

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A VESTING TENTATIVE MAP TO SUBDIVIDE TWO EXISTING PARCELS TO CREATE NINE PARCELS, INCLUDING SEVEN SINGLE-FAMILY PARCELS, ONE MULTIFAMILY PARCEL, AND ONE PARCEL FOR A PRIVATE STREET ON AN APPROXIMATELY 1.07-GROSS-ACRE SITE SITUATED ON THE EAST SIDE OF THE INTERSECTION OF MILLER AVENUE AND TUCKER DRIVE (1334 & 1348 MILLER AVENUE) (APNS 377-25-053 & 055)**

**FILE NO. PT21-039**

**WHEREAS**, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on September 20, 2021, Melanie Griswold, on behalf of the owner, Union Ave LLC by Yi Chun, filed a Vesting Tentative Map application (File No. PT21-039) with the City of San José to subdivide two existing single-family residential parcels to create nine parcels, including seven single-family residential parcels, one multi-family parcel, and one parcel for a private street, together with a concurrent Planned Development Zoning and Planned Development Permit application for the development of a residential project including five detached single-family residences, two attached single-family parcels, and one stacked duplex, including two affordable units, on an approximately 1.07-gross-acre site; 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, "VESTING TENTATIVE TRACT MAP FOR CONDOMINIUM PURPOSES" dated May 18, 2023, and last revised July 19, 2023, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection; said plan 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 currently has two parcels and is developed with a detached single-family residence and an accessory building on each parcel. Access to each existing parcel 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 Vesting Tentative Map to allow the subdivision of approximately 1.07 gross acres from two existing residential parcels to nine parcels, including seven single-family parcels, one multifamily parcel, and one parcel for a private street, located on the east side of the intersection of Miller Avenue and Tucker Drive (1334 & 1348 Miller Avenue).

In conjunction with the Vesting Tentative Map, the project also includes a Planned Development Rezoning, File No. PDC21-032, and a Planned Development Permit, File No. PD21-017. 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 Planned Development Permit allows the demolition of two single-family residences and two accessory buildings, the removal of 11 ordinance-size and seven non-ordinance-size trees, and the construction of five detached-single-family residences, two attached single-family residences, and a stacked duplex reserved as affordable to low-income households.

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, state Density Bonus Law permits this additional density.*

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.

Development Regulations

Below is a comparison of the R-1-8 Single-Family Residence Zoning District per Section 20.30.200 of the Zoning Code and the project's Planned Development Zoning District development standards for standards relevant to this Vesting Tentative Map. 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.

Standard	R-1-8 Zoning District Requirements	R-1-8(PD) Planned Development Zoning District Development Standards (Proposed)	Provided by Project
Minimum Lot Area	5,445 square feet	Lots 1 to 5: 5,445 SF Lots 6 to 8: 2,000 SF	Lots 1 to 5: 6,565 SF  Lots 6 to 8: 2,025 SF

*Analysis: As shown on the plan set for this Vesting Tentative Map, the project conforms with all relevant required standards pursuant to the proposed General Development Plan of the Planned Development Zoning District.*

5. **Subdivision Ordinance Consistency.** Vesting Tentative Maps must be consistent with Title 19 – Subdivisions of the San José Municipal Code. The information required by Section 19.12.030 is provided on the Vesting Tentative Map and consistent with the stated requirements. The project is analyzed for consistency with key design requirements of the Subdivision Ordinance below:

Section 19.36.180 – The Council may permit the reduction of the six thousand square foot minimum lot area prescribed in Section 19.36.170 of all or some of the lots in a proposed subdivision if the Council shall, in the exercise of reasonable judgment, deem such reduction advisable in view of the character of the neighborhood in which the subdivision is to be located, the quality or kinds of development to which the area is best adapted, the size, use or physical or other conditions of the property proposed to be subdivided, neighborhood and general planning, or safety and general welfare of the public and of the lot owners in the proposed subdivision, provided that in no event shall any lot contain a minimum area of less than five thousand square feet. The provisions

of this section shall not be used to decrease the minimum lot areas designated in Title 20 of this Code or in any sections of this Title 19 other than Section 19.36.170.

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

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

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

## **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 low-income households (maximum of 80% of AMI), with income limits as defined in California Code Section 65915. The project is therefore eligible for two concessions and unlimited waivers under the provisions of the Density Bonus Law. Waivers are allowed from any development standard or regulation that prevents the project from being developed at the allowed density. The project has requested six waivers regarding 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. As none of these waivers affect the findings for this Vesting Tentative Map, they are not therefore evaluated in this resolution.

### Density Bonus

As stated above, the allowed density 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.

## **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 the California Environmental Quality Act ("CEQA") Guidelines (California Code of Regulations §15000 et. seq.) and the regulations and policies of the City of San José. The IS/MND evaluated the environmental impacts that might reasonably be anticipated to result from implementation of the proposed project.

The IS/MND was circulated from October 27, 2023 to November 16, 2023, and two comment letters were received during the public review period. The first comment letter was from Pacific Gas & Electric Company (PG&E) which identified the project occurring within the same vicinity of PG&E's existing facilities, and that the Permittee must contact PG&E to apply for the modification and/or relocation of existing services as needed. The second comment letter is from Valley Water and identified text revisions to the IS/MND to clarify the project site's environmental setting and regulatory framework. In response to Valley Water's comments, the IS/MND has been revised to update the project site's distance to Saratoga and Calabazas Creek, clarify the project's compliance with the re-issued Municipal Regional Permit, and include a reference to Federal Emergency Management Agency's current Flood Insurance Rate Map.

The IS/MND, including responses to comments received during the public review period, can be found at the following link: <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. **Vesting Tentative Map Findings.** In accordance with San José Municipal Code (SJMC) Sections 19.12.130 and 19.12.220 and California Government Code Section 66474, the City Council, in consideration of the proposed subdivision shown on the Vesting Tentative Map with the imposed conditions, shall deny approval of a Vesting Tentative Map, if the Council makes any of the following findings:
- a. That the proposed map is not consistent with applicable General and Specific Plans as specified in Section 65451.
  - b. That the design or improvement of the proposed subdivision is not consistent with applicable General and Specific Plans.
  - c. That the site is not physically suitable for the type of development.
  - d. That the site is not physically suitable for the proposed density of development.
  - e. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
  - f. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
  - g. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

*Analysis: Based on review of the subdivision, a Vesting Tentative Map to subdivide 1.09 gross acres from two existing residential parcels to nine parcels, including seven single-family parcels, one multifamily parcel, and one parcel for a private street, the Council of the City of San José does not make any such findings to deny the subject subdivision. The project is consistent with the General Plan goals, policies, and land*

*use designation, as analyzed above. The project site is physically suitable for the project and proposed intensity in that residential development is allowed by the combination of the General Plan and state Density Bonus Laws. Furthermore, the project site does not contain historic resources or sensitive habitats or wildlife.*

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

In accordance with the findings set forth above, a Tentative Map to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. This City Council expressly declares that it would not have granted this permit and determination 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 permitted hereby.

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

1. **Acceptance of Vesting Tentative Map.** Per Section 19.12.230, should the Subdivider fail to file a timely and valid appeal of this Vesting Tentative Map within the applicable appeal period, such inaction by the Subdivider shall be deemed to constitute all of the following on behalf of the Subdivider:
  - a. Acceptance of the Vesting Tentative Map by the Subdivider; and
  - b. Agreement by the Subdivider to be bound by, to comply with, and to do all things required of or by the Subdivider pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 19 applicable to such Vesting Tentative Map.
2. **Expiration of Vesting Tentative Map.** This Vesting Tentative Map shall automatically expire 30 months from and after the date of issuance hereof by the City Council, if within such time period, a Final Map has not been obtained, pursuant to and in accordance with the provisions of this Tentative Map. The date of issuance is the date this Vesting Tentative Map is approved by the City Council. However, the Director of Planning, Building and Code Enforcement may approve a Tentative Map Extension to extend the validity of this Tentative Map in accordance with Title 19. An extension of the approval of the Tentative Map shall not exceed two years by the City Council or the Director of Planning, Building and Code Enforcement.
3. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.



4. **Improvements.** Pursuant to the Subdivision Agreement (hereinafter referred to as "Agreement"), the Subdivider shall, before approval and recording of the Final Map, improve or agree to improve all land within the subdivision and all land outside, but appurtenant to, the Subdivision shown on the Tentative Map for public or private streets, alleys, pedestrian ways and easements to the satisfaction of the Director of Public Works.
5. **Improvement Contract.** In the event the Subdivider has not completed the improvements required for the proposed subdivision at the time the final map is presented for approval, Subdivider shall enter into an improvement contract pursuant to Agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code and shall provide the bonds and insurance mentioned therein.
6. **Public Use Easements.** The Subdivider shall dedicate on the final map for public use easements for public utilities, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems and slope easements in and upon all areas within the subdivision shown on the Tentative Map for the subdivision to be devoted to such purposes.
7. **Distribution Facilities.** The Subdivider shall, at no cost to the City, cause all new or replacement electricity distribution facilities (up to 40KV), telephone, community cable, and other distribution facilities located on the subject property to be placed underground.
8. **Homeowner's Association.** A Homeowner's Association shall be established for maintenance of all common areas, including but not limited to, private streets, pedestrian walkways, easements, landscaping, and landscaping in the public right-of-way that is not already in a maintenance district. The Permittee shall provide to the Homeowners Association a copy of the Vesting Tentative Map Permit, the accompanying Plan Set, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans within 30 days of completion of each construction phase.
9. **Conformance with Other Permits.** The subject Vesting Tentative Map conforms to and complies in all respects with the Planned Development Permit File No. PD21-017 and as may be amended, on which such Vesting Tentative Map is based. Approval of said Vesting Tentative Map shall automatically expire with respect to any portion of the lands covered by such Vesting Tentative Map on which a Final Map or Tract Map has not yet been recorded if, prior to recordation of a Final Map or Tract Map thereon, the Planned Development Permit for such lands automatically expires or for any reason ceases to be operative.
10. **Final Map.** No Final Map or Tract Map shall be approved by City Council unless and until the appeal period for the development permit, City File No. PD21-017, has expired and all appeals have been exhausted.

11. **Covenant of Easements.** Prior to recordation of the Final Map, the Subdivider shall offer to the City of San José a Covenant of Easement for joint use and emergency access purposes, in accordance with Part 1 of Chapter 20.110 of Title 20 of the San José Municipal Code, across lots as applicable as shown on the Approved Plan Set. Said easements shall be binding upon, and all benefits shall insure to, all successors in interest to the affected real property.
12. **Conveyance of Easements.** Subdivider shall convey or cause to be conveyed to the City of San José, easements in and upon all areas as shown on the Tentative Map outside the boundaries of, but appurtenant to, the subdivision. Should a separate instrument be required for the conveyance of the easement(s), it shall be recorded prior to the recordation of the Parcel or Final Map. Such easements so conveyed shall be shown on the Parcel Map, together with reference to the Book and Page in the Official Recorder of Santa Clara County, where each instrument conveying such easements is recorded
13. **Multiple Final Maps.** Multiple Final Maps may be filed for this subdivision if each and all of the following conditions are met with each Final Map:
  - a. All fees associated with development and a part of this approval shall be apportioned and paid for each portion of this subdivision for which a Final Map is being filed, including but not limited to Parkland Dedication, undergrounding of utilities, drainage, area and sewer treatment plan.
  - b. All public streets on which each Final Map has frontage shall be improved or bonded to be improved to the satisfaction of the Director of Public Works.
  - c. All grading, drainage, and easements for drainage, adequate to protect each lot for which a Final Map is requested, and surrounding parcels which could be impacted by such design or lack of design, shall be guaranteed to the satisfaction of the Director of Public Works.
  - d. Any and all off-site improvements necessary for mitigation of impacts brought about by this project shall be apportioned to the degree possible to guarantee adequate mitigation for each area for which a Final Map is being filed, to the satisfaction of the Director of Public Works.
  - e. For final maps that are phased, where the phasing is not specified, the Permittee is required to process a Permit Amendment to specify the phases and phased improvements. All improvements must be in conformance with the associated development permit, as may be amended.
14. **Development Rights – Vesting on Approval of Vesting Tentative Map.**
  - a. Per San José Municipal Code Section 19.13.070, the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Government Code Section 66474.2. However, if Section 66474.2 of the

Government Code is repealed, the approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved.

- b. Notwithstanding subsection 3.a., above, any permit, including a building permit, approval, extension, or entitlement may be made conditional or denied if any of the following are determined:
  - i. A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.
  - ii. The condition or denial is required, in order to comply with state or federal law.
- c. The rights referred to herein shall expire if a final map is not approved prior to the expiration of the vesting tentative map as provided in Section 19.13.060. If the final map is approved, these rights shall last for the following periods of time:
  - i. An initial time period of one year. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, this one-year initial time period shall begin for each phase when the final map for that phase is recorded. All of said final maps or parcel maps must be recorded within the time period set forth in Section 19.13.060 or the vesting tentative map approval shall expire for those parcels for which final maps or parcel maps are not timely recorded.
  - ii. The initial time period set forth in c.i. shall be automatically extended by any time used for processing a complete application for a grading permit if such processing exceeds thirty days from the date a complete application is filed.
  - iii. A Subdivider may apply for a one-year extension at any time before the initial time period set forth in c.i. expires. If the extension is denied, the subdivider may appeal that denial to the city council within fifteen (15) days.
  - iv. If the Subdivider submits a complete application for a building permit during the periods of time specified in c.i. through c.iii., above, the rights referred to herein shall continue until the expiration of that permit, or any extension of that permit.

**15. 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 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 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

**16. 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;
- 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.

- 17. 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.
- 18. 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.
- 19. Parks:** This residential project is subject to 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) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the "Formula for Dedication of Land" and/or "Schedule of Fees and Credits" contained within in the chapter.
- 19. 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	
x:x = tree replacement to tree loss ratio				
Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.				
A 38-inch tree equals 12.1 inches in diameter.				
A 24-inch box tree = two 15-gallon trees				

- 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 tree 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, Building and Code Enforcement.

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.

## **20. 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.

**21. 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.

**22. Conformance to Mitigation Monitoring and Reporting Program.** This Project shall conform to all applicable requirements of the MMRP approved for this development by City Council Resolution No. \_\_\_\_\_.

**23. Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the Subdivider will be required to have satisfied all of the following Public Works conditions as described in the Planned Development Permit (PD21-017).

**24. Revocation, Suspension, Modification.** This Vesting Tentative Map is subject to revocation, suspension or modification for violation of any of its provisions or conditions.

In accordance with the findings set forth above, a Vesting Tentative Map Permit to use the subject property for said purpose specified above, subject to conditions, is hereby **approved**.

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ADOPTED and issued this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, MMC  
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

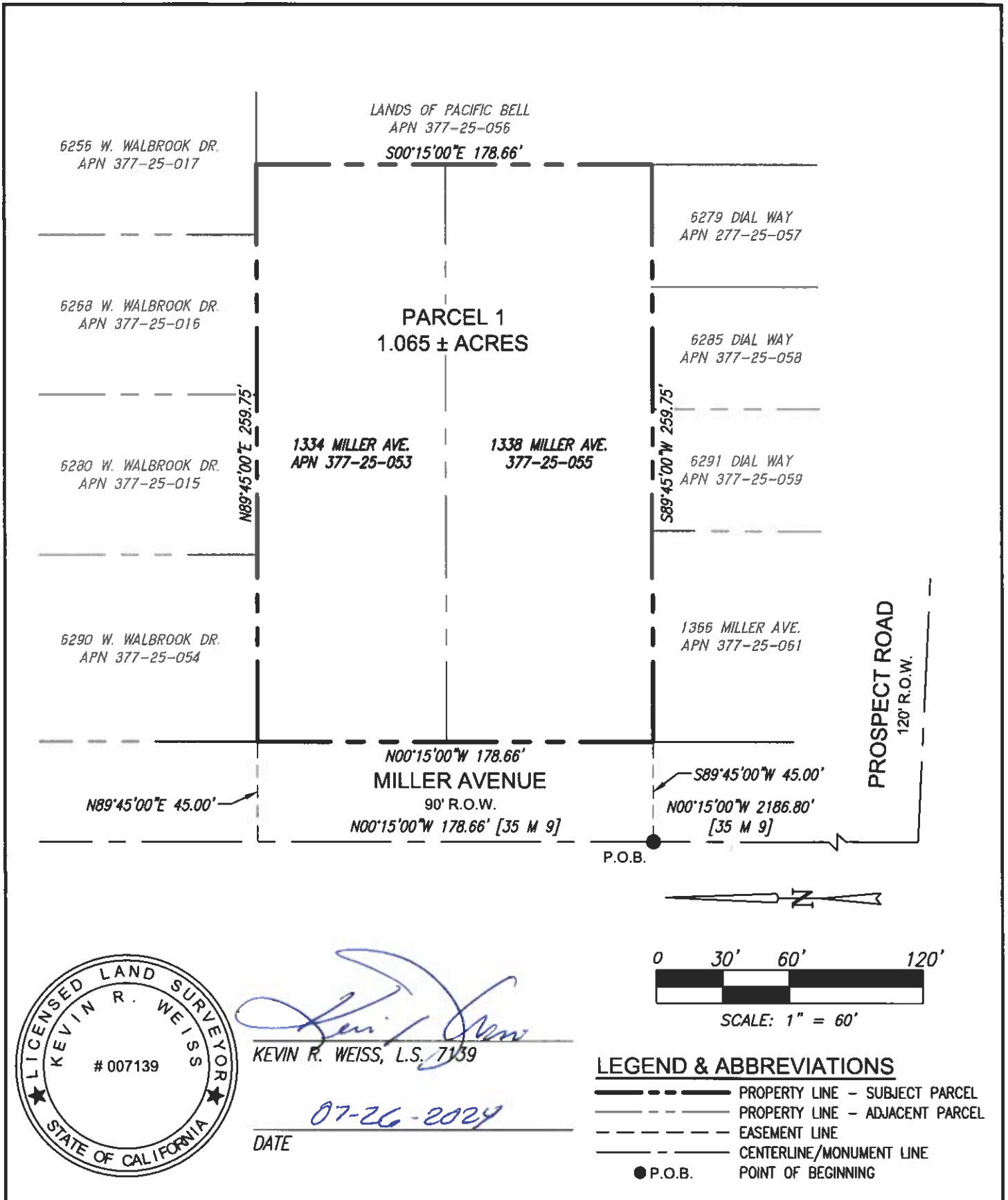


EXHIBIT 'B': PLAT FOR  
PLANNING PURPOSES

SAN JOSE

PDC21-032

CALIFORNIA

SCALE:

DATE: 07/26/2024

BY: DG

SHEET 2 OF 2

JOB NO. 5228

J M H  
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