

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE 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, AND 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 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 LOCATED ON THE EAST SIDE OF THE INTERSECTION OF MILLER AVENUE AND TUCKER DRIVE (1334 & 1348 MILLER AVENUE) (APNS 377-25-053 & -055)**

**FILE NO. PD21-017**

**WHEREAS**, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on September 20, 2021, Melanie Griswold, on behalf of the owner, Union Ave LLC, filed a Planned Development Permit application (File No. PD21-017) with the City of San José 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, and the construction of five detached-single-family residences units, two attached single-family residences, and a stacked duplex reserved as affordable to lower-income households, including density bonus waivers to reduce the amount of private open space for four units, reduce the minimum distance from Miller Avenue to off-street parking, and four waivers regarding equivalence between restricted affordable and non-restricted units, for geographic concentration, unit size, unit type, and parking equivalence requirements, on an approximately 1.07-gross-acre site (the “Project”) located on the

east side of the intersection of Miller Avenue and Tucker Drive (1334 & 1348 Miller Avenue) (the “subject property”); and

**WHEREAS**, a legal description of the subject property is attached as Exhibit "A" and depicted in the parcel map attached as Exhibit "B," which are incorporated by reference; and

**WHEREAS**, at a duly noticed public hearing on August 14, 2024, the Planning Commission considered public comments and all evidence and testimony received at the public hearing regarding the Project and recommended that the City Council approve the Project; and

**WHEREAS**, this City Council received and considered the reports and recommendations of the City’s Planning Commission and City’s Director of Planning, Building, and Code Enforcement and conducted a duly noticed public hearing on the Project, giving all persons full opportunity to be heard and to present evidence and testimony; and

**WHEREAS**, at said hearing, this City Council received in evidence a plan for the subject property entitled, “LAND SUBDIVISION & NEW ATTACHED AND DETACHED HOUSES / 1334 & 1348 MILLER AVE” dated August 17, 2021, and last revised April 30, 2023; said plan is on file in the Department of Planning, Building and Code Enforcement, is available for inspection, and is incorporated by reference; and

**WHEREAS**, this City Council has heard and considered the testimony presented at the public hearing and has further considered written materials submitted on behalf of the Project applicant, City staff, and other interested parties;

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

The foregoing recitals are hereby incorporated by reference as if fully set forth herein, and after considering evidence presented at the public hearing the City Council finds that the following are the relevant facts and findings regarding this project:

**1. Site Description and Surrounding Uses.** 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 is comprised of two lots and is developed with a detached single-family residence and an accessory building on each lot. Access to each existing lot is from a C-shaped driveway off of Miller Avenue. Surrounding land uses include single-family residences to the north, south, and west. There is a preschool across Miller Avenue to the northwest, and the Project site directly abuts a telecommunications switching facility to the east.

**2. Project Description.** The project consists of 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, and the construction of five detached-single-family residences, two attached single-family residences, and a stacked duplex reserved as affordable to lower-income households, with density bonus waivers to reduce the amount of private open space for four units, reduce the minimum distance from Miller Avenue to off-street parking, and four waivers regarding equivalence between restricted affordable and non-restricted units, for geographic concentration, unit size, unit type, and parking equivalence requirements, on an approximately 1.07-gross-acre site located on the east side of the intersection of Miller Avenue and Tucker Drive (1334 & 1348 Miller Avenue).

In conjunction with the Planned Development Permit, the Project also includes a Planned Development Rezoning, File No. PDC21-032, and a Vesting Tentative Map, File No. PT21-039. The Planned Development Rezoning rezones the site from the R-1-8 Single-Family Residence Zoning District to the R-1-8(PD) Planned Development Zoning District, and the Vesting Tentative Map subdivides 1.07 gross acres from two existing parcels to create nine lots, including seven single-family lots, one multi-family lot, and one lot for a private street.

**3. Envision San José 2040 General Plan Consistency.** 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.*

#### **4. 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.

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

## **5. San José Design Guidelines Consistency**

### **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.*

## **6. 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 lower-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") requires 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 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 the 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 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

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.

## **7. 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.

## **8. California Environmental Quality Act.**

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 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: <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>

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.

**9. Planned Development Permit Findings.** Section 20.100.940 of the Zoning Ordinance specifies the required findings for approval of a Planned Development Permit. In order to make the Planned Development Permit findings and recommend approval to the Planning Commission, staff must determine that:

- a. 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 lower-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.*

- b. 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.*

- c. 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 above, 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.*

- d. 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 staked 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.*

- e. 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 affect on adjacent property or properties.

*Analysis: As discussed in the CEQA section above, 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.*

**10. 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 this Resolution:

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. 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.*

- c. 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.*

- d. 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.*

- e. 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.*

- f. 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.*

- g. 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.*

**11. Tree Removal Findings.** Chapter 13.32 of the San José Municipal Code establishes 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.

- a. 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 Permittee 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
<p>x:x = tree replacement to tree loss ratio</p> <p>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 Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.</p> <p>A 38-inch tree equals 12.1 inches in diameter.</p> <p>A 24-inch box tree = two 15-gallon trees</p>				

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.

In accordance with the findings set forth above, a Planned Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per San José Municipal Code Section 20.100.290(B), should Permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the Permittee shall be deemed to be constitute all of the following on behalf of the Permittee:
  - a. Acceptance of the Permit by the Permittee; and
  - b. Agreement by the Permittee to be bound by, to comply with, and to do all things required of or by the Permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Planned Development Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, the proposed use of the site or the construction of buildings (if a Building Permit is required) has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described in the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

4. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
5. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Planned Development Permit plans entitled, "LAND SUBDIVISION & NEW ATTACHED AND DETACHED HOUSES / 1334 & 1348 MILLER AVENUE" dated August 17, 2021 and last updated April 30, 2023, on file with the Department of Planning, Building and Code Enforcement as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "approved plans" or the "Approved Plan Set."
6. **Demolition Permit.** A demolition permit may be issued for the existing single-family houses and accessory structures only upon the submittal of a complete Public Works Grading Permit application or the submittal of a complete Building Permit application for new construction.
7. **Planned Development District Effectuated.** This Planned Development Permit effectuates the Planned Development Zoning as reflected in the Permit's Approved Plan Set and the corresponding legal description.
8. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
9. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.

10. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
11. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
12. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
13. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
14. **Construction Disturbance Coordinator.** Rules and regulation pertaining to all construction activities and limitations identified in this Permit, along with the name and telephone number of a Permittee-appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site.
15. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related complete Public Works Grading Permit Application or Building Permit Application has been filed.
16. **Tree Protection Standards.** The Permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the Permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
17. **Tree Replacement Enforcement.** Failure to plant trees in conformance with the approved plan set may be subject to in-lieu fees for trees not planted.
18. **Verification of Payment and/or Planting of Replacement Tree(s).** After payment of the in-lieu fee and/or the planting of replacement trees on-site, the permittee shall provide appropriate evidence such as, but not limited to, photographs and/or receipts to the Planning Project Manager to verify compliance with the mitigation requirements. Such evidence shall be uploaded to [www.sjpermits.org](http://www.sjpermits.org) using these instructions: (1) how to set up an account: <https://www.sanjoseca.gov/business/development->

services-permit-center/online-permits-at-sjpermits-org, and (2) how to upload <https://www.sanjoseca.gov/home/showpublisheddocument/88853/638088605255430000>. Such evidence shall also be e-mailed to the Planning Project Manager and labeled File No. PD21-017.

19. **Replacement Tree Failure.** On-site tree replacement trees that fail within three years after planting shall be promptly replaced.
20. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
21. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans, as applicable. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
22. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the Project, as applicable.
23. **Common Area Landscaping.** All landscaping in common areas shall be maintained by the Homeowner's Association or other similar entity.
24. **Homeowner's Association.** A Homeowner's Association shall be established for maintenance of all common areas, including driveways/courtyards, landscaping and the community amenity area. A copy of the Development Permit, the accompanying Approved Plans, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans shall be provided to the Homeowner's Association by the Permittee no later than 30 days upon completion of each phase.
25. **Stormwater Stenciling.** All storm drain inlets and catch basins shall be stenciled with the "NO DUMPING - FLOWS TO BAY," applied to the top and/or face of the curb next to the storm drain inlet. The development maintenance entity and/or property owner shall ensure that all storm drain inlet markings located on privately maintained streets within the property are present and maintained.
26. **Regulatory Agreement.** Prior to the issuance of the first Building Permit, the Permittee shall submit a Permit Adjustment Application and enter into a Density Bonus Regulatory Agreement with the City. The final Regulatory Agreement, as amended and as approved by the City Attorney and by the Director of Planning, shall be recorded in the Office of the County Recorder by the City. This Permit shall take effect upon the date of

recordation of the Density Bonus Regulatory Agreement in the form approved by the City and shall have no force and effect prior to that date.

- 27. Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the Project must comply with the California Fire Code as adopted or updated by the City.
- 28. Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This Permit file number, PD21-017 shall be printed on all construction plans submitted to the Building Division.
  - b. *San José 's Natural Gas Infrastructure Prohibition and Reach Code Ordinances.* The City's Natural Gas Infrastructure Prohibition and Reach Code Ordinances apply to this project and all requirements shall be met. For more information, please visit [www.sjenvironment.org/reachcode](http://www.sjenvironment.org/reachcode).
  - c. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - d. *Emergency Address Card.* The project Permittee shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - e. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.
  - f. *Project Addressing Plan.* Prior to issuance of any Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official: The project Permittee shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of addressing (i.e., individual street addresses as compared to unit number off of a primary street).
  - g. *Other.* Such other requirements as may be specified by the Chief Building Official.
- 29. Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the Project, including information on available haulers and processors.
- 30. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract Map by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the permittee will be required to have satisfied all of

the following Public Works conditions. The permittee is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at: <http://www.sanjoseca.gov/devresources>.

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. **Transportation:** This project meets the screening criteria of less than 15 single family detached units for Vehicle Miles Traveled under Council Policy 5-1 which results in less-than-significant impacts for transportation. Additionally, this project does not require a Local Transportation Analysis. The project is expected to result in less-than-significant transportation impacts and the Projected traffic for the Project was reviewed and found to be minimal.
- c. **Grading/Geology:**
  - i. A grading permit is required prior to the issuance of a Public Works Clearance.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 feet in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San José Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
  - iii. If the Project proposes to haul more than 10,000 cubic yards of cut/fill to or from the Project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
  - iv. Because this project involves a land disturbance of one or more acres, the permittee is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.

- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
  - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
  - ii. Final inspection and maintenance information on the post-construction treatment control measures must be included on the final Stormwater Control Plan.
- e. **Stormwater Peak Flow Control Measures:** The project is located in a Hydromodification Management (HM) area but will not create and/or replace one acre or more of impervious surface. The project is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14) which requires demonstrating that post-project runoff is less than or equal to the estimated pre-project rates and durations.
- f. **Flood: Zone D and X:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. Flood Zone X is an area of moderate or minimal flood hazard. Zone X is used on new and revised maps in place of Zones B and C. There are no City floodplain requirements for Zone D and X.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable prior to issuance of Public Works clearance.
- h. **Parks:** This residential project is subject to the payment of park fees in-lieu of land dedication under either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San José Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San José Municipal Code).
- i. **Undergrounding:** The In-Lieu Undergrounding Fee shall be paid to the City for all frontage(s) adjacent to Miller Ave. prior to issuance of a Public Works Clearance. One hundred percent (100%) of the base fee in place at the time of payment will be due. Currently, the 2023 base fee is \$605 per linear foot of frontage and is subject to change every January 31st based on the Engineering News Record's City Average Cost Index for the previous year. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued (based on 2023 rate, the fee is approximately \$108k).

- j. **Reimbursement:** The developer will be required to reimburse the City for costs advanced for the construction of street improvements along Miller Ave. in accordance with City Ordinance #19663.
- k. **Street Improvements:**
  - i. Remove existing curb, gutter, and sidewalk and construct a 12' wide detached sidewalk with park strip along the Miller Ave frontage per CSJ standards.
  - ii. Permittee shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
  - iii. Construct a 20' wide driveway per CSJ standards at the northern Miller Ave ingress/egress location.
  - iv. Construct a 12' wide driveway per CSJ standards at the southern Miller Ave ingress/egress location.
  - v. Close unused driveway cut(s).
  - vi. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the Project frontage.
  - vii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
  - viii. Construct or provide voluntary contribution (\$121 per linear foot) for a Class IV protected bike lane along the Miller Ave frontage per the City of San José Better Bikeway 2025.
  - ix. Provide a voluntary contribution of \$7K towards purchase and installation of a point-zoom camera (PTZ) at the Miller Ave/Rainbow Dr signalized intersection.
- l. **Sanitary:** The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
- m. **Electrical:** Existing electroliers along the Project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- n. **Street Trees:**
  - i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current



“Guidelines for Planning, Design, and Construction of City Streetscape Projects”. Street trees shall be installed in park strip. If street tree locations conflict with existing utilities, developer shall be solely responsible for relocating or adjusting utilities as necessary to resolve conflict. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

- ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

**o. Private Streets:**

- i. Per Common Interest Development (CID) Ordinance, all common infrastructure improvements shall be designed and constructed in accordance with the current CID standards.
- ii. The plan set includes details of private infrastructure improvements. The details are shown for information only. Final design shall require the approval of the Director of Public Works.

**31. Inclusionary Housing Ordinance Requirements for Residential Developments.**

An application has been submitted for this project under the Inclusionary Housing Ordinance (IHO), and the applicant selected Alternative Methods option for compliance with the IHO. The proposal includes the sale of seven (7) single-family dwelling lots. Lots 1-5 are designed for a single-family home with a detached Accessory Dwelling Unit (ADU), while Lots 6 and 7 will each feature only a single-family home. The Project shall fulfill its obligations under the IHO and SB 330 by providing, concurrently with the market-rate single-family dwellings, two rental condos with rents restricted at an Affordable Housing Cost for Low- and Very Low-Income households consistent with California Health and Safety Code Section 50053.

Unit Type	# Units	# Bedrooms	Net Residential Square Footage	Household Income Maximum	Rent Maximum
Rented Condo 1	1	3	1,101	50% AMI	50% AMI
Rented Condo 2	1	3	1,141	80% AMI	60% AMI

- 32. Replacement Affordable Units.** The permittee submitted a complete Replacement Unit Determination Application (“RUD”). The RUD determined that two (2) units are proposed to be demolished and must be replaced pursuant to the requirements of California’s Housing Crisis Act (SB 330/CA Government Code section 66300, as amended). The City has determined that two (2) units are protected affordable units that must be replaced with two affordable units to be made available at an Affordable

Housing Cost to Low- and Very Low-Income households pursuant to the requirements of the Housing Crisis Act of 2019/CA Govt. Code 66300, as amended. Of the two (2) units, one (1) unit must be available to a Very Low-Income household and one (1) unit to a Low-Income household consistent with Health and Safety Code Section 50053. The affordability restriction shall have a period of at least 55 years. The following are SB 330/ CA Govt. Code 66300.5 and 66300.6. Unit Replacement Conditions:

- a. The Project will replace all protected units listed in the RUD with comparable replacement units and record against the property a restrictive affordability covenant with the City prior to demolition permit issuance implementing all applicable requirements of CA Govt. Code 66300.5 and 66300.6, as amended;
- b. For any occupied units, a relocation plan (consistent with the requirements of subsection C below) for approval by the decision-making body for the Project; and
- c. For any occupied units, lower-income households are entitled to a right of first refusal in a comparable replacement unit and relocation assistance. For any occupied units, the permittee must provide a Relocation Plan to the City for its approval that is consistent with California Relocation Assistance law (CA Government Code Section 7260 et seq.).

Replacement Affordable Units under SB 330:

<b>AMI Levels:</b>	Very Low Income (31% to 50% AMI)	Low Income (51% to 80% AMI)
<b>Number of Units:</b>	1	1
<b>Bedroom Type:</b>	3-Bedroom Unit	3-Bedroom Unit
<b>Rent Limits:</b>	30% of 50% AMI	30% to 60% AMI

Any discrepancies between these conditions and those approved in the Alternative Memo on July 24, 2024, these conditions shall prevail.

**33. Conformance to Mitigation Monitoring and Reporting Program (MMRP).** This project shall conform to all applicable requirements of the MMRP approved for this development.

**34. Standard Environmental Conditions.**

**a. Air Quality**

- i. Water active construction areas at least twice daily or as often as needed to control dust emissions.
- ii. Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.

- iii. Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- iv. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- v. Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- vi. Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- vii. Replant vegetation in disturbed areas as quickly as possible.
- viii. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- ix. Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- x. Maintain and properly tune construction equipment in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- xi. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

**b. Biological Resources**

- i. **Tree Removal and Replacement.** Any tree to be removed will be replaced with new trees in accordance with the City's Tree Replacement Ratios, as set forth below.

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

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	
<p>x:x = tree replacement to tree loss ratio</p> <p>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 Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.</p> <p>A 38-inch tree equals 12.1 inches in diameter.</p> <p>A 24-inch box tree = two 15-gallon trees</p>				

- 1) To compensate for the 19 trees to be removed, the following tree replacement will be implemented: 2 trees replaced at a 1:1 ratio, 4 trees at a 2:1 ratio, 1 trees at a 3:1 ratio, 10 trees at a 4:1 ratio, and 1 tree replaced at a 5:1 ratio. The total minimum number of replacement trees required to be planted would be 58 15-gallon trees, which will be planted onsite.
- 2) In the event that a project site does not have sufficient area to accommodate the required tree replacement, one or more of the following may be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment:
  - a. 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.
  - b. Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of grading 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.
- ii. **Tree Protection Standards.** The Permittee shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the

dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the Permittee to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

- iii. **Santa Clara Valley Habitat Plan.** The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project Permittee would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>

**c. Cultural Resources.**

- i. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American representative registered with the Native American Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and 2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
- ii. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further

excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project Permittee shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- iii. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- iv. The MLD identified fails to make a recommendation; or
- v. The landowner or his authorized representative rejects the recommendation of the MLD, and the mediation by the NAHC fails to provide measures acceptable to the landowner.

**d. Geology and Soils.**

- i. To avoid or minimize potential damage from seismic shaking, the Project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the Project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.
- ii. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- iii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iv. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.

- v. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.
- vi. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement (PBCE) shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project Permittee shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or the Director's designee.

**e. Hazards and Hazardous Materials.**

- i. In conformance with state and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).
- ii. During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.
- iii. All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.
- iv. A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.
- v. Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of

materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

**f. Hydrology and Water Quality.**

- i. Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- ii. Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- iii. All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- iv. Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- v. All trucks hauling soil, sand, and other loose materials shall be required to cover all trucks or maintain at least two feet of freeboard.
- vi. All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- vii. Vegetation in disturbed areas shall be replanted as quickly as possible.
- viii. All unpaved entrances to the site shall be filled with rock to knock mud from truck tires prior to entering City streets. A tire wash system may also be employed at the request of the City.
- ix. The project Permittee shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

**g. Construction-Related Noise.**

- i. Limit construction hours to between 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- ii. Construct solid plywood fences around ground level construction sites adjacent to operational business, residences, or other noise-sensitive land uses.
- iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- iv. Prohibit unnecessary idling of internal combustion engines.



- v. Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
- vi. Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- vii. Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the Project site.
- viii. Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to adjacent land uses and nearby residences.
- ix. If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
- x. Designate a “disturbance coordinator” who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

### **35. Design Features to Reduce Project Receptor Exposure.**

- a. Install air filtration and fresh air ventilation system intakes for all residential units. Air filtration devices shall be rated MERV13 or higher. To ensure adequate health protection to sensitive receptors (i.e., residents), this ventilation system, whether mechanical or passive, shall filter all fresh air that would be circulated into the dwelling units.
- b. The ventilation system shall be designed to keep the building at positive pressure when doors and windows are closed to reduce the intrusion of unfiltered outside air into the building.
- c. As part of implementing this measure, an ongoing maintenance plan for the buildings’ heating, ventilation, and air conditioning (HVAC) air filtration system shall be required that includes regular filter replacement.
- d. Ensure that the use agreement and other property documents: (1) require cleaning, maintenance, and monitoring of the affected buildings for air flow leaks, (2) include assurance that new owners or tenants are provided information on the ventilation system, and (3) include provisions that fees associated with owning or leasing a unit(s) in the building include funds for cleaning, maintenance, monitoring, and replacements of the filters, as needed.

- e. If source #13532 (a Pacific Bell Telephone Company emergency generator) is removed or altered, then this measure is no longer necessary.

**36. Noise Insulation.**

- a. Provide a suitable form of forced-air mechanical ventilation, as determined by the local building official, for all residential units on the Project site, so that windows can be kept closed at the occupant's discretion to control interior noise and achieve the interior noise standards.
- b. Preliminary calculations indicate that standard construction with the inclusion of adequate forced-air mechanical ventilation at the residential building nearest to Miller Avenue would reduce interior noise levels to 45 dBA DNL.

**37. Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the City Council at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or state law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

**EFFECTIVE DATE**

The effective date of this Planned Development Permit shall be the same as effective date of the Rezoning Ordinance for File No. PDC21-032 passed for publication on \_\_\_\_\_, 2024 (the "Zoning Ordinance") and shall be no earlier than the effective date of said Rezoning Ordinance.

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ADOPTED this \_\_\_\_ day of \_\_\_\_, 2024, 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

**NOTICE TO PARTIES**

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*

**Legal Description**

1334 & 1338 Miller Avenue

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Beginning at a point in the center line of Miller Avenue distant thereon North 0° 15' West 2186.80 feet from the point of intersection of said line of Miller Avenue with the center line of Prospect Road as the **Point of Beginning**; thence running along the center line of Miller Avenue, North 0° 15' West 178.66 feet to a nail set in the southwesterly corner of that certain 10.21 acre tract of land described in the deed from Sivert H. Shelley to Elmer Taggart dated October 8, 1897 and recorded October 8, 1897, in Book 202 of Deeds at page 337, Santa Clara County records; thence leaving said center line of Miller Avenue and along the southerly line of said 10.21 acre tract north 89° 45' east 304.75 feet to a 3/4" iron pipe set at the northeasterly corner of that certain 1.25 acre tract of land described in the deed from L.F. Hoffman et ux, to Harry Jaeger dated September 9, 1952, and recorded September 18, 1952, in book 2489 of Official Records at page 291, Santa Clara County records; thence along the easterly line of said 1.25 acre tract South 0° 15' West 178.66 feet; thence parallel with the southerly line of the 10.21 acre tract of land hereinabove referred to, South 89° 45' West 304.75 feet to the **Point of Beginning** and being a portion of the Quito Rancho, and also being a portion of the 13.269 acre tract of land shown upon map of Record of Survey filed for record in the office of the recorder of the County of Santa Clara, State of California, on October 25, 1951 in Book 35 of Maps, page 9.

Excepting therefrom the westerly 45 feet of said described property.

APN: 377-25-053 & 377-25-055

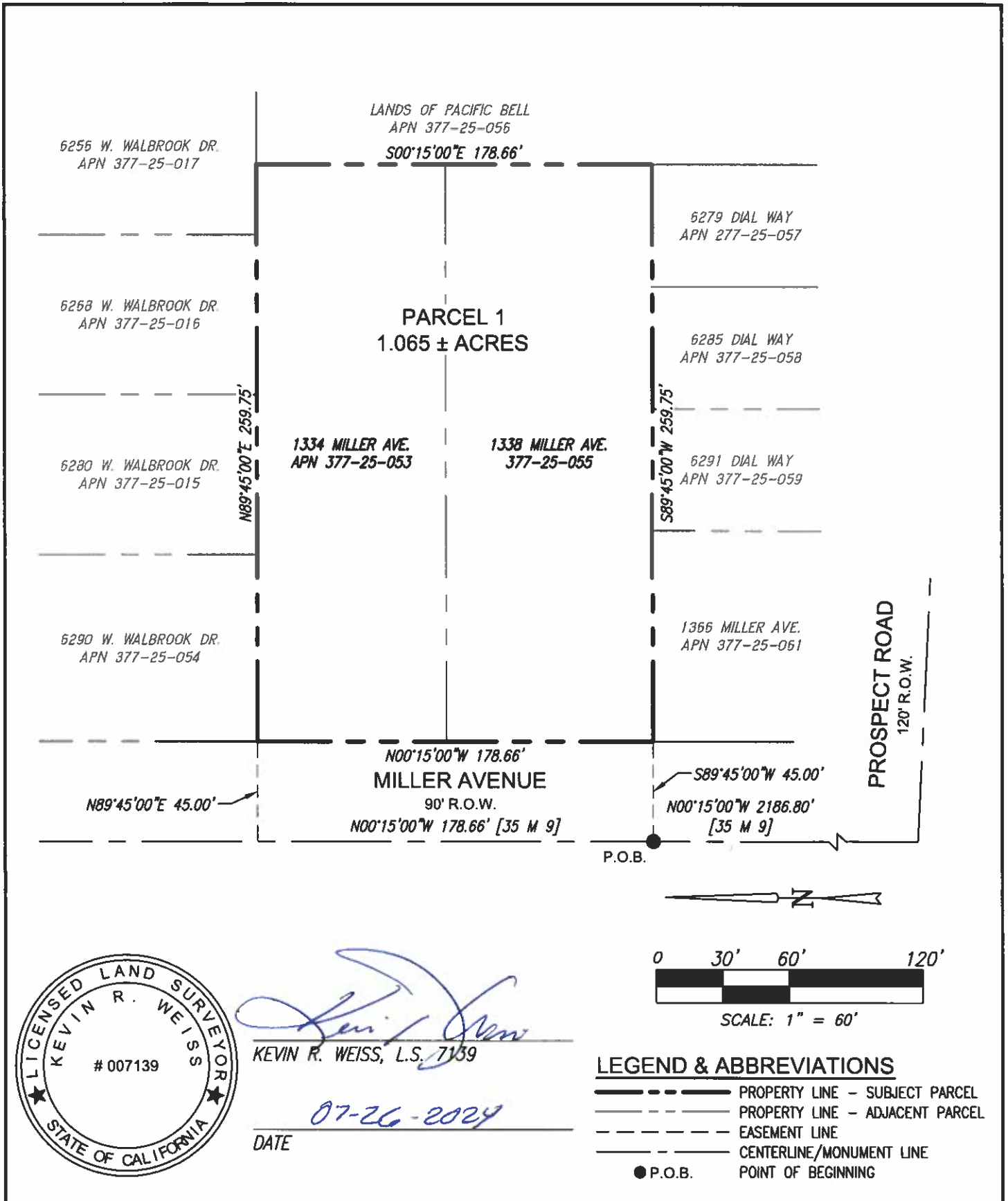


EXHIBIT 'B': PLAT FOR PLANNING PURPOSES			<p>J M H</p> <p><b>Weiss</b></p> <p>1731 Technology Drive Suite #880 San Jose, CA 95110 Phone: (408) 286-4555 www.jmhweiss.com</p>
SAN JOSE	PDC21-032	CALIFORNIA	
SCALE:	DATE: 07/26/2024	BY: DG	
SHEET 2 OF 2	JOB NO. 5228		