were single-family houses with rear yards, therefore resulting in the loss of one unit.

Waiver 3: Square Footage of Restricted Affordable Units (Section 20.190.050.B and Section 5.08.470.F). This Standard requires that the square footage of restricted affordable units be functionally equivalent to the non-restricted units. The project creates two affordable units with a maximum of 1,141 square feet in floor area. The smallest market-rate unit is 2,054 square feet, while the largest is 3,317 square feet (both excluding the garage). Complying with this standard would require redesigning the affordable units so that they were about twice as large, therefore resulting in the loss of one unit.

Waiver 4: Functionally Equivalent Parking of Restricted Affordable and Non-Restricted Units (Section 20.190.050.B and Section 5.08.470.B). This Standard requires that the restricted affordable and non-restricted units have functionally equivalent parking. The project includes two affordable units with no covered garages. All non-restricted units have garages; the attached units have covered one-car garages while the detached units have covered two-car garages. Complying with this standard would require redesigning the affordable units to have covered garages; including a covered garage would result in the loss of one unit.

Waiver 5: Private Open Space (Citywide Design Standards and Guidelines Section 4.2.2, Additional Requirements (Appendix A.2)). Lot 6 of this development is considered a townhouse (front-facing garage), requiring 400 square feet of private open space, and Lot 8 is a stacked duplex, requiring 300 square feet of private open space per unit, per the table in Appendix A.2. The development provides 380 square feet of private open space in the form of a yard for Lot 6, and 540 square feet of shared open space for the units on Lot 8. Complying with this standard would require redesigning the houses on Lots 6 through 8 and reconfiguring and expanding the provided open space, which would result in the loss of one unit.

Waiver 6: Parking Space Location (Citywide Design Standards and Guidelines Section 2.3.6, Standard S2). This Standard requires that the first parking stall be at least 20 feet away from the driveway when accessing a parking lot from a secondary street. As a local connector street outside of a growth area, Miller Avenue is considered a secondary street for the purposes of the Citywide Design Standards and Guidelines, so this Standard applies to the two-car parking area on the driveway of the duplex. Complying with this standard would require pushing the parking area into the stacked duplex as designed, resulting in the reconfiguration and redesign of Lot 8 and the loss of one unit.

PERMIT FINDINGS

Planned Development Permit Findings

To make the Planned Development Permit findings pursuant to San José Municipal Code Section 20.100.940 and recommend approval to the Planning Commission, staff must determine that:

1. The planned development permit, as issued, is consistent with and furthers the policies of the general plan; and

Analysis: As analyzed in the General Plan conformance section above, the nine-unit residential project, of which two units are reserved as affordable to low-income households, is consistent with the Residential Neighborhood land use designation per the General Plan, including relevant goals and policies. The uses are allowed within the Residential Neighborhood designation, and the project is providing 8.4 du/ac, allowable under the Density Bonus Law, as consistent with General Plan Policy H-2.4.

2. The planned development permit, as issued, conforms in all respects to the planned development zoning of the property; and

Analysis: As analyzed in the Zoning Ordinance Consistency section above, the project is consistent with the R-1-8 (PD) Planned Development Zoning District Development Standards. The project is consistent with the use, setback, and height requirements of the Planned Development Standards and the General Development Plan.

3. The planned development permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As discussed in the City Council Policy Consistency section below, the project is subject to and conforms to the Public Outreach Policy for Pending Land Use and Development Proposals. The project was noticed at a 500-foot radius and the required on-site sign has been posted at the site since November 18, 2022, to inform the neighborhood of the project. No community meeting was required or held for this project because the project is considered a Standard Development Proposal, as it includes less than 50 dwelling units.

4. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious; and

Analysis: The subject project provides five detached single-family houses, two attached single-family houses, and one stacked duplex, which are compatible and appropriate uses within the proposed residential neighborhood. All buildings are two stories with typical residential designs, including modernistic, traditional, and builder-contemporary architectural styles, including consistent

materials, including stucco, shingle roofs, wood siding on many of the units, while also including unique aspects such as a stone veneer, differing porch sizes, and larger windows on certain lots to provide for variation in design, while remaining aesthetically harmonious with one another in the overall design of each building.

5. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: As discussed in the CEQA section below, the project incorporates measures to address noise, stormwater runoff, drainage, and erosion. The project will be required to adhere to all applicable standard permit conditions and mitigation measures related to reducing temporary and operational sources of noise and vibration, dust, and erosion. Residential buildings are not a source of significant odor and would not impact adjacent properties. The project will be required to comply with all City permits and policies related to erosion and storm water runoff. For these reasons, the project is not anticipated to have an unacceptable negative impact on adjacent properties.

Demolition Findings

Per Section 20.80.460 of the Municipal Code, prior to the issuance of any Development Permit which allows for the demolition, removal or relocation of a Building, the approval authority shall determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation. In making such a determination, the following factors shall be considered. Staff recommends the Planning Commission adopt the considerations below for each factor, based on the above stated findings related to General Plan, Zoning and CEQA conformance and other reasons stated below, and subject to the conditions set forth in the Resolution:

1. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
2. The failure to approve the permit would jeopardize public health, safety or welfare;

Analysis: The property contains no nuisance, blight, or dangerous conditions. It would be speculative to conclude that failure to approve the permit would result in the creation of nuisance, blight, or dangerous conditions, or jeopardize the public health, safety, or welfare.

3. The approval of the permit should facilitate a project that is compatible with the surrounding neighborhood;

Analysis: The approval of the permit facilitates a project that is compatible with the surrounding neighborhood, in that it is a nine-unit project with seven single-family houses and one duplex (allowed in single-family zones per state law). This project is compatible with the Residential Neighborhood designation; while the proposed density of 8.4 du/ac is above the allowable density of 8 du/ac, it is allowed through the provisions of the Density Bonus Law. The project is also with the character and appearance of the adjacent residential development in that the adjacent lots on Dial Way and West Walbrook Drive are established to front on side streets and not Miller Avenue, and the Planned Development Zoning allows the shared boundaries to be mostly a rear-to-rear configuration with the existing units.

4. The approval of the permit should maintain the supply of existing housing stock in the City of San José;

Analysis: Approval of the permit increases the supply of housing stock in the City of San José. Two units would be demolished, while nine units would be constructed.

5. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;

Analysis: No buildings, sites, or districts of historical significance are being demolished.

6. Rehabilitation or reuse of the existing building would not be feasible; and

Analysis: The rehabilitation or reuse of the existing buildings would not be feasible should the new project be constructed, as the demolition of the existing buildings is required to construct the new buildings and circulation, and the project is intended to replace the existing buildings. Additionally, the reuse of these buildings is also not economically feasible, retaining the existing buildings would mean that the project could not be built to the density allowed by the General Plan land use designation.

7. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

Analysis: Replacement buildings would be approved in this application, and the existing buildings could not be demolished prior to submittal of a building or grading permit for the replacement buildings.

Tree Removal Findings

[Chapter 13.32](#) of the San José Municipal Code establishes that at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees. Findings are made for the project based on the findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the resolution.

1. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.

Analysis: As discussed above, eleven ordinance-size trees and seven non-ordinance-size trees will be removed to accommodate the project. All ordinance-size trees to be removed are located either within the area of the proposed homes, and therefore can be removed due to proximity to a proposed structure, or within the project circulation, which is required for fire access, and therefore can be removed for the preservation of public safety. Due to their location within the proposed development, the trees to be removed cannot be preserved.

All removed trees are to be replaced per the City's Tree Replacement ratios in the table below. The ordinance-size trees to be removed are one Coast Live Oak to be replaced at a 5:1 ratio, and three Hollywood Junipers, one Magnolia tree, one Sweetgum tree (liquidamber), one fig tree, one elm tree, one olive tree, one plum tree, and one apricot tree, each to be replaced at a 4:1 ratio. The non-ordinance-size trees to be removed are one redbud tree, to be replaced at a 3:1 ratio; one apricot

tree, one persimmon tree, and two Japanese black pines, each to be replaced at a 2:1 ratio; and two Japanese yew trees, each to be replaced at a 1:1 ratio. This results in a replacement requirement of 58 trees. Per Sheets L-2.0 and L-2.1 of the Planned Development Permit Plan Set, 30 24-inch box trees will be planted at the project site, equivalent to 60 replacement trees, to meet the replacement requirement.

An offsite tree replacement in-lieu fee, at \$775 per tree, will be incurred if the required tree replacement is not met. Proof of tree replacement planting is required. The applicant shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager of the replacement tree to verify compliance with the tree mitigation requirement. Such evidence shall be sent to the Planning Project Manager, as conditioned in the Planned Development Permit.

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
x:x = tree replacement to tree loss ratio Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multifamily residential, Commercial and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. A 24-inch box tree = two 15-gallon trees				

If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement or Director's designee. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment.

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site.
- Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.

Subdivision Ordinance Consistency

Vesting Tentative Maps must be consistent with Title 19 – Subdivisions of the San Jose Municipal Code. The information required by [Section 19.12.030](#) is provided on the Vesting Tentative Map and consistent

with the stated requirements. The project is analyzed for consistency with key design requirements of the Subdivision Ordinance below:

[Section 19.36.180](#) – The director may permit the reduction of the six thousand square foot minimum lot area prescribed in Section 19.36.170 of all or some of the lots in a proposed subdivision if the director shall, in the exercise of reasonable judgment, deem such reduction advisable in view of the character of the neighborhood in which the subdivision is to be located, the quality or kinds of development to which the area is best adapted, the size, use or physical or other conditions of the property proposed to be subdivided, neighborhood and general planning, or safety and general welfare of the public and of the lot owners in the proposed subdivision, provided that in no event shall any lot contain a minimum area of less than five thousand square feet. The provisions of this section shall not be used to decrease the minimum lot areas designated in Title 20 of this Code or in any sections of this Title 19 other than Section 19.36.170.

Analysis: *While the project includes lots less than the minimum 6,000-square-foot lot area prescribed in Section 19.36.170, the Planned Development Zoning District allows a minimum lot size of 2,000 square feet. The minimum lot size in this proposed tentative map is 2,025 square feet, which is more than the required minimum. A reduction from a minimum 6,000-square-foot lot area can be found because the minimum lot size is greater than the allowable minimum in the Planned Development Zoning, and is advisable in that the project provides for single-family houses, consistent with the neighborhood, and the City must allow the allowed density per state law.*

[Section 19.36.190](#) – Except as otherwise provided in this Title 19, all lots shall have direct access to a public street. The director may waive this requirement with respect to certain lots in a proposed subdivision if he finds that, because of the design of and/or improvements in such subdivision, proposed private ways of access from said lots to a public street for both vehicular and pedestrian traffic, are adequate for such lots.

Analysis: *Only one lot of this subdivision has direct access to a public street. However, the remaining lots have adequate private ways of access, through a private street, to access a public street for both vehicular and pedestrian traffic.*

Vesting Tentative Map Findings

In accordance with San José Municipal Code (SJMC) [Sections 19.12.130](#) and [19.12.220](#) and California Government Code Section 66474, the Director of Planning of the City of San José, in consideration of the proposed subdivision shown on the Vesting Tentative Map with the imposed conditions, shall deny approval of a Vesting Tentative Map, if the Director makes any of the following findings:

1. That the proposed map is not consistent with applicable General and Specific Plans as specified in Section 65451.
2. That the design or improvement of the proposed subdivision is not consistent with applicable General and Specific Plans.
3. That the site is not physically suitable for the type of development.
4. That the site is not physically suitable for the proposed density of development.
5. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Analysis: Based on review of the subdivision, a Vesting Tentative Map to subdivide 1.09 gross acres from two existing residential lots to nine lots, including seven single-family lots, one multifamily lot, and one lot for a private street, the Director of Planning of the City of San José does not make any such findings to deny the subject subdivision. The project is consistent with the General Plan goals, policies, and land use designation, as analyzed above. The project site is physically suitable for the project and proposed intensity in that residential development is allowed by the combination of the General Plan and State Density Bonus Laws. Furthermore, the project site does not contain historic resources or sensitive habitats or wildlife.

The site is not located within a designated Federal Emergency Management Agency (FEMA) 100-year flood plain. The project site, as well as the surrounding area, are currently developed with structures and do not provide a natural habitat for either fish or wildlife. Multiple improvements to the pedestrian network and traffic calming measures are required to be implemented as conditions of approval, including a detached sidewalk along the Miller Avenue frontage and contributions to a Class IV protected bikeway along the Miller Avenue project frontage.

City Council Policy Consistency

City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals

Under City Council Policy 6-30, the project is a standard development. Standard development projects are required to provide Early Notification by website and e-mail to property owners and tenants within a 500-foot radius, and by on-site signage. Following City Council Policy 6-30, the required on-site sign has been posted at the site since September 29, 2021, and updated on November 18, 2022, to inform the neighborhood of the project. No community meeting was required or held for this project. The staff report is posted on the City's website, and staff has been available to respond to questions from the public.

To date, no comments have been received from the public on this file.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of San José, as the Lead Agency, prepared an Initial Study/Mitigated Negative Declaration (IS/MND) (state Clearinghouse No. 2023100847), for the 1334 and 1348 Miller Avenue Residential Project in compliance with the California Environmental Quality Act ("CEQA") Guidelines (California Code of Regulations §15000 et. seq.) and the regulations and policies of the City of San José. The IS/MND evaluated the environmental impacts that might reasonably be anticipated to result from implementation of the proposed project.

The IS/MND was circulated from October 27, 2023 to November 16, 2023, and two comment letters were received during the public review period. The first comment letter was from Pacific Gas & Electric Company ("PG&E") which identified the project occurring within the same vicinity of PG&E's existing facilities, and that the Permittee must contact PG&E to apply for the modification and/or relocation of existing services as needed. The second comment letter is from Valley Water and identified text

revisions to the IS/MND to clarify the project site's environmental setting and regulatory framework. In response to Valley Water's comments, the IS/MND has been revised to update the project site's distance to Saratoga and Calabazas Creek, clarify the project's compliance with the re-issued Municipal Regional Permit, and include a reference to Federal Emergency Management Agency's current Flood Insurance Rate Map.

The IS/MND, including responses to comments received during the public review period, can be found at the following link: [1334 and 1348 Miller Avenue Residential Project | City of San José \(sanjoseca.gov\)](https://sanjoseca.gov/1334-and-1348-Miller-Avenue-Residential-Project-City-of-San-Jose)

The IS/MND identified relevant mitigation measures for potential impacts to air quality during construction, nesting birds, cultural resources, hazards from the project site's past agricultural history, and construction-related vibration impacts. In addition, standard permit conditions are made part of the permit approval. These standard permit conditions include best management practices for construction related air quality impacts, removal of existing trees on the site, compliance with the Santa Clara Valley Habitat Plan, compliance with the California Building Code for seismic safety of the proposed building, erosion control during construction activities, protection of unknown subsurface cultural resources and human remains, protection of construction workers from hazards related to contaminated soils, water quality impacts during construction and operation periods, and best management practices to control noise during construction and achieving an interior noise level of less than 45 dBA DNL after construction. The mitigation measures are included in the Mitigation Monitoring and Reporting Program ("MMRP") and both the mitigation measures and standard permit conditions are made a part of this permit.

The Initial Study concluded that the proposed project would not result in any significant and unavoidable environmental impacts, with implementation of identified mitigation measures. Therefore, an EIR is not required, and an Initial Study/Mitigated Negative Declaration is the appropriate level of CEQA clearance for the project.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy to inform the public of the proposed project. An on-site sign was posted on the property, consistent with the City Council Policy, as discussed above.

Staff has not received any comments from the public to date for this file.

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

Project Manager: Jason Lee

Approved by: /s/ John Tu, Division Manager, for Christopher Burton, Director of Planning, Building & Code Enforcement

ATTACHMENTS:	
Exhibit A:	Vicinity Map, Aerial
Exhibit B:	General Plan Land Use Designation Map
Exhibit C:	Zoning District Map (Existing and Proposed)
Exhibit D:	Planned Development Zoning PDC21-032 Ordinance
Exhibit E:	Planned Development Permit PD21-017 Resolution
Exhibit F:	Vesting Tentative Map PT21-039 Resolution
Exhibit G:	PDC21-032 Draft Development Standards
Exhibit H:	Planned Development Zoning PDC21-032 Plan Set
Exhibit I:	Planned Development Permit PD21-017 Plan Set
Exhibit J:	Vesting Tentative Map PT21-039 Plan Set
Exhibit K:	CEQA Determination (IS/MND) Draft Resolution, including Mitigation Monitoring and Reporting Program
Exhibit L:	Density Bonus Application

Development Review Project Manager	Environmental Project Manager
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Owner	Applicant
UnionAve LLC, Lun Ke, Tao Zhang 97 Boston Avenue San José, CA 95128	Melanie Griswold Hestia Real Estate, Inc. 1842 University Avenue San José, CA 95126

Exhibit A: Vicinity Map/Aerial

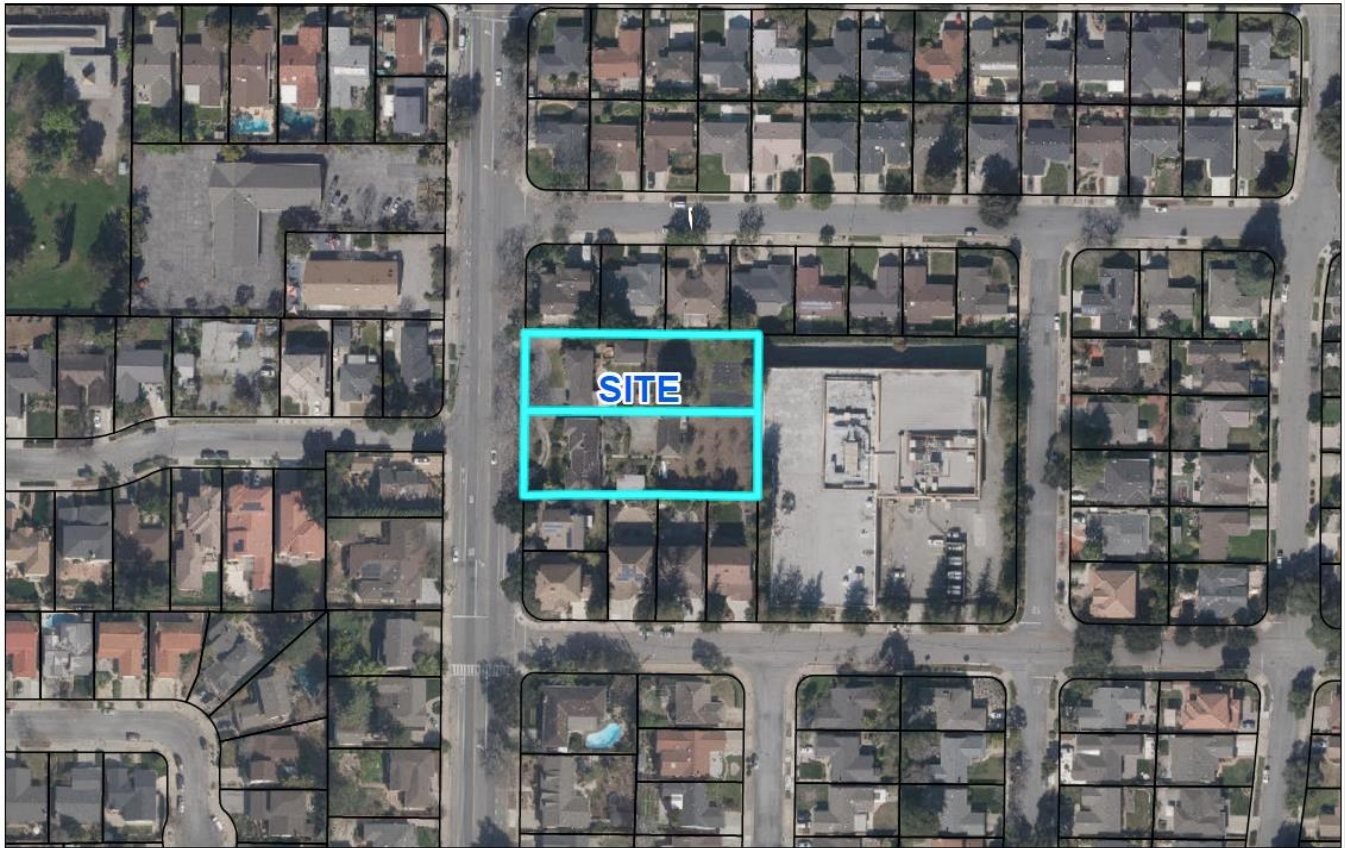


Exhibit B: General Plan Land Use Designation

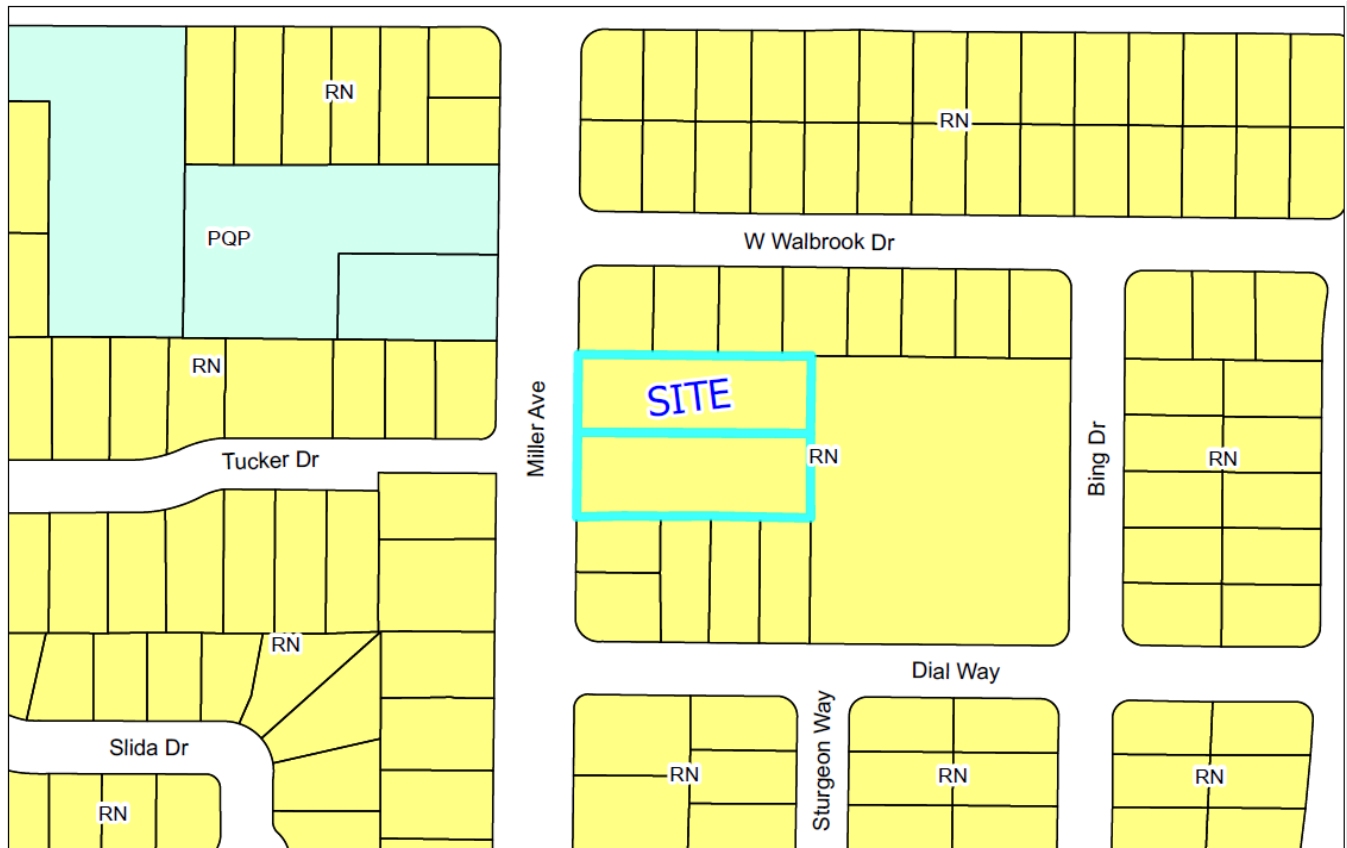


Exhibit C: Zoning District Map

Note: The color of the zoning map is not changing with this Planned Development Zoning, although the project site will be rezoned to the **R-1-8(PD) Planned Development Zoning District**.

PDC21-032, PD21-017, PT21-039 & ER21-148

Links to Exhibit D - L

Click on the title to view document.

<u>Exhibit D: Planned Development Zoning PDC21-032 Ordinance</u>
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