

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A VESTING TENTATIVE MAP TO SUBDIVIDE A 1.0-GROSS-ACRE LOT INTO NINE LOTS, INCLUDING SEVEN SINGLE-FAMILY RESIDENTIAL LOTS AND TWO PRIVATE STREET LOTS, LOCATED ON THE EAST SIDE OF CAMDEN AVENUE BETWEEN MALAPAS DRIVE AND CANNA LANE (APN: 567-26-014)

FILE NO. PT21-002

WHEREAS, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on June 29, 2021, a concurrent application (File No. PT21-002) was filed by applicant Dal Properties, on behalf of the owner Kelsey Family Trust, for a Vesting Tentative Map to subdivide a 1.0-gross-acre lot into nine lots, including seven single-family residential lots and two private street lots, together with concurrent Planned Development Zoning and Planned Development Permit applications for the development of seven single-family detached residences located on the east side of Camden Avenue between Malpas Drive and Canna Lane (APN: 567-26-014, the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A", entitled “Legal Description,” which is 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 December 7, 2022, 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 "Vesting Tentative Map for Camden Avenue," dated April 29, 2022, which is on file in the Department of Planning, Building and Code Enforcement and available for inspection by anyone interested; said plan is attached hereto and made a part hereof by this reference as if fully set forth herein;

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

The foregoing recitals are hereby incorporated into the body of this Resolution, and 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 subject property is vacant and located on the east side of Camden Avenue, between Malpas Drive and Canna Lane (APN: 567-26-014). The access to the site will be from two private streets from Camden Avenue.

The surrounding land uses include single-family attached residences to the north, Guadalupe Creek riparian corridor to the east and south, and a commercial strip

shopping center to the west, across Camden Avenue, with two-family residences (duplexes) beyond.

The approximately one-acre site is within the 300-foot Guadalupe Creek riparian corridor and is, therefore, subject to City Council Riparian Policy, as discussed further below. The property consists of a levelled vacant lot with minimal vegetation cover. The property has a continuous six-foot-high chain link fence along the eastern edge maintained by Valley Water, which creates a physical separation between the riparian corridor and the subject Camden property. The proposed development requires a street dedication for public right-of-way improvements, approximately 27 feet to 31 feet wide, along its western property line fronting Camden Avenue. The total net square footage of the subject parcel after deducting street dedication area would be approximately 0.76 acres.

A conventional rezoning for the subject 1.0-gross acre site from the A Agricultural Zoning District to the R-2 Two-Family Residence Zoning District was adopted (Resolution No. 30198) by the City Council on December 11, 2018.

- 2. Project Description.** The project consists of a Planned Development Permit to allow the construction of seven single-family detached residences, on an approximately 1.0-gross acre site.

In conjunction with the Planned Development Permit, the project also includes a Planned Development Rezoning, File No. PDC21-019, and a Vesting Tentative Map, File No. PT21-002. The Planned Development Rezoning would rezone the site from the R-2 Two-Family Residence Zoning District to the R-2(PD) Planned Development Zoning District, and the Vesting Tentative Map subdivides 1.0-gross acre site from one lot into 9 lots, including 7 single-family residential lots and two private street lots.

- 3. Envision San José 2040 General Plan and Stevens Creek Boulevard Urban Village Plan Consistency.**

Land Use

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 for established, single-family residential neighborhoods. The Residential Neighborhood designation typically provides for a density of up to 8 dwelling units per acre (DU/AC), but also allows projects to match the existing neighborhood character if greater than 8 DU/AC.

In order for new infill development to establish a unique character as defined by density, lot size and shape, where 50% or more of the development on the same block (both sides of the street) is developed at a density greater than 8 DU/AC, new development can match the prevailing density. For any new infill project to exceed 8 DU/AC, it is necessary that: (1) other policies in this the General Plan are met, (2) applicable design guidelines are met, and (3) development does not exceed 16 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: The subject site abuts a planned residential development (townhomes) to the north at a density of 12 DU/AC. The parcels across Camden Avenue to the west, behind the commercial shopping center (at Malpas Drive and Canna Lane intersection), are developed with two-family homes (duplexes) with an average density of 13.3 DU/AC.

At 0.76 net acres (removing the private street acreage) the project could be developed with up to nine units. The project is proposing seven units at 9.2 DU/AC, which would be consistent with the prevailing density at 12 DU/AC of the adjacent neighborhood.

The project is consistent with the General Plan policies and Council Policy on Riparian Corridor Protection and Bird-Safe Design, the project is also consistent with applicable Single-Family Design Guidelines discussed below and the development does not exceed prevailing density at 12 DU/AC, and therefore consistent with the density requirement of up to maximum 16 DU/AC per the General plan land use designation of Residential Neighborhood.

General Plan Policies

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

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

Analysis: The project includes seven single-family detached homes and is generally consistent with the surrounding land uses but requires specific development standards to meet the allowed density allowed by the General Plan, including reduced lot area and width and reduced setbacks, that would not be possible with the standard R-2 Two-Family Residence Zoning District while also being compatible with the character and appearance of the adjacent residential development. The base zoning of the R-2 (PD) Planned Development Zoning District supports compatibility with the surrounding single-family and two-family residential neighborhoods.

The rezoning would allow proposed infill development at 9.2 DU/AC on the site which

would be compatible with the higher density townhome development (12 DU/AC) to the north, higher intensity commercial uses across Camden Avenue, with two-family residential development (13.3 DU/AC) beyond. The adjacent lands to the east and south are undevelopable due to the Open Space General Plan designation.

4. Zoning Ordinance Consistency

The project is in the **R-2 Two Family Residence Zoning District**.

The project includes a rezoning from the R-2 Two Family Residence Zoning District to the R-2(PD) Planned Development Zoning District.

Land Use

The rezoning from R-2 to R-2 (PD) Planned Development Zoning District would allow for specific development standards that differ from those required by the R-2 Two-Family Residence Zoning District. The proposed rezoning would allow reduced lot sizes and setbacks to support higher density allowed per General Plan, as discussed above, to construct seven detached single-family residences.

Development Regulations

Below is a comparison of the R-2 Two-Family Residence Zoning District per Section 20.30.200, the proposed R-2(PD) Planned Development Zoning District development standards, and project compliance with those standards.

The project includes seven *detached* single-family homes on seven separate lots.

Standard	R-2 Zoning District Requirements	R-2(PD) Planned Development Zoning District Development Standards	Project Compliance with R-2(PD) Zoning District Standards
Minimum Lot Area	5,445 square feet	2,800 square feet	2,850 square feet minimum
Minimum Front Setback	15 feet	Five feet	Five feet minimum
Minimum Side Setback (interior)	5 feet	Three feet	Three feet minimum
Minimum Side Setback (from private street)	12.5 feet	12 feet	12 feet minimum
Minimum Rear	25 feet	13 feet	13 feet minimum

Setback			
Maximum Height	35 feet	35 feet	29 feet maximum
Parking	Two spaces per three-bedroom unit	Two covered spaces per unit	Two covered spaces per unit (18 spaces)

Analysis: As shown on the Planned Development Permit Plan Set for File No. PD21-006, the project conforms with the minimum lot sizes and all proposed setbacks, height and parking standards of the R-2(PD) Planned Development Zoning District Development Standards.

5. Riparian Corridor Protection and Bird Safe Design Policy

The Riparian Corridor Policy (Council Policy 6-34, the Riparian Policy”) is for the protection, preservation and restoration of the riparian habitat. The Riparian Policy provides general guidelines for riparian corridor protection and requires a minimum 100-foot setback from a riparian corridor’s top of bank or riparian vegetative edge to minimize intrusion into the riparian corridor. The Riparian Policy also allows reductions to the 100-foot setback to be made on a case-by-case basis. For example, sites with unique geometric characteristics or disproportionately long riparian frontages; or where the project implements measures that better protect and enhance riparian values than a 100-foot setback would, may be allowed a reduced setback.

The subject property borders the riparian corridor along its east side adjacent to Guadalupe Creek. The Biological Evaluation Technical Report dated September 15, 2021, by qualified biologist, Live Oak Associates Inc., delineates the subject property’s full 100-foot riparian setback area to be 0.57 acres. The remaining area would be inadequate to allow the permitted density of seven single-family detached residences on the subject site, particularly given the substantial Camden Avenue right-of-way dedication.

The project’s Biological Evaluation Technical Report includes analysis of the Riparian Policy and indicates that based on a review of the technical information and observations at the subject property and its vicinity, the reduced setback of 50 feet would not result in a biological impact to the adjacent riparian area. Exceptions to the 100-foot setback requirement are allowed by the Riparian Policy for the various situations. Exceptions applicable to the project include:

- a. Urban infill locations where most properties are developed and are located on parcels that are equal to or less than one (1) acre.

Analysis: The development will be on a parcel equal to 0.76 net acre after street

dedication.

- b. Sites with unique geometric characteristics and / or disproportionately long riparian frontages in relation to the width of the minimum Riparian Corridor setback.

Analysis: This condition is applicable as the site has an elongated triangular shape, with the longest side adjacent to the riparian corridor. If the full 100-foot riparian setback were applied, approximately 0.18 acre of the net project site after street dedication would be available for development.

- c. The extent to which meeting the required setback would result in demonstrable hardship (i.e. denies an owner any economically viable use of the land or adversely affects recognized real property interest).

Analysis: The subject property is vacant. The new development proposes a 50-foot reduced setback from top of bank of Guadalupe Creek. There is no reasonable alternative for the proposed project that avoids or reduces the encroachment into the 100-foot riparian setback area. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties. The proposed residential uses are not fundamentally incompatible with the riparian habitats. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the setback area. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

Additionally, the project cannot be built within the 100-feet of the riparian corridor without a setback exception approval from the City of San José and from the Santa Clara Valley Habitat Agency (SCVHP).

Condition 11 of the SCVHP provides requirements for “Stream and Riparian Setbacks,” which requires that new covered projects adhere to setbacks from creeks, streams, and associated riparian vegetation to minimize and avoid impacts from covered projects on riparian vegetation, as discussed under Sections 3.2.6 and 3.2.7 of the Biological Evaluation Technical Report by Live Oak Associates Inc. As the project site is within the City’s Urban Service Area and the site does not possess a 30% or greater slope, required stream setbacks measured from the top of the stream bank are required to be at least 35 to 100 feet depending on the category of the stream. Setbacks for Category 1 streams are at least 100 feet. The Guadalupe Creek is a Category 1 stream; therefore, development is required to maintain a 100-foot setback, without an exception request.

With the granting of a riparian setback exception, the project could have a stream setback of 35 feet. To obtain a Condition 11 Exception for a 35-foot stream setback, the project applicant will need to demonstrate the following:

- 1) The existence of legal uses within the setback;
- 2) The extent to which meeting the required setback would result in a

demonstrable hardship (i.e., denies an owner any economically viable use of his land or adversely affects recognized real property interests) for the applicant;

- 3) The extent to which meeting the required setback would require deviation from, exceptions to, or variances from other established policies, ordinances or standards regarding grading, access, water supply, wastewater treatment, disposal systems, geologic hazards, zoning, or other established code standards.
- 4) The stream setback exception does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

Analysis: The site would be accessed from Camden Avenue via private streets. The proposed development would have a riparian setback of 50 feet from the top of bank of Guadalupe Creek and at least 35 feet from the outer dripline of riparian vegetation. As documented in the analyses provided in the Biological Evaluation Technical Report (attached to staff report), the residential development and associated Habitat Mitigation and Monitoring Plan (HMMP) is a legal use, enforcement of the standard 100-foot stream setback would render the site economically infeasible and would be inconsistent with the intended density under the site's General Plan land use designation and zoning district and implementation of the HMMP would advance the biological goals and objectives of the Habitat Plan. Therefore, the project would qualify for a Condition 11 Exception request and would be consistent with all applicable conditions on covered activities within the Habitat Plan area. The project includes additional riparian landscaping within the 0.25-acre riparian setback area and includes a five-year monitoring plan. This landscaping project will be implemented in conformance with a Habitat Mitigation and Monitoring Plan that has been prepared for the site. The Biological Evaluation Technical Report recommended measures are further discussed and included in the Initial Study / Mitigated Negative Declaration prepared for the project.

- 6. Subdivision Ordinance Consistency.** Vesting Tentative Maps must be consistent with Title 19 – Subdivisions of the San José Municipal Code. The project is analyzed for consistency with the Subdivision Ordinance below:

Chapter 19.36 – Design Requirements

Section 19.36.180 – The Director of Planning, Building and Code Enforcement (the “Director”) may permit the reduction of the six thousand square foot minimum lot area prescribed in Section 19.36.170 of all or some of the lots in a proposed subdivision if the director shall, in the exercise of reasonable judgment, deem such reduction advisable in view of the character of the neighborhood in which the subdivision is to be located, the quality or kinds of development to which the area is best adapted, the size,

use or physical or other conditions of the property proposed to be subdivided, neighborhood and general planning, or safety and general welfare of the public and of the lot owners in the proposed subdivision, provided that in no event shall any lot contain a minimum area of less than five thousand square feet.

Analysis: The project is required by this section to have a minimum lot size of 5,000 square feet pursuant to Section 19.36.170; however, the adjacent neighborhood to the north of the site is developed with townhomes on smaller lot sizes at a density of 12 DU/AC, and hence the proposed development is justified having a minimum lot size of 2,800 square feet and developed with a Planned Development Zoning development standards.

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

- 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-acre vacant lot into 9 lots, for 7 single-family detached residences and two private streets, the Director 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 subject property is physically suitable for the project and proposed intensity in that single-family residential density at 9.2 DU/AC would be supported. Furthermore, the subject property does not contain historic resources and is within the 300-foot Riparian Corridor, but the development will maintain a minimum 50-foot reduced setback from the top-of-bank of the Guadalupe Creek and will not have a significant impact to sensitive habitats or wildlife, per the

submitted Biological Evaluation Technical Report prepared by Live Oak Associates, Inc., dated September 15, 2021.

The site is not located within a designated Federal Emergency Management Agency 100-year flood plain. The subject property is currently vacant with no trees and does not provide a natural habitat for either fish or wildlife. Multiple improvements to the pedestrian and bike network and right-of-way easement dedication measures are required to be implemented as conditions of approval, such as construction of half-street along the Camden Avenue project frontage to include asphalt pavement, curb, gutter, and 12-foot-wide detached sidewalk with minimum 4-foot by 6-foot-wide park strip and minimum 5-foot pedestrian through zone. The project will be required to provide a monetary contribution for the future Class IV protected bikeway along the Camden Avenue project frontage per the San Jose Better Bike Plan 2025.

8. Public Outreach

To inform the public of the project, staff followed City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the subject property and posted on the City's website. An on-site sign describing the project was posted along the frontage of the subject property. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

9. 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. 2022080655) for the Camden Avenue Residential Project in compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines (California Code of Regulations §15000 et. seq.) and the regulations and policies of the City San José, California. 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 July 22, 2022, to August 10, 2022, and three comments were received during the public review period. One of the comment letters was from the Valley Water, in which Valley Water requested a clarification to the Initial Study as to where Valley Water property is in relation to the subject property. Valley Water also requested that various policy and guideline information be added to the IS/MND. The Santa Clara Audubon Society provided a comment letter and requested certain clarifications be added for the protection of birds, and that certain General Plan policies be added. Pacific Gas and Electric ("PG&E") also provided a comment letter to clarify that there are PG&E facilities within the proposed project's right-of-way, and that coordination with PG&E for any relocation of these facilities must be performed by the applicant. The IS/MND, including responses to comments received during the public review period, can be found at the following link: Camden Avenue Residential

Project | City of San Jose (sanjoseca.gov).

The IS/MND identified relevant mitigation measures for potential impacts to air quality during construction, nesting birds and biological resources, hazards and hazardous materials from past agricultural uses on the site, and for construction-related noise and vibration. 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, prehistoric and historic resources, 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 Resolution. The Initial Study concluded that the 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.

In accordance with the findings set forth above, a Vesting Tentative Map to subdivide 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 subdivision 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 subdivision approved 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. The date of issuance is the date this Vesting Tentative Map is approved by the City Council.
3. **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 3.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 to the director for a one-year extension at any time before the initial time period set forth in 3.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 3.c.i. through 3.c.iii., above, the rights referred to herein shall continue until the expiration of that permit, or any extension of that permit.

4. **Conformance to Plans.** The development of the site shall conform to the approved plans entitled, "Vesting Tentative Map Camden Avenue," dated April 29, 2022, 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 Vesting Tentative Map Plan Set."
5. **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.
6. **Conformance with Other Permits.** The subject Vesting Tentative Map conforms to and complies in all respects with the Planned Development Permit File No. PD21-006 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.
7. **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.
8. **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.
9. **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.
10. **Conveyance 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 inure to, all successors in interest to the affected real property.

- 11. Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Subdivider shall constitute acknowledgement of receipt of notice by Subdivider 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.
- 12. Housing Conditions of Approval.** The Subdivider has submitted an Affordable Housing Compliance Plan Application ("Plan") and processing/application fees. Subdivider will provide four dwelling units reserved for Low-Income Households (as defined by CA Health and Safety Code 50079.5). The four units include attached single-family lots 1, 2, 6 and 7. Homes are approved under 5.08.610 F and therefore are waived from 5.08.470 F.
- a. The Subdivider must execute and record their City Affordable Housing Agreement memorializing the IHO obligations against the property and any contiguous property under common ownership and control prior to earliest of: issuance of any building permits, or approval of any final map.
 - b. Subdivider must strictly comply with each requirement of the approved Affordable Housing Compliance Plan, the Affordable Housing Agreement, and any other applicable requirements of the IHO.
 - c. No building permit may issue until the Affordable Housing Agreement is recorded against the property. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
 - d. Temporary Certificate of Occupancy, Certificate of Occupancy, and Notice of Completion for any units shall be issued in accordance with all requirements of the IHO and Affordable Housing Agreement.
- 13. 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.

14. **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.
15. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, state, and federal laws.
16. **Conformance to Mitigation Monitoring and Reporting Program.** This Project shall conform to all applicable requirements of the Mitigation Monitoring and Reporting Program (MMRP) approved for this development by City Council Resolution No. _____.
19. **Standard Environmental Conditions.** The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
 - a. **Air Quality**
 - i. Water active construction areas at least twice daily or as often as needed to control dust and emissions.
 - ii. All trucks hauling soil, sand, and other loose material shall be covered and all trucks shall 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. Check all equipment by a certified mechanic and record a determination of 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.** The trees removed by the project shall be replaced according to tree replacement ratios required by the City as provided in Table 3.4 2 below. Three non-native ordinance-size trees onsite would be removed. Three trees shall be replaced at a 4:1 ratio. The total number and size of replacement trees required to be planted is 12 trees, and each replacement tree shall be a minimum size of 15 gallons.

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Table 1: Tree Replacement Requirements				
Diameter of Tree to be Removed¹	Type of Tree to be Removed²			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
12.1 inches or more ³	5:1	4:1	3:1	15-gallon container
6.1 – 12.1 inches	3:1	2:1	None	15-gallon container
Less than 6.1 inches	1:1	1:1	None	15-gallon container

¹ As measured 4.5 feet above ground level
² x:x = tree replacement to tree loss ratio
³ Ordinance-sized trees

Notes: Trees greater than or equal to 12.1 inches in diameter 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 Tree Removal Permit is required for removal of trees of any size.

A 38-inch tree is 12.1 inches in diameter.
 1 24-inch box tree = 2 15-gallon trees.

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

- 1) The size of a 15-gallon replacement may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
 - 2) Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance with the City Council approved Fee Resolution. The City will use the following off-site tree replacement fee(s) to plant trees at alternative sites.
- ii. **Santa Clara Valley Habitat Plan.** The project is subject to applicable Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The Subdivider shall submit the Santa Clara

Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building, and Code Enforcement or Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of grading permits. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

- c. **Cultural Resources.** 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 Subdivider 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 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:
- i. 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.
 - ii. The MLD identified fails to make a recommendation; or
 - iii. 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. Prior to issuance of any site-specific grading or building permits, a design-level geotechnical investigation shall be prepared and submitted to the City of San José Public Works Department for review and approval. The project shall implement the recommendations in the investigation to minimize impacts from expansive soils. Options to address these conditions may range from removal of the problematic soils and replacement, as needed, with properly conditioned and compacted fill, lime treat soils, and to design and construct improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements.
 - vii. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, 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 Subdivider shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning, Building and Code Enforcement or Director's designee
- e. **Hydrology and Water Quality.** Measures shall be implemented to prevent stormwater pollution and minimize potential sedimentation during construction, including, but not limited to, the following:
- 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 covered and all trucks shall 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 remove mud from truck tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
 - ix. The Subdivider 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.
- f. **Noise.** Pursuant to General Plan Policy EC-1.7, project construction operations shall use best available noise suppression devices and techniques including, but not limited to the following:
- i. Pile Driving is prohibited.
 - ii. Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses if the project's solid sound wall and good neighbor fence are not constructed first.
 - iii. Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good conditions 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 businesses, 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 will 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.
- g. Interior Noise.** The Subdivider shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. The Subdivider shall conform with any special building construction techniques requested by the City’s Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.
- 20. Bureau of Fire Department Clearance for Issuing Permits.** Prior to the issuance of any Building Permit, the project must comply with the California Fire Code as adopted or updated by the City.
- 21. Building Division Clearance for Issuing Permits.** Prior to the issuance of any Building permit, all the requirements shall be met to the satisfaction of the Chief Building Official as described in the Planned Development Permit (PD21-006).
- 22. Public Works Clearance for 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 Public Works conditions as described in the Planned Development Permit (PD21-006).
- 23. Revocation, Suspension, Modification.** This Vesting 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 Vesting Tentative Map Permit to subdivide the subject property for said purpose specified above, subject to conditions, is hereby **approved**.

ADOPTED this ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk



EXHIBIT "A"
FOR REZONING PURPOSES

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of Property Two as described in the Grant Deed recorded April 25, 2000, in Document No. 15224632 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the northeasterly corner of said Property Two;
Thence along the northerly line of said Property Two; North 89°40'04" West, 203.12 feet to the easterly line of Camden Avenue (formerly Hicks Road, Los Gatos-Almaden Road and Harwood Road);

Thence along said easterly line the following two courses:

1. southerly, along a non-tangent curve to the right, having a radius of 1,008.00 feet, whose center bears North 87°58'43" West, through a central angle of 10°34'24" for an arc length of 186.02 feet;
2. Thence South 00°19'56" West, 188.87 feet to the southeasterly line of said Property Two;

Thence along said southeasterly line, the following three courses:

1. northeasterly, along a non-tangent curve to the right, having a radius of 866.50 feet, whose center bears South 61°03'35" East, through a central angle of 16°39'16" for an arc length of 251.87 feet;
2. Thence along a reverse curve to the left, having a radius of 108.50 feet, through a central angle of 33°07'50" for an arc length of 62.74 feet;
3. Thence along a reverse curve to the right, having a radius of 416.50 feet, through a central angle of 17°29'42" for an arc length of 127.18 feet, to the POINT OF BEGINNING.

Containing 1.01 acres, more or less.

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

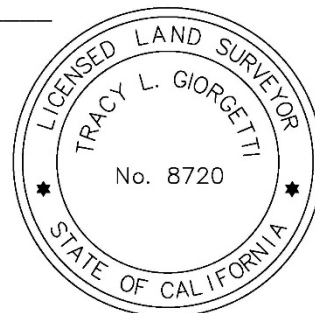
END OF DESCRIPTION

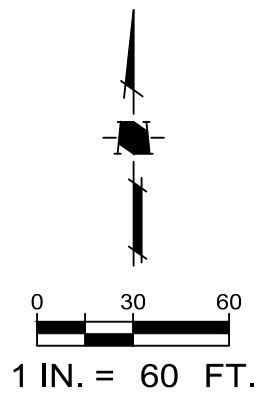
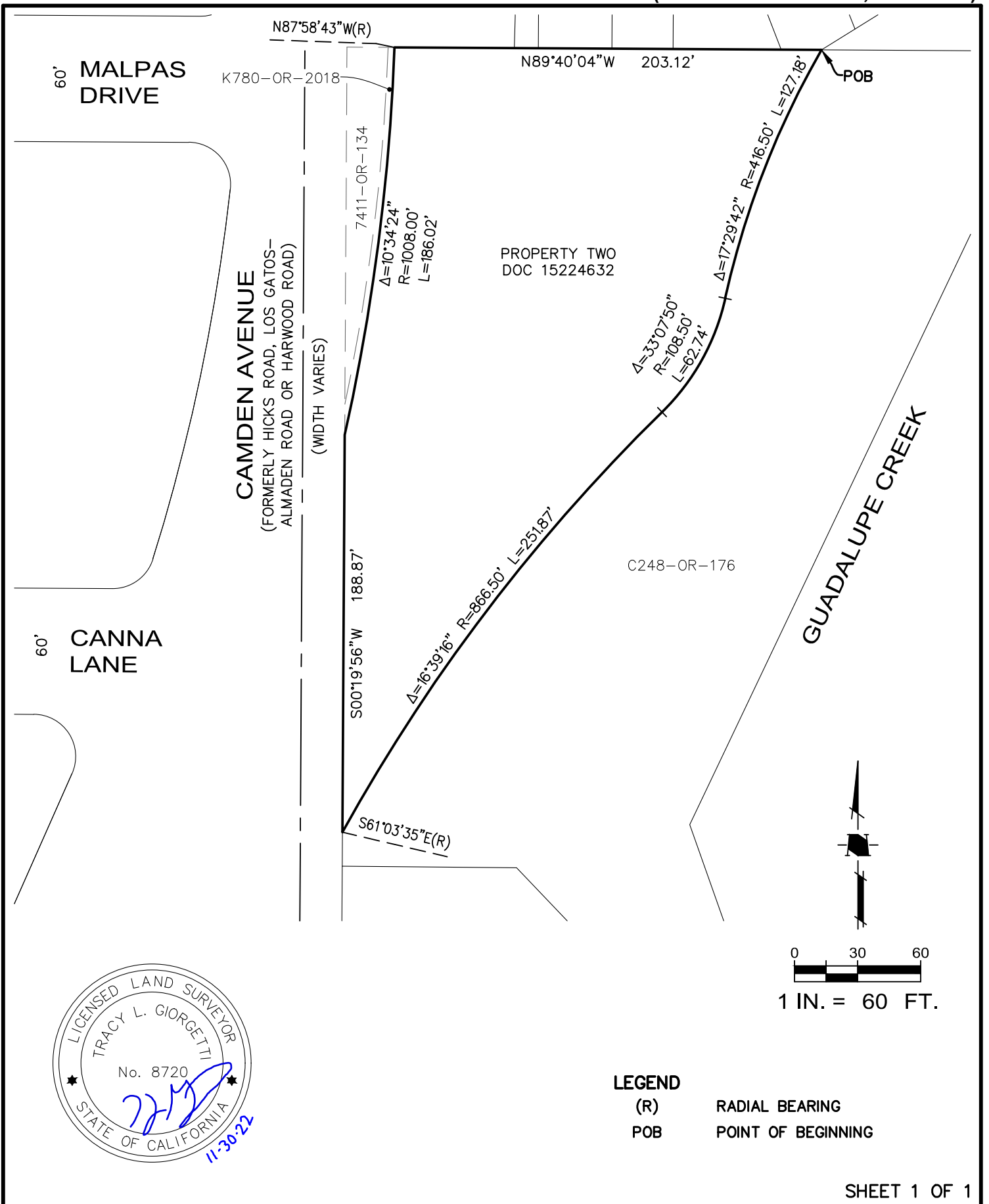
For assessment or zoning purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

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

Date: 11-30-22


Tracy L. Giorgetti, LS 8720





LEGEND
 (R) RADIAL BEARING
 POB POINT OF BEGINNING

SHEET 1 OF 1

Date:	2022-11-30
Designed:	-
Drawn:	DAW
Checked:	RF
Proj. Engr.:	-
591400PL01	

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

EXHIBIT "B"
PLAT TO ACCOMPANY DESCRIPTION:
FOR REZONING PURPOSES

SAN JOSE CALIFORNIA