

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A TENTATIVE MAP, SUBJECT TO CONDITIONS, TO SUBDIVIDE ONE PARCEL INTO THREE PARCELS ON AN APPROXIMATELY 1.01-GROSS ACRE SITE, LOCATED ON THE WEST SIDE OF SAN FELIPE ROAD, APPROXIMATELY 2,000 FEET NORTH OF YERBA BUENA ROAD (4349 SAN FELIPE ROAD)

FILE NO. PT19-022

WHEREAS, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on May 23, 2019, a concurrent application (File No. PT19-022) was filed by the applicant, King Property Partners/Hawkstone Development on behalf of Douglas and Nancy Vierra, with the City of San José for a Tentative Map to subdivide one parcel into three parcels on an approximately 1.01-gross acre site, on that certain real property situated in the A(PD) Planned Development Zoning District and located on the west side of San Felipe Road, approximately 2,000 feet north of Yerba Buena Road (4349 San Felipe Road, San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A", entitled “Legal Description,” and depicted in Exhibit "B," entitled “Plat Map,” which are attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said concurrent applications on July 22, 2020, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, this City Council received and considered the reports and recommendations of the Planning Commission and the City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled "Tentative Parcel Map", dated April 25, 2019 and revised June 10, 2020, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested, and is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council.

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

After considering all of the evidence presented at the Public Hearing, the City Council finds

that the following are the relevant facts regarding this proposed project:

- 1. Site Description and Surrounding Uses.** The project site is located on the west side of San Felipe Road, approximately 2,000 feet north of Yerba Buena Road and east of Thompson Creek. The site is developed with an approximately 2,600-square foot single-family residence and an unpermitted commercial parking lot with access off San Felipe Road. The approximately 1.01-gross acre site is generally divided into three uses: open space on the western edge, residential in the center of the site, and the unpermitted commercial parking lot on the eastern edge of the site which also serves as the ingress/egress driveway to the existing single-family residence. The southern edge of the subject site abuts the Atria Evergreen property, a senior living and memory care facility, and a residential subdivision on Mousa Court is located to the north of the site. Residential uses are located east of the site, across San Felipe Road.

Site History

On December 11, 2018, the City Council adopted Resolution No. 78903, amending the San José 2040 General Plan to modify the Land Use/Transportation Diagram from Rural Residential to 1) Rural Residential; 2) Open Space, Parklands and Habitat; and 3) Neighborhood/Community Commercial at the subject site (4349 San Felipe Road). The subject Planned Development Zoning, Planned Development Permit, and Tentative Map would complement the adopted General Plan designations in that the one parcel would be subdivided into three parcels including the 100-foot riparian corridor setback from the edge of Thompson Creek (open space), two single-family residences, and a commercial parking lot.

- 2. Project Description.** The project is a Tentative Parcel Map (PT19-022) to subdivide one parcel into three parcels to allow the construction of two single-family residences and associated grading, and establishment of the on-site commercial parking lot on-site.

The project would result in a net addition of one single-family residence, establish a 100-foot setback from the riparian corridor, and permit an existing commercial parking lot. Currently, site access is via a driveway through the unpermitted commercial lot from San Felipe Road. With the implementation of the project, the entrance to the commercial parking lot would continue to be accessible from San Felipe Road. The approximately 9,919-square foot commercial parking lot would serve the commercial uses along San Felipe, north of the Mousa Court residential subdivision and can accommodate up to 28 vehicles. The remaining 31,754 square feet of the site would consist of the residential portion of the project which would be sited in the center of the project site and the habitat buffer which starts at the edge of Thompson Creek and continues 100 feet eastward towards the residential area. The residential area would have a dedicated driveway entrance from Mousa Court.

- 3. General Plan Conformance.** The project site has an Envision San José 2040 General Plan designation of Rural Residential, Open Space, Parklands and Habitat,

and Neighborhood/Community Commercial.

The Rural Residential designation is applied to areas already largely developed for residential use with a low density or rural character; new infill development should be limited to densities that match the established density, lot size, and character of surrounding properties. The subject portion of the project in the Rural Residential designation would allow the construction of two single-family residences consistent with the Rural Residential designation's established density, lot size, and the character of surrounding properties and therefore is consistent with the Rural Residential designation.

The Open Space, Parklands and Habitat designation is intended for low intensity uses. Typically, lands in this designation are devoted to open space, parks, recreation areas, rails, habitat buffers, nature preserves, and other permanent open space areas. The subject portion of the project in the Open Space, Parklands, and Habitat designation would be maintained as permanent open space dedicated to providing a habitat buffer, specifically a 100-foot riparian corridor setback, between the edge of Thompson Creek and the residential use consistent with the designation.

The Neighborhood/Community Commercial designation supports a very broad range of commercial activity, including commercial uses that serve communities in neighborhood areas, such as neighborhood serving retail and services and commercial/professional office development. The subject portion of the project in the Neighborhood/Community Commercial designation would establish a parking lot for the exclusive use of neighborhood commercial/professional office development consistent with the Neighborhood/Community Commercial.

The project conforms to the following key General Plan policies:

- a. LU-1.1. Foster development patterns that will achieve a complete community in San José, particularly with respect to increasing jobs and economic development and increasing the City's jobs-to-employed resident ratio while recognizing the importance of housing and a resident workforce.

Analysis: This project would foster a development pattern with commercial, residential, and open space uses to help achieve a complete community, consistent with the General Plan policy as described above. The project includes the construction of two single-family residences meeting the prevailing density and character of surrounding residential uses.

LU 11.1. Design all new single-family detached residences so that each home has a frontage on a public street or on a private street that appears and functions as a public street.

- b. LU 11.4. Locate new commercial uses in established residential neighborhoods on busier streets or at street intersections. Discourage new commercial uses on small existing residential streets unless it can be clearly demonstrated that the

commercial use can integrate with the existing residential neighborhood without creating adverse impacts. Discourage primary access to large commercial parking lots and structures through residential neighborhoods.

Analysis: Consistent with Land Use Policy 11.1, the new detached single-family residences on the project site will have direct access from Mousa Court, a private street. Consistent with Land Use Policy 11.4, the commercial parking lot will be accessed from the busier street, San Felipe Road. The parking lot will be designed to integrate with the new residential development using buffers including landscaping and a wood fence to separate the uses.

4. Zoning and Planned Development Zoning Conformance.

The site is in the A(PD) Planned Development Zoning District which conforms to the Envision San José 2040 General Plan Land Use/Transportation Diagram designation.

The A(PD) Planned Development Zoning District for the project site references the allowed uses and development standards of the R-1-8 Single-Family Residence Zoning District and the CG – Commercial General Zoning District, except as included in the General Development Standards. Two single-family residences and a commercial parking lot are permitted uses in the R-1 Single-Family Residence Zoning District and the CG Commercial General Zoning District, respectively, with a Planned Development Permit.

The subject site would support three discrete land uses. The Planned Development Zoning District divides the parcel into two areas with distinct development regulations. Area A permits commercial a use (parking lot) while Area B permits residential uses and requires an Open Space buffer along the riparian corridor:

a. Area A (Commercial) Development Regulations

Use: Area A permits the permitted, special, and conditional uses of the CG Commercial General Zoning District as set forth in Title 20 of the San José Municipal Code, as amended.

Setback: The required setbacks include a minimum 12 feet from San Felipe Road, a public street, a five-foot setback from the side property lines, and a two-foot rear setback from the abutting Area B (residential use).

Parking: Parking shall be provided in accordance with Chapter 20.90 (Parking and Loading), of the City of San José Municipal Code, as amended.

Landscaping and Screening: Commercial parking shall be screened, from adjacent residential uses, by a masonry wall or solid wood fence five feet in height and no more than four feet in height within the public street setback area. Screening shall be at all times maintained in good condition. All setback areas within the parking area not suited for parking or circulation shall be landscaped.

Analysis: The Planned Development Permit would maintain the existing 28-space

commercial parking lot in Area A to serve the commercial uses located along San Felipe Road and Mousa Court. No structures are being permitted within the commercial parking lot area. An off-site parking lot is permitted with a Special Use Permit in the CG Zoning District and therefore could be reviewed with the Planned Development Permit. The Planned Development Permit would include improvements to the existing parking lot including the addition of landscaping and a wood fence to separate Area A and B, on-site. Consistent with the development standards outlined in the General Development Standards specific to this Planned Development, the parking lot will be located 12 feet from San Felipe Road, 5 feet from the side property lines, and 2 feet from Area B.

b. Area B: (Single Family Residential) Development Regulations:

Use: Area B permits the permitted, special, and conditional uses of the R-1 Single-Family Residence Zoning District with the issuance of a Planned Development Permit. The density of Area B shall not exceed 8 dwelling units per acre, and the minimum lot size shall be 5,445 square feet. No new structures are permitted within the 100-foot Riparian Setback except the Riparian Setback area may be used for an earthen berm serving as a small detention basin, to the satisfaction of the Director of Planning, Building and Code Enforcement, and the Director of Public Works. The basin shall be set back at least 35 feet from the edge of the riparian corridor. The riparian setback and open landscape areas adjacent to it shall be treated as an amenity and landscaped in a manner that is to the setting as determined by a qualified biologist/ecologist and/or the recommended plantings made in the updated biological analysis report dated March 12, 2020.

Setbacks and Height: The setbacks established per the A (PD) Planned Development Zoning District are outlined below:

- Building from Private Street: 20 feet minimum
- Building from Southern PD Zoning Property Line: 6 feet
- Building to Side Property Line (internal: abutting Area A/Commercial): 5 feet
- Minor architectural projections such as, fireplaces and bay windows, may project into any setback or building separation (except riparian setbacks) by up to 2 feet for a length not to exceed 10 feet or 20% of the building elevation length.

Riparian Buffer: Within the required riparian buffer, landscaping shall be consistent with riparian vegetation recommended in the Live Oaks Biological Report dated March 12, 2020 (i.e., *Elymus triticoides*, *Baccharis salicifolia*, etc.). The detention basin shall be comprised of earthen berms that are composed of compacted soils and not have the appearance of being engineered (i.e., straight edged or non-undulated banks).

Parking: Parking shall be provided in accordance with Chapter 20.90 (Parking and

Loading), of the City of San José Municipal Code, as amended.

Analysis: Two detached single-family homes would be constructed in Area B; each would have a minimum lot size of 5,445 square feet. Consistent with the development standards set forth in Area B, the two residences would provide the minimum required 20-foot front yard setback from Mousa Court, a six-foot rear yard setback from the southern property line, and a minimum five-foot setback side setback from the property line abutting the commercial lot on the east and would not exceed the maximum height of 35 feet established in the residential zoning district. No new structures would be located within the required riparian setback area except for the storm water detention basin. The basin would be located 35 feet from the edge of the riparian corridor (Thompson Creek) consistent with the minimum required 35-foot setback established in the Santa Clara Valley Habitat Plan. Pursuant to Table 20-190 in Section 20.90.060, two covered parking spaces are required for one single-family dwelling. The two single-family residences are designed with attached two-car garages; therefore, the covered parking requirement is met.

5. City Council Policies.

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 project. Council Policy 6-30 specifies the public outreach and communication required regarding development projects including posting a notice of development application on the project site, hosting a community meeting which is appropriately advertised to the community, and providing Public Hearing Notices to the in a timely matter to an appropriate project radius. Under City Council Policy 6-30, a standard project requires notification to property owners and tenants within 500 feet of the project site.

Analysis: Following City Council Policy 6-30, the project applicant has posted on-site signs to inform the neighborhood of the project. The hearing notice was sent to all owners and tenants within 500 feet of the project. Staff contact information have also been available on the on-site sign and hearing notice. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

City Council Policy 6-34: Riparian Corridor Protection and Bird-Safe Design policy

The Riparian Corridor Protection and Bird-Safe Design policy contains provisions for the protection, preservation, or restoration of riparian habitat and limits the creation of new impervious surface within Riparian Corridor setbacks to minimize flooding from urban runoff, and control erosion. Pursuant to the Riparian Corridor Protection policy, the project is subject to a minimum 100-foot setback from the edge of Thompson Creek.

Analysis: The Live Oak Associates, Inc. Biological Technical Study, dated April 28, 2017, describes how the biologist delineated the edge of the riparian vegetation and

identified constituent species therein. With the maintenance of the 100-foot riparian setback, the ecologist determined that the project would not impact the channel or riparian habitat of Thompson Creek. A subsequent biological analysis by Live Oak Associates, Inc. dated March 12, 2020 specifically assessed the potential impact of a flow spreader within the 100-foot setback and concluded that the flow spreader is not considered to be an adverse addition to the riparian setback area. A flow spreader is a passive feature to manage stormwater runoff from the site, especially during periods of high precipitation. Per the Biological Technical Study, the predominantly soil-based construction of the basin will have an inconsequential grated drain in the bottom of the basin, but there are no structures or other potentially impactful aspects to the design. Biologically, the basin appears to be nothing more than a subtle change in the topography of the existing conditions of the site. As stated by the ecologist in the updated report, the Riparian Corridor Policy does not explicitly address earthen berms/stormwater basins; however, it does provide guidance related to erosion control. The flow spreader was determined to serve as an erosion control measure and therefore would be consistent with the Riparian Corridor Policy.

Evergreen-East Hills Development Policy

The Evergreen-East Hills Development Policy builds upon several prior planning efforts, including the work of the Evergreen Vision Strategy, the Evergreen-East Hills Vision Strategy (EEHVS) planning process, the Strong Neighborhood Initiative program, and the Knight Program in Community Building Evergreen-Eastridge area charrette. The total development proposed as part of the Evergreen-East Hills Vision Strategy was up to 5,700 residential units, 500,00 square feet of commercial development, and 75,000 square feet of office development in the development policy area.

Analysis: The project is within the Evergreen-East Hills Development Policy boundary/area. The project includes the construction of two single-family residences resulting in the net addition of one single-family residence. There are 138 residential units left in the residential pool, therefore, there is capacity for the additional single-family residence. The project includes a commercial parking lot totaling approximately 9,900 square feet. The commercial development capacity has not been exhausted as it has a remaining capacity of 31,556 square feet. Therefore, the commercial lot is consistent with the Policy.

The project also includes a habitat buffer and erosion control measures consistent with the Evergreen-East Hills Development Policy.

- 6. Design Guidelines.** The project consists of three land uses: commercial parking lot, residential, and open space. Therefore, the project was reviewed against the Commercial Design Guidelines, the Single-Family Design Guidelines, and the recommendations made by the project biologist.

Analysis: Per the Commercial Design Guidelines, commercial parking lots are

discouraged to provide access from or to an otherwise intact residential street and should be separated from the residential street by a masonry wall placed at the prevailing setback line. As recommended by the Commercial Design Guidelines, the subject commercial parking lot will be separated and screened from the residential uses with either a masonry wall or wooden fence and dense shrubs. Furthermore, the commercial parking lot will not provide access to or from an intact residential street. Perimeter landscaping, per the Guidelines, should be landscaped to provide parking lot screening. As such, the subject parking lot will be bordered by existing and new trees and the repaved driveway entrance will align with the public street improvements and compatible landscaping.

The Single-Family Design Guidelines consist of three primary considerations: neighborhood patterns, elements of building design, and relationships to adjacent properties.

The two new single-family residences are consistent with the character of the adjacent single-family homes in the Mousa Court subdivision. Specifically, the two new single-family homes are two stories with attached garages, low to medium-pitched roofs and framed/covered entries which are aesthetically harmonious with the character, massing, and scale of the adjacent residential use.

Because the residential use is in proximity to Thompson Creek, setbacks and specific interventions are required per the Live Oak Associates, Inc. Biological Technical Study dated March 12, 2020, and as outlined below.

- *100 feet between the Thompson Creek drip line of riparian vegetation or top of bank, whichever is greater, and any portion of the new development including roads and buildings.*
- *The Riparian Setback area may be used for an earthen berm serving as a small detention basin, to the satisfaction of the Director of Planning, Building and Code Enforcement, and Public Works.*
- *The basin shall be set back at least 35 feet from the edge of the riparian corridor.*
- *The riparian setback and open landscape areas adjacent to it shall be treated as an amenity and landscaped in a manner that is consistent with riparian vegetation recommended in the Live Oaks Biological Report dated March 12, 2020 (i.e. *Elymus triticoides*, *Baccharis salicifolia*, etc.).*
- *The detention basin shall be comprised of earthen berms that are composed of compacted soils and not have the appearance of being engineered (i.e., straight edged or non-undulated banks).*

7. Environmental Review.

Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is found to be exempt

from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303 New Construction or Conversion of Small Structures, Class 3, covers the construction of up to three single-family residences in an urbanized area. The subject project includes the rezoning of an existing parcel and the construction of two single-family residences in a residential area of the Evergreen-East Hills. CEQA Guidelines Section 15301 Existing Facilities, Class 1, covers operation, repair and maintenance or minor alteration of existing public or private structures and facilities. The existing unpermitted commercial parking lot would be repaved, striped and landscaped.

The environmental analysis determined that none of the exemption exceptions contained in Section 15300.2 (including Location, Cumulative Impact, Significant Effect, Scenic Highways, Hazardous Waste Sites, or Historical Resources) apply to the project. The project is located in an urbanized area and all project buildings will be located outside the 100-foot riparian setback. The project, which would have temporary construction impacts and result in a net increase of one unit, was not found to have a cumulative impact on the environment. The project does not have any unusual circumstances and the site is not located near a designated scenic resource or on any list compiled pursuant to Section 65962.5. The project would not adversely impact a historical resource.

FINDINGS

The City Council concludes and finds, based on the analysis of the above facts, that:

1. **Conformance with the Subdivision Ordinance and the Subdivision Map Act.** In accordance with San José Municipal Code (SJMC) Section 19.12.130, the City Council may approve the tentative map if the City Council cannot make any of the findings for denial in Government Code Section 66474, and the City Council has reviewed and considered the information relating to compliance of the project with the California Environmental Quality Act and determines the environmental review to be adequate. Additionally, the City Council may approve the project if the City Council does not make any of the findings for denial in San José Municipal Code Section 19.12.220. San José Municipal Code Section 19.12.130 incorporates the findings for denial in Section 66474 of the Government Code, as set forth below.
 - a. The City Council finds that the proposed subdivision shown on the Tentative Map, subject to the conditions listed below and the requirements for project design and improvements is consistent with applicable General and Specific Plans of the City of San José, in that:

Analysis: As discussed in detail above, the project is consistent with the General Plan.
 - b. The City Council has considered the proposed subdivision shown on the Tentative Map, with the imposed conditions, to determine whether to make any of the

findings set forth in the subsections of Section 66474 of the Government Code of the State of California which states "A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it 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 is 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. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

Analysis: As described above, the City Council of the City of San José does not make any such findings to deny the subject subdivision. The tentative map and the development's design are consistent with the Envision San José 2040 General Plan, as discussed above. The site is physically suitable for the project development in that the tract meets the minimum 5,445 square foot residential lot size and 9,919-square foot commercial lot size consistent with the area. The property is in two different flood zones given its length. Although this property is shown to be within a Federal Emergency Management Agency (FEMA) 100-year floodplain, Flood Zone A, the locations of the two single-family residences and commercial parking lot are in Flood Zone D, which is not a designated 100-year floodplain. Flood zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements

for Flood Zone D. The project site will be developed with a 100-foot setback from the riparian corridor in adherence with the Santa Clara Valley Habitat Plan and to minimize adverse impacts to natural habitat for either fish or wildlife. The project site is located within 50 feet from the top of bank of Thompson Creek and is therefore subject to the Guidelines and Standards for Land Use Near Streams that includes design requirements and recommendations for land-use activities in order to protect stream resources. With the implementation of these Guidelines and Standards and the required 100-foot setback from the riparian corridor, the subject subdivision and subsequent improvements are not likely to cause serious public health problems.

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 Tentative Map.** Per Section 19.12.230, should the Subdivider fail to file a timely and valid appeal of this 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 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 Tentative Map.
2. **Expiration of the Tentative Map.** This Tentative Map shall automatically expire 30 months from and after the date of issuance hereof by the Director of Planning of the City of San José. The date of issuance is the date this Tentative Map is approved by the City Council.
3. **Conformance to Plans.** Development shall conform to the approved Tentative Map plans entitled "Tentative Parcel Map" dated April 25, 2019 and revised June 10, 2020, 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 Tentative Map Plan Set."
4. **Compliance with Subdivision Ordinance.** The final map shall comply with all of the

- requirements for final maps in Chapter 19.16 of the San José Municipal Code and shall show and contain all of the data required by San José Municipal Code Section 19.16.110.
5. **Conformance with Other Permits.** The subject Tentative Map conforms to and complies in all respects with the Planned Development Permit File No. PD19-018 on which such Tentative Map is based. Approval of said Tentative Map shall automatically expire with respect to any portion of the lands covered by such 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.
 6. **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.
 7. **Improvement Contract.** In the event Subdivider has not completed the improvements required for the subdivision at the time the final map is presented for approval, Subdivider shall enter into a subdivision improvement agreement with the City of San José, in accordance with Section 19.32.130 of the San José Municipal Code, and provide the improvement security and insurance required therein.
 8. **Public Use Easements.** Subdivider shall dedicate on the final map for public use easements for public utilities, emergency access, open space, streets, pedestrian ways, sanitary sewers, drainage, flood control channels, water systems, and parking in and upon all areas within the subdivision shown on the Tentative Map for the subdivision to be devoted to such purposes.
 9. **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 Final Map. Such easements so conveyed shall be shown on the Final 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.
 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. PD19-018 has expired and all appeals have been exhausted.
 11. **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 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.

12. **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.
13. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Tentative Map shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
14. **Parkland Dedication Ordinance.** This development is subject to the requirements of 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 contained within the parkland dedication ordinance and the associated Fees and Credit Resolutions. Prior to approval of the Final Map or final building permits for this development, the Subdivider shall enter a parkland agreement with the City to the satisfaction of the Director of Public Works in order to fulfill the requirements of the Parkland Dedication Ordinance.
15. **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 (PD19-018).
16. **Revocation, Suspension, Modification.** This Tentative Map is subject to revocation, suspension or modification for violation of any of its provisions or condition.

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

EFFECTIVE DATE

The effective date of this Tentative Map shall be the same effective date of the Planned Development Rezoning Ordinance for File No. PDC19-022 passed for publication on _____, 2020 (the "Planned Development Zoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

APPROVED and issued this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

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.



January 23, 2020
HMH 5423.11.270
Page 1 of 1

EXHIBIT "A"
FOR PD REZONING & PD PERMIT PURPOSES

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

BEGINNING at a railroad spike in the center line of dry creek and San Felipe Road at the southeasterly corner of that certain parcel of land described in the deed from Bank of America National Trust and Savings Association, a National Banking Association, to Matto Colacicco, et ux, dated August 28, 1942 recorded October 15, 1942 in Book 1112 of Official Records, page 470, Santa Clara County Records; running thence North 37°11' West along the said center line of dry creek and San Felipe Road 84.06 feet to a nail; thence leaving said last named line and running South 79°40' West and parallel with the southerly line of the land so described in the deed to Matto Colacicco, et ux, 652.80 feet to the center line of a dry creek; thence along said center line South 76°40' East 186.83 feet to a point on the southern line of the land so described in the deed to said Matto Colacicco, et ux, running thence North 79°40' East along said last named line 519.65 feet to the point of beginning.

Containing 43,965 square feet or 1.01 acres, more or less.

As shown on Exhibit "B" attached hereto and made a part hereof.

END OF DESCRIPTION

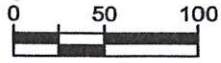
For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

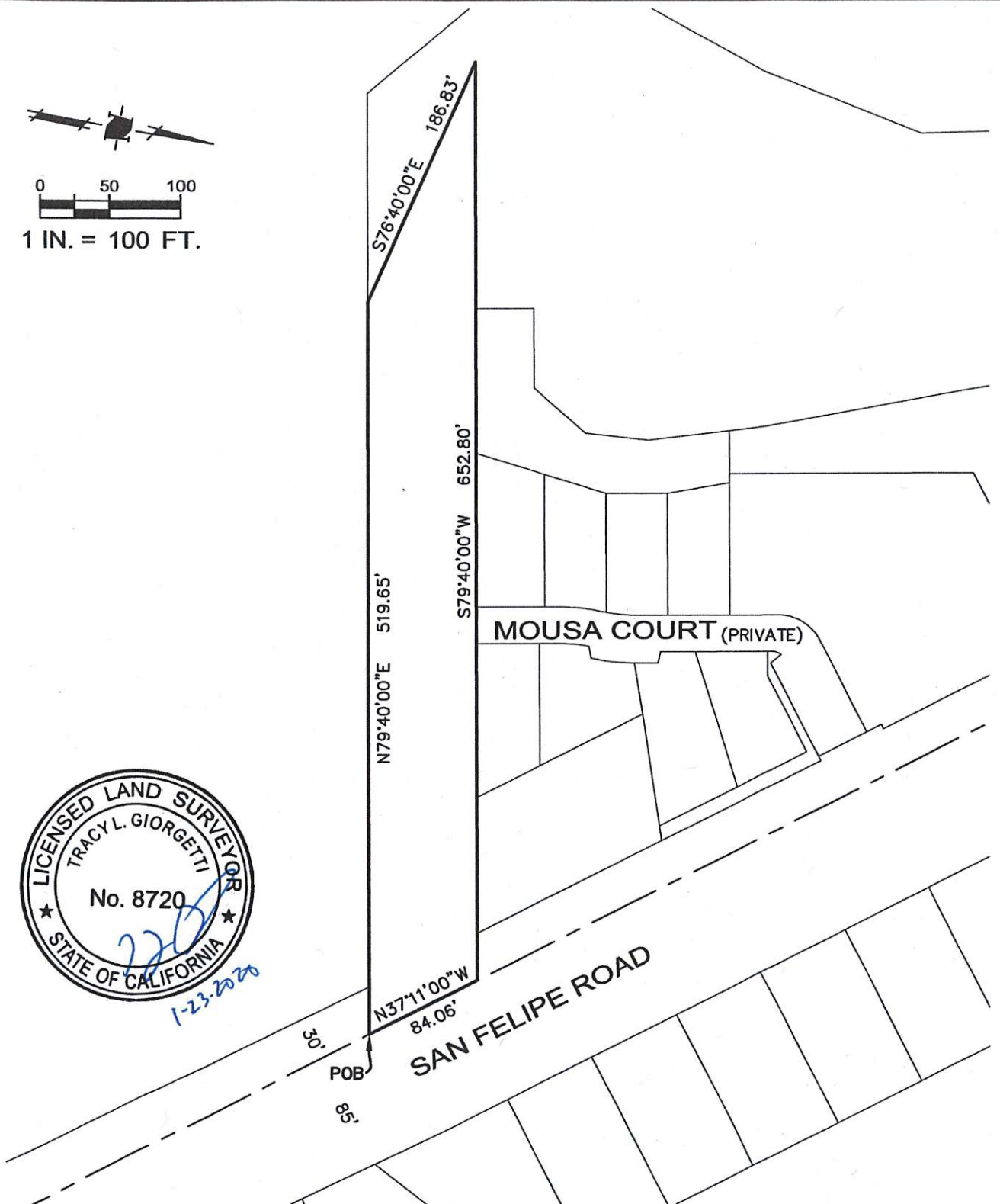
Date: 1.23.2020


Tracy L. Giorgetti, LS 8720





1 IN. = 100 FT.



LEGEND

POB POINT OF BEGINNING

SHEET 1 OF 1

Date:	2020-01-23
Designed:	-
Drawn:	RF
Checked:	TC
Proj. Engr.:	-
542311PL01	



1570 Oakland Road (408) 487-2200
 San Jose, CA 95131 HMMHca.com

EXHIBIT "B"
 PLAT TO ACCOMPANY DESCRIPTION:
 FOR PD REZONING & PD PERMIT PURPOSES

SAN JOSE

CALIFORNIA