

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN JOSE ADOPTING THE 1334 AND 1348 MILLER  
AVENUE RESIDENTIAL PROJECT MITIGATED  
NEGATIVE DECLARATION, FOR WHICH AN INITIAL  
STUDY WAS PREPARED, ALL IN ACCORDANCE WITH  
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS  
AMENDED, AND ADOPTING A RELATED MITIGATION  
MONITORING AND REPORTING PROGRAM**

**WHEREAS**, prior to the adoption of this Resolution, the Director of Planning, Building and Code Enforcement of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the 1334 and 1348 Miller Avenue Residential Project under Planning File Nos. PDC21-032, PD21-017, PT21-039, & ER21-148, all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

**WHEREAS**, the 1334 and 1348 Miller Avenue Residential Project (the “Project”) analyzed under the Initial Study supporting a Mitigated Negative Declaration (“IS/MND”) consists of a Planned Development rezoning the R-1-8 Zoning District to the R-1-8 (PD) Planned Development Zoning District, a Tentative Map to subdivide the existing single lot into eight residential lots and one common access lot, and a Planned Development Permit to demolish two existing single-family homes and accessory structures for the construction of five new single-family residences with attached accessory dwelling units (“ADUs”), two attached single-family residences, and two deed-restricted affordable housing stacked flat condominiums, for a total of nine residential units and five ADUs on a 1.07-gross acre site at 1334 and 1348 Miller Avenue (Assessor’s Parcel Number: 377-25-053 and 377-25-055), San José, California; and

**WHEREAS**, the IS/MND concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

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

**WHEREAS**, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the “Mitigation Monitoring and Reporting Program”); and

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

**WHEREAS**, the City Council has reviewed and considered the IS/MND and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

**WHEREAS**, the IS/MND and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director of Planning, Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José,

California, 95113, are available for inspection by any interested person at that location and electronically on the City of San José's Department of Planning, Building and Code Enforcement website, and are, by this reference, incorporated into this Resolution as if fully set forth herein;

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

**THAT THE CITY COUNCIL** does hereby incorporate the foregoing recitals.

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

**THAT THE CITY COUNCIL** does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File Nos. PDC21-032, PD21-017, PT21-039, & ER21-148). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The IS/MND and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning,

Building and Code Enforcement, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and electronically on the City of San José's Department of Planning, Building and Code Enforcement website, and (2) available for inspection by any interested person.

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, MMC  
City Clerk

# MITIGATION MONITORING AND REPORTING PROGRAM

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**1334 and 1348 Miller Avenue  
Residential Subdivision Project  
File Nos. PDC21-032, PD21-017, PT21-039, & ER21-148  
August 2024**

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## PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration prepared for the 1334 and 1348 Miller Avenue Residential Subdivision Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

The mitigation measures enumerated in this document would reduce the level of impact of potential environmental effects of the proposed action. In all cases, these mitigation measures would reduce the impact of effects determined to be significant prior to mitigation to less-than-significant levels.

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

I, Chun Yi, the applicant, on the behalf of UnionAve LLC, hereby agree to implement the mitigation measures described below which have been developed in conjunction with the preparation of an Initial Study/Mitigated Negative Declaration for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level.

Project Applicant's Signature  AC6FB6C10BD24B7...

Date 8/5/2024

**EXHIBIT "A"**



*Planning, Building and Code Enforcement*  
CHRISTOPHER BURTON, DIRECTOR

1334 and 1348 Miller Avenue Residential  
Subdivision Project  
File Nos. PDC21-032, PD21-017, PT21-039,  
& ER21-148

MITIGATIONS		MONITORING AND REPORTING PROGRAM			
		Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]	
		Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports Monitoring Timing or Schedule
<b>Air Quality</b>					
<b>Impact AQ-1:</b> Project construction would result in an infant cancer risk of 15.8 in one million at the residential MEI, which exceeds the BAAQMD's cancer risk significance threshold of 10 in one million.					
<b>MM AQ-1:</b> Prior to the issuance of any demolition, grading, or building permits (whichever occurs first), the project applicant shall prepare a construction operations plan with equipment verified by a qualified air quality specialist that demonstrates off-road equipment used on-site to construct the project would achieve a fleet-wide average of a 40 percent reduction or more in diesel particulate matter (DPM) exhaust emissions. Specifically, this plan shall include, but is not limited to, the measures identified below: <ul style="list-style-type: none"> <li>All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 emission standards for particulate matter (PM10 and PM2.5), if feasible, otherwise: <ul style="list-style-type: none"> <li>If use of Tier 4 equipment is not available, alternatively use equipment that meets U.S. EPA emission standards for Tier 3 engines and include particulate matter emissions control equivalent to CARB Level 3 verifiable diesel emission control devices that altogether achieve a 40 percent reduction in particulate matter exhaust in comparison to uncontrolled equipment; alternatively (or in combination).</li> </ul> </li> <li>Alternatively, the applicant may develop another construction operations plan demonstrating that the</li> </ul>		Prepare a construction operations plan with equipment verified by a qualified air quality specialist that demonstrates off-road equipment used on-site to construct the project would achieve a fleet-wide average of a 50 percent reduction or more in diesel particulate matter (DPM) exhaust emissions.	Prior to the issuance of any demolition, grading, or building permits (whichever occurs first).	Director of Planning, Building and Code Enforcement or the Director's designee	Review and approve construction operations plan.
					Prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).

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<p>construction equipment used on-site would achieve a reduction in construction diesel particulate matter emissions by 40 percent or greater. Elements of the plan could include a combination of some of the following measures:</p> <ul style="list-style-type: none"> <li>○ Use of Tier 4 engines or alternatively fueled equipment.</li> <li>○ Installation of electric power lines during early construction phases to avoid use of diesel generators and compressors,</li> <li>○ Use of electrically-powered equipment,</li> <li>○ Restriction of forklifts and aerial lifts to electric or propane/natural gas powered for exterior and interior building construction,</li> <li>○ Change in construction build-out plans to lengthen phases, and</li> <li>○ Implementation of different building techniques that result in less diesel equipment usage.</li> </ul> <p>The construction operations plan shall be reviewed and approved by the Director of Planning, Building and Code Enforcement or the Director's designee prior to the issuance of any demolition, grading, or building permits (whichever occurs earliest).</p>					
<b>Biological Resources</b>					
<b>Impact BIO-1:</b> Construction activities associated with the project could result in the loss of fertile eggs of nesting raptors or other migratory birds, or nest abandonment.					
<b>MM BIO-1:</b> The project applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds,	Schedule demolition and construction activities to avoid the nesting season	Prior to any tree removal, or approval of any	Director of the Planning, Building, and Code Enforcement	Review and approve monitoring report.	Prior to any tree removal, or approval of any



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<p>including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive).</p> <p>If demolition and construction cannot be scheduled to occur between September 1st and January 31st (inclusive and as amended), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist or biologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive). During this survey, the qualified ornithologist/biologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests.</p> <p>If an active nest is found sufficiently close to work areas to be disturbed by construction, the qualified ornithologist/biologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests shall not be disturbed during project construction.</p>	<p>(February 1<sup>st</sup> through August 31<sup>st</sup>, inclusive).</p> <p>If demolition and construction cannot be scheduled to occur between September 1st and January 31st (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist or biologist to ensure that no nests shall be disturbed during project implementation.</p>	<p>grading or demolition permits (whichever occurs first).</p> <p>No more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive)</p>	<p>or the Director's designee.</p>		<p>grading or demolition permits (whichever occurs first).</p>

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Prior to any tree removal, or approval of any grading or demolition permits (whichever occurs first), the qualified ornithologist/biologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of the Planning, Building, and Code Enforcement or the Director's designee.					
<b>Cultural Resources</b>					
<b>Impact CR-1:</b> The project may impact archaeological deposits during excavation and construction activities.					
<b>MM CR-1.1. Cultural Sensitivity Training:</b> Prior to issuance of any grading permit, the project applicant shall be required to conduct a Cultural Awareness Training for construction personnel. The training shall be facilitated by a qualified project archaeologist in collaboration with a Native American representative registered with the Native American Heritage 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. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.		Conduct a Cultural Awareness Training for construction personnel, facilitated by a qualified project archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission.	Prior to issuance of any grading permit	Director of Planning, Building and Code Enforcement or the Director's designee.	Review documentation verifying that Cultural Awareness Training has been conducted.
<b>MM CR-1.2. Monitoring Plan:</b> Prior to issuance of any demolition, grading, or building permits (whichever occurs first), a qualified archeologist, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is		A qualified archeologist, in consultation with a Native American representative registered with the Native American Heritage Commission for the City of	Prior to issuance of any demolition, grading, or building permits (whichever occurs first).	Director of Planning, Building and Code Enforcement or the Director's designee.	Review monitoring plan.
					Following completion of Cultural Awareness Training and prior to issuance of any grading permit.
					Prior to issuance of any demolition, grading, or building permits

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## Planning, Building and Code Enforcement CHRISTOPHER BURTON, DIRECTOR

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Subdivision Project  
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<p>traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare a monitoring plan for all earthmoving activities. The Plan shall be submitted to the Director of the Planning, Building, and Code Enforcement or the Director's designee for review. The plan shall include, but is not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Monitoring schedules</li> <li>• Contact information</li> <li>• Recommendation for monitoring methods</li> <li>• Timing of reporting finds</li> </ul>	<p>San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare a monitoring plan for all earthmoving activities.</p>				<p>(whichever occurs first).</p>
<p><b>MM CR-1.3. Monitoring Plan. Sub-Surface Monitoring:</b> A qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage 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 also be present during applicable earthmoving activities in accordance with the Monitoring Plan in MM CR-1.2. These could include but are not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping.</p>	<p>A qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage 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 also be present during applicable (subsurface) earthmoving activities.</p>	<p>During applicable earthmoving activities (trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping).</p>	<p>Director of Planning, Building and Code Enforcement or the Director's designee.</p>	<p>Review monitoring plan to ensure that Native American monitor is identified for subsurface monitoring.</p>	<p>Prior to issuance of any demolition, grading, or building permits (whichever occurs first).</p>
<p><b>MM CR-1.4. Evaluation:</b> The project applicant shall notify the Director of the City of San José Department of Planning, Building, and Code Enforcement or</p>	<p>Notify the Director of Planning, Building, and Code Enforcement or</p>	<p>During grading or other construction activities.</p>	<p>Director of Planning, Building and Code</p>	<p>Review documentation.</p>	<p>During grading or other construction</p>

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Director’s designee of any finds during the grading or other construction activities. Any historic or prehistoric material identified in the project area during the during excavation activities shall be evaluated for eligibility for listing in the California Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Information Center and Native American Heritage Commission (NAHC) Sacred Land Files, and/or equivalent prior to the issuance of an occupancy permit. A copy of the evaluation shall be submitted to the City of San Jose Department of Planning, Building, and Code Enforcement or the Director’s designee.	Director’s designee of any finds.  Project applicant shall have finds evaluated for eligibility for listing in the CRHR.  If applicable, provide documentation to the NWIC and NAHC.		Enforcement or the Director’s designee.	Receive documentation on data recovery.	activities in the event a find is made.  Following evaluation.
Hazards and Hazardous Materials					
Impact HAZ-1: Due to the past agricultural history of the project site, there is a potential that the shallow soil contains residual organochlorine pesticides and/or pesticide-based metals such as arsenic and lead as a result of historic pesticide application. If pesticides are present and not mitigated, construction of the project could result in exposure of construction workers, occupants of adjacent properties and future site occupants to pesticide contamination.					
MM HAZ-1. Prior to issuance of a grading permit, the project applicant shall retain a qualified environmental professional to complete a Phase II soil contamination investigation to evaluate past agricultural use. The	Retain a qualified environmental professional to complete a Phase II soil contamination investigation.	Prior to issuance of any grading permit	Supervising Environmental Planner of the City of San José Planning, Building,	Review Phase II and evidence of regulatory oversight and	Prior to issuance of any grading permit

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<p>Phase II shall include soil sampling and analysis for organochlorine pesticides and pesticide-based metals, arsenic and lead to determine if these chemicals are present above the regulatory environmental screening levels for construction worker safety and residential uses. The results of the soil sampling and testing must be provided to the Supervising Environmental Planner of the City of San José Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.</p> <p>If the Phase II results indicate soil concentrations of pesticides or metals above the environmental screening levels, the applicant must obtain regulatory oversight from the Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program. A Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified environmental consultant under regulatory oversight and approval that identifies remedial measures and/or soil management practices to ensure construction worker safety and the health of future site occupants. The plan and evidence of regulatory oversight shall be provided to the Director of Planning, Building, and Code Enforcement or Director's designee and the Environmental Compliance Officer in the City of San José Environmental Services Department.</p>	<p>Prepare an SMP or RAP and obtain regulatory oversight if Phase II results indicate soil concentrations of pesticides or metals above the environmental screening levels.</p>		<p>and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.</p>	<p>SMP/RAP (if applicable).</p>	

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<b>Noise &amp; Vibration</b>					
<b>Impact NSE-1:</b> Construction of the project would generate vibration levels exceeding the General Plan threshold 0.2 in/sec PPV or more at buildings of normal conventional construction located within 25 feet of the project site.					
<b>MM NSE-1. Construction Vibration Monitoring, Treatment, and Reporting Plan.</b> Prior to the issuance of any grading permits, the project applicant shall implement a construction vibration monitoring plan to document conditions prior to, during, and after vibration generating construction activities. All plan tasks shall be undertaken under the direction of a licensed Professional Structural Engineer in the State of California and be in accordance with industry-accepted standard methods. The construction vibration monitoring plan shall include, but not be limited to, the following measures: <ul style="list-style-type: none"> <li>A list of all heavy construction equipment to be used for this project known to produce high vibration levels (e.g., tracked vehicles, vibratory compaction, jackhammers, hoe rams, clam shovel drop, and vibratory roller, etc.) shall be submitted to the Director of Planning or Director's designee of the Department of Planning, Building, and Code Enforcement by the contractor. This list shall be used to identify equipment and activities that would potentially generate substantial vibration and to define the level of effort for</li> </ul>		Retain a licensed individual to prepare and implement a construction vibration monitoring plan.	Prior to issuance of any grading permit.	Director of Planning or Director's designee of the Department of Planning, Building, and Code Enforcement.	Review construction vibration monitoring plan and list of heavy construction equipment.  Prior to issuance of any grading permit.



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<p>reducing vibration levels below the thresholds.</p> <ul style="list-style-type: none"> <li>Place operating equipment on the construction site as far as possible from vibration-sensitive receptors.</li> <li>Smaller equipment to minimize vibration levels to below 0.2 in/sec PPV shall be used at the property lines adjoining adjacent buildings. For example, a smaller vibratory roller, such as the Caterpillar model CP433E vibratory compactor, could be used when compacting materials within 30 feet of the adjacent conventional building.</li> <li>Avoid using vibratory rollers and clam shovel drops near sensitive areas.</li> <li>Select demolition methods not involving impact tools.</li> <li>Modify/design or identify alternative construction methods to reduce vibration levels below the limits.</li> <li>Avoid dropping heavy equipment and use alternative methods for breaking up existing pavement, such as a pavement grinder, instead of dropping heavy objects, within 30 feet of the adjacent conventional buildings.</li> <li>Designate a person responsible for registering and investigating claims of excessive vibration. The contact information of such</li> </ul>					



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person shall be clearly posted on the construction site.					

Source: Initial Study supporting a Mitigated Negative Declaration, 1334 and 1348 Miller Avenue Residential Subdivision Project, City of San José, October 2023.