

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING, SUBJECT TO CONDITIONS, A VESTING TENTATIVE MAP TO MERGE THREE PARCELS INTO ONE AND SUBDIVIDE INTO THIRTY-TWO PARCELS AND UP TO 590 CONDOMINIUM UNITS ON AN APPROXIMATELY 13.05-GROSS-ACRE SITE SITUATED ON THE NORTH SIDE OF BERRYESSA ROAD, APPROXIMATELY 1,100 FEET WESTERLY OF LUNDY AVENUE (1655 BERRYESSA ROAD)**

**FILE NO. PT21-030**

**WHEREAS**, pursuant to the provisions of Chapter 19.12 of Title 19 of the San José Municipal Code, on June 28, 2021, a concurrent application (File No. PT21-030) was filed by the owner and applicant Robert Facchino of Terracommercial Real Estate Corp for a Vesting Tentative Map to merge three parcels into one and subdivide into thirty-two parcels and up to 590 condominium units on an approximately 13.05-gross-acre site, on that certain real property situated in the R-M(PD) and CP(PD) Planned Development Zoning Districts and located on the north side of Berryessa Road, approximately 1,100 feet westerly of Lundy Avenue (1655 Berryessa 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,” titled “Plat Map,” 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 May 10, 2023, 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 Master Tentative Tract Map PT21-030 Lands of Facchino", dated November 28, 2022, 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 and findings regarding this proposed project:

**1. Site Description and Surrounding Uses.** The Project Site is located at the north side of Berryessa Road, approximately 1,100 feet westerly of Lundy Avenue (1655 Berryessa Road). The approximately 13.05-gross acre site is currently developed with one light industrial building (9,740 square feet) and surface parking lot, constructed in 1975. Existing access to the site is from one ingress/egress driveway along Berryessa Road. The project scope includes connecting the public rights-of-way of adjacent streets that currently terminate at the project site, including Shore Drive, Mercado Way, and De Rome Drive, and will create new public rights-of-way, including Bernardo Drive and a portion of Perlo Drive. The remaining portion of Perlo Drive and newly created Facchino Way will be private streets.

To the north, west, and east across the Bay Area Rapid Transit (BART) tracks of the project site are single-family and multifamily residential uses. The Berryessa Flea Market site is located to the south of the project site, across Berryessa Road.

**2. Project Description.** The project consists of a Planned Development Permit to establish a Master Plan for a general site layout, public and private street layout, grading and drainage patterns, and utility layout to allow the future construction of up to 455,000-square feet of commercial space, an approximately 0.92-gross-acre park, and up to 850 residential units, including on-site affordable units, and construction of the first phase (Blocks A, B, and C, including 24 detached single family homes and 24 attached townhome units), including the demolition of an existing light industrial facility (9,740 square feet) and surface parking lot, and the removal of 47 ordinance-size trees and 56 non-ordinance-size trees on the Project Site; and the Vesting Tentative Map would merge three parcels into one and subdivide into thirty-two parcels and up to 590 condominium units on the Project Site, an approximately 13.05-gross acre site, located at the north side of Berryessa Road, approximately 1,100 feet westerly of Lundy Avenue (1655 Berryessa Road).

The project would also connect the public rights-of-way of adjacent streets that currently dead-end into the project site, including Shore Drive, Mercado Way, and De Rome Drive, and will create new public rights-of-way, including Bernardo Drive and a portion of Perlo Drive. The remaining portion of Perlo Drive and newly created Facchino Way will be private streets.

In conjunction with the Planned Development Permit, the project also included a Planned Development Rezoning, File No. PDC18-036, and a Vesting Tentative Map, File No. PT21-030. The Planned Development Rezoning would rezone the site from the LI Light Industrial and A Agricultural Zoning Districts to the R-M(PD) and CP(PD) Planned Development Zoning Districts and to establish a General Development Plan with site-specific development standards that would be applied to the development of the site, and this

Vesting Tentative Map would merge three parcels into one and subdivide into thirty-two parcels and up to 590 condominium units on the Project Site.

**3. Envision San José 2040 General Plan and Berryessa BART Urban Village Plan Consistency.** The project the site is partially designated as Mixed-Use Neighborhood along the western and northern property lines, Transit Employment Center facing Berryessa Road, and Urban Residential for the remainder of the site within the Envision San José 2040 General Plan Land Use/Transportation Diagram Map and is located within the Facchino District of the BBUVP.

The BBUVP is a Regional Transit Urban Village. The following is a summary and analysis of the requirements for each designation:

#### Mixed-Use Neighborhood

For new development, the Mixed-Use Neighborhood designation is applied to specific areas in the Facchino district only. The goal of the Plan is to concentrate planned growth in District areas, which results in mid- and high-density residential development in most Districts. In the Facchino District, the limited residential uses under the Mixed-Use Neighborhood designation will serve as a transitional buffer between the mid-density residential in the District and the adjacent single-family residential neighborhoods. This transitional buffer will minimize the height impacts of tall residential buildings on adjacent homes. The Mixed-Use Neighborhood designation has an allowable residential density of up to 30 DU/AC.

*Analysis: This 2.06-gross-acre area comprises Blocks A, B, and C, and is proposed with 24 single-family residences and 24 townhomes. This is estimated to be approximately 23.3 DU/AC and is **consistent** with the land use designation, which allows up to 30 DU/AC. As part of this approval, Planned Development Permit PD21-009 would allow the construction of these 48 units in the first phase of the Master Plan. The units proposed in Phase 1 would serve as a transitional buffer between the existing residences and the higher intensity uses toward the center of the project and along the BART tracks.*

#### Transit Employment Center

Within this Urban Village plan, the Transit Employment Center designation is applied to areas within walking distance of the Berryessa/North San José BART Station, which are envisioned for intensive job creation. Uses allowed in this designation include retail and service commercial uses on the first two floors, office, research and development (R&D), as well as other supportive commercial uses such as personal services. In particular, this Village Plan envisions types of businesses with high employee densities that would place a premium on being adjacent to the BART Station and would support BART ridership. Flex office space with large floor plate formats that are highly adaptable to current or future decentralized employment needs is highly desirable. Overall, the focus on the Transit Employment designation in the Berryessa BART Urban Village is high-density

employment growth, typically associated with office uses. Therefore, office/R&D uses are the only industrial uses that are allowed in this Urban Village.

The Transit Employment Center designation generally supports the desired urban form and development intensities of each District that has this designation. The range of commercial FAR for the Facchino District is 3.0 to 5.0 FAR, supporting between 288,000 and 480,000 square feet of space approximately. Minimum commercial FARs are envisioned to be implemented on a building basis, excluding parking (both surface and parking garage), roads, and public right-of-way. Additional flexibility in maximum FARs is allowed, provided that future development shape the desired urban form in each District, focusing on the development of towers on key locations.

*Analysis: This area is comprised of Block I along the Berryessa Road frontage of the project site. Pursuant to the Berryessa BART Urban Village Plan, a minimum 3.0 FAR of job-generating commercial use was implemented as a requirement to create jobs at the site, which is likely to generate a greater number of jobs than the previous light industrial use at existing site. This area is proposed with approximately 280,000 to 455,000 square feet of commercial medical office use over 2.09-gross-acres. This would result in approximately 3.0 to 4.0 FAR.*

*This is **consistent** with the land use designation. A future Planned Development Permit would be required to develop Block I, consistent with the General Development Plan of the Planned Development Zoning, File No. PDC18-036.*

#### Urban Residential

The Urban Residential designation allows for scaling-down building heights towards low-density residential neighborhoods. The Urban Residential designation is most appropriate for the residential character of the Facchino District. This land use designation will enable a transition between medium-density residential and the adjacent single-family homes to the north and west. Urban Residential will also allow compatibility with the commercial development fronting Berryessa Road and the new high-density residential on the district's western boundary.

Urban Residential is envisioned in this Village Plan to support mid-rise multifamily residential uses preferably, including mixed-use residential with ground-floor neighborhood-serving commercial uses or other community amenities. However, the General Plan generally allows commercial uses under Urban Residential, so this Village Plan would also allow 100% commercial projects that support transit ridership, such as coworking space, cultural activities, or community services to nearby residents. The Urban Residential land use designation in the Berryessa BART Urban Village supports a residential density that ranges from 75 to 250 DU/AC in the Facchino District. For context, the minimum density of 75 DU/AC supports the development of approximately 320 units and the maximum density of 250 DU/AC supports the development of approximately 1,062 units, using the area designated as Urban Residential in the land use plan. For

condos and for-sale residential the Plan allows a density range of 95-100 DUs considering the larger size of those units.

*Analysis: This area is comprised of Blocks D, F, G, and H of the project site. The multifamily residential portion of the project site proposes approximately 567 units over approximately 4.66-acres. This calculates to approximately 121.7 DU/acre and is **consistent** with the requirements of the land use designation. These blocks provide a transition from the adjacent single-family homes and townhome units to the north and west into higher-density multifamily units and provides a transition into the high-intensity commercial use fronting Berryessa Road to the south. Future Planned Development Permits will be required to develop these sites to be consistent with the General Development Plan of the Planned Development Zoning, File No. PDC18-036.*

### **Berryessa BART Urban Design Guidelines – All Districts**

Block Size Standards – Per Table 5-1, Section B, the maximum block size is 2.3 acres with a maximum length of 450 feet.

*Analysis: The largest block within the project is 2.3 acres with a length of 437.5 feet. The project is consistent with this requirement.*

### **Berryessa BART Urban Design Guidelines – Facchino District**

Setbacks and Height – The project is located within the Facchino District of the Urban Village Plan. Per Table 5-1 and Policy 1A-DS of the Berryessa BART Urban Village Plan, the following are the setback and height requirements for Blocks A, B, and C of the Facchino District for the first phase of the project, as proposed under Planned Development Permit, File No. PD21-009. All other blocks will require future PD permits to establish consistency findings with the Urban Village Plan.

<b>Development Standard</b>	<b>Required by Berryessa BART Urban Village Plan</b>	<b>Provided by Project</b>
Front Setback	Table 5-1: Maximum 6 feet	Townhome – Maximum 6 feet Single-Family – Maximum 6 feet
Side Setback	Policy 1A-DS-4: Maximum 5 feet from existing residential areas	Townhome – N/A Single-Family – 4 feet
Rear Setback	Policy 1A-DS-3: Minimum 20 feet	Townhome – 20 feet Single-Family – 20 feet
Height	Policy 1A-DS-1: Maximum 40 feet where adjacent to single-family homes	Maximum 38 feet

*Analysis: The project is consistent with the setback and height requirements of the Urban Village Plan per the table above. The side setback for the townhomes is listed as “N/A” not applicable, since the townhomes do not have a side setback adjacent to the existing residences, only a rear setback.*

**4. Zoning Ordinance Consistency.** The project includes a rezoning from the LI Light Industrial and A Agricultural Zoning Districts to the R-M(PD) and CP(PD) Planned Development Zoning Districts, including the establishment of a General Development Plan and site-specific Development Standards that would be applied to the development of the site. The surrounding residential uses are primarily zoned A(PD) Planned Development, and the Berryessa Flea Market use to the south is zoned CP(PD) Planned Development.

#### Land Use

The R-M Multiple Residence base zoning district for the R-M(PD) Planned Development Zoning District supports the development of land for the construction, use and occupancy of higher density residential development and higher density residential-commercial mixed-use development.

The CP Commercial Pedestrian base zoning district for the CP(PD) Planned Development Zoning District supports pedestrian-oriented retail activity at a scale compatible with the residential neighborhood to the south, supports mixed residential/commercial development where appropriate, and is designed to support the commercial goals and policies of the general plan in relation to Urban Villages. This CP(PD) Planned Development Zoning District also supports intensive pedestrian-oriented commercial activity and development consistent with general plan urban design policies.

*Analysis: The R-M base zone is applied to the areas of the Project Site intended for single-family, townhome, and multifamily residential use, and the uses are consistent with the allowed uses of the base zone and the General Development Plan of the Planned Development Zoning. Similarly, the CP base zone is applied only to the area of the project site intended for high-intensity, pedestrian-oriented commercial use, which is consistent with the allowed land uses of the base zone and the General Development Plan of the Planned Development Zoning.*

#### Development Regulations

##### **Phase 1 – Blocks A, B & C (24 Single-Family Homes and 24 Townhomes)**

Below is a comparison of the R-M Multiple Residence Zoning District and the project’s R-M(PD) Planned Development Zoning District development standards. The uses within the CP(PD) Planned Development Zoning District will require a future Planned Development Permit to provide consistency findings for the development. Per Section 20.60.040.B of the Zoning Code, when a Planned Development permit has been implemented, the

provisions of the permit prevail over the regulations of the base district zoning of the property. In this case, the PD Permit is only applicable to Phase 1 of the project.

#### Residential Lot Standards

The table below is an analysis of the residential lot standards of the R-M Zoning District and the development standards of the PD Zoning per PDC18-036:

<b>Lot Standard</b>	<b>R-M Multiple Residence Zoning District Requirements</b>	<b>R-M(PD) Planned Development Zoning District Development Standards</b>	<b>Provided by Project</b>
Detached Single-Family Minimum Lot Area	6,000 square feet	2,160 square feet	2,170 square feet
Detached Single-Family Minimum Lot Width	55 feet	35 feet	35 feet

#### Setbacks and Height

Per the analysis in Section 3 above, the setbacks for the single-family and townhome residences and the building height requirements are consistent with the BBUVP. However, additional setback requirements are included in the General Development Plan, as follows:

- Maximum side setback for a corner lot: 14 feet
- No maximum setback for lots adjacent to BART tracks

*Analysis: The side setbacks for the single-family homes within Block A are typically four feet to the property line. This allows for the intended dense neighborhood and is similar to the existing single-family residence setbacks surrounding the project site. The single-family homes within Block B have an eight-foot and twelve-foot corner side setbacks, consistent with this requirement. The townhomes within Block C have a seven-foot and five-foot corner side setback, also consistent with the requirement. Therefore, the setbacks in Blocks A through C are consistent with the BBUV Plan per Section 3 above and the additional setback regulations within the Development Standards of PDC18-036, as shown in the table above.*

#### Vehicle Parking:

On December 6, 2022, City Council approved an update to the City's Parking Ordinance. This update eliminated minimum parking requirements citywide and established

Transportation Demand Management (TDM) requirements, effective April 10, 2023. The applicant had the option of either complying with the new parking ordinance or the parking ordinance in effect when the application was submitted. The applicant is consistent with the parking ordinance that was effective at the time of application submittal and the PD Zoning standards per PDC18-036. The following table shows a comparison of the parking standards of the Zoning Code, and the parking requirements of the CP(PD) Planned Development Zoning District development standards:

Parking	Zoning Code	R-M(PD) Planned Development Zoning District Development Standards	Provided by Project
Single-Family Residences	Per Table 20-190, minimum 2 covered spaces	No change	48 garage spaces (two covered spaces per unit)
Townhomes	Per Table 20-210, Minimum 2 spaces per two-bedroom Minimum 2.2 spaces per three-bedroom	Minimum two covered spaces per unit	48 garage spaces (two covered spaces per unit)
<b>Total Residential Parking Required and Provided</b>			<b>96 spaces</b>

*Analysis: The project site and all units are located within ½ mile of the Berryessa BART Station, as well as VTA Bus Routes 61, 70, 77, and Rapid 500. The R-M(PD) Planned Development Zoning District provides parking ratios consistent with the reductions allowed by the Zoning Code. The rezoning allows the project to reduce the amount of land dedicated exclusively to parking, as well as encourage transit ridership at the nearby transit station.*

#### Bicycle Parking

The General Development Plan of PDC18-036 states, "Bicycle parking shall be provided as required per Title 20 of the San José Municipal Code, as may be amended. No bicycle parking is required for townhome units with two covered parking spaces." Per Table 20-190 of the Zoning Code, no bicycle spaces are required for single-family residences with a garage. Per Table 20-210, one bicycle space per four units is required for townhome residential buildings, resulting in six spaces required. However, due to the Development Standard of the PD Zoning, no bicycle spaces are required for the townhome units.

*Analysis: No bicycle parking is required or provided with the first phase of the project. The project is consistent with the bicycle parking requirements.*

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

Chapter 19.36 – Design Requirements

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

*Analysis: All lots have direct pedestrian and vehicular access to a public street, with the exception of the 24 townhomes within Block C (Lot 23), which will have vehicular access via a private drive, which Public Works has deemed to meet the requirement for access.*

Section 19.36.220 – All lots fronting on a major street shall have a minimum depth of 20 feet.

*Analysis: Block I (Lot 22) along Berryessa Road is approximately 288 feet in depth and is consistent with this requirement.*

**6. City Council Policy Consistency**

Under City Council Policy 6-30, the project is considered to be a large development. Large development projects are required to provide Early Notification by website, email, postcard mailed to property owners and tenants within a 1,000-foot radius, and by on-site signage. Following City Council Policy 6-30, an on-site sign has been posted at the site since March 15, 2021 to inform the neighborhood of the project. A community meeting was held to discuss the project on August 12, 2021 via Zoom webinar. Approximately six members of the public were in attendance for the meeting. There was one member of the public who spoke during the meeting, and he was in support of the project. Public Notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

**7. California Environmental Quality Act.**

The City of San José, as the Lead Agency, prepared an Environmental Impact Report (EIR) (State Clearinghouse No. 2021070467) for the Planned Development Rezoning, Planned Development Permit, and Vesting Tentative Map (PDC18-036, PD21-009, and PT21-030), for the Berryessa Mixed Use Project in compliance with the requirements of the California Environmental Quality Act (CEQA). The EIR was circulated from August 11, 2022, through September 26, 2022, and seven comment letters were received during the public review period. Concerns were raised in the public comments, including air

quality, noise, wetlands, and consistency with the general plan and Berryessa BART Urban Village Plan (BBUVP). The EIR, including responses to comments received during the public review period, can be found at the following link: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/berryessa-road-mixed-use-development>

The EIR identified relevant mitigation measures for potential impacts to air quality during construction and operation, nesting birds and biological resources, cultural resources, hazards and hazardous materials from past 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, tree replacement, 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. Applicable mitigation measures are included in the Mitigation Monitoring and Reporting Program (MMRP) prepared for the project, and both the mitigation measures and standard permit conditions are made a part of the resolution of this permit. The EIR concluded that the project would not result in any significant and unavoidable environmental impacts with implementation of identified mitigation measures.

**8. Tree Removal Findings.** Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Live Tree Removal Permit for ordinance-size trees. Findings are made for the project based on the findings related to General Plan, Zoning Ordinance and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the resolution.

- a. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question

*Analysis: A total of 103 trees will be removed to accommodate the project. These include 47 ordinance-size trees and 56 non-ordinance-size trees, including one native tree, that are distributed within the footprint of the project development. The trees will be required to be replaced at the City-required ratio, as shown in the table below (Tree Replacement Ratios).*

*As described below, a total of 299 required replacement trees at 15-gallon size or 150 trees at 24-inch box size will be required as replacement trees. Pursuant to the project landscaping plan, the development would plant a total of 18 replacement trees at 15-gallon size and 53 trees at 24-inch box size (equivalent to 106 15-gallon trees), which is less than the City's Tree Replacement ratios. The applicant will therefore be required to pay in-lieu fees for the remaining 175 trees prior to issuance of a Building Permit or*

*Grading Permit, in accordance with the approved City Council Fee Schedule. The reason for the discrepancy is because this project will be removing trees for all phases of the project, but is only constructing the first phase, and therefore only planting trees for the first phase at this time.*

Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
x:x = tree replacement to tree loss ratio				
Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size.				
A 38-inch tree equals 12.1 inches in diameter.				
A 24-inch box tree = two 15-gallon trees				

*Per Sheet L2 of the Plan Set, of the 47 ordinance-size trees to be removed, one is a native Coast Live Oak and will be required to be replaced at a ratio of 5:1, totaling 5 replacement trees. The other non-native ordinance trees to be removed include species Mexican Fan Palm, Peruvian Pepper, and Red Ironbark, and will be required to be replaced at a ratio of 4:1, totaling 184 replacement trees.*

*Of the 56 non-ordinance trees to be removed, 54 are sized between 19 and 38 inches in circumference, and the remaining two trees are less than 19 inches in circumference. All of the non-ordinance sized trees are non-native. Species to be removed include Italian Cypress, Tree of Heaven, and Chinese Hackberry. The replacement ratios are 2:1 for the trees 19-38 inches in circumference, and 1:1 for all trees proposed to be removed less than 19 inches in circumference, for a total of 110 replacement trees.*

**9. Vesting Tentative Map Findings.** In accordance with San José Municipal Code (SJMC) Sections 19.12.130 and 19.12.220 and California Government Code Section 66474, the Director of Planning, Building, and Code Enforcement of the City of San José, 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 proposed subdivision, a Vesting Tentative Map to merge three parcels into one and subdivide up to thirty-two lots and up to 590 condominium units on the approximately 13.05-gross acre site, the Director of Planning, Building, and Code Enforcement of the City of San José does not make any such findings to deny the subject subdivision. The project is consistent with the General Plan and Urban Village Plan goals, policies, and land use designation, as analyzed in Section 3 above. The Urban Village land use designation allows for higher-intensity projects. The project site is physically suitable for the project and proposed intensity in that mixed-use commercial/residential development is allowed up to 250 du/ac. Furthermore, the project site does not contain historic resources or sensitive habitats or wildlife.*

*Additionally, the site is not located within a designated Federal Emergency Management Agency (FEMA) 100-year flood plain. The project site, as well as the surrounding area, are currently developed with structures and do not provide a natural habitat for either fish or wildlife. The proposed subdivision and subsequent improvements are not likely to cause serious public health problems. The project will be required to dedicate a twenty-foot-wide sidewalk along Stevens Creek Boulevard and a 12-foot-wide sidewalk along Albany Drive, with street trees along both street frontages.*

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

the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Vesting Tentative Map.** Per Section 19.12.230, should the Subdivider fail to file a timely and valid appeal of this Vesting Tentative Map within the applicable appeal period, such inaction by the Subdivider shall be deemed to constitute all of the following on behalf of the Subdivider:
  - a. Acceptance of the Vesting Tentative Map by the Subdivider; and
  - b. Agreement by the Subdivider to be bound by, to comply with, and to do all things required of or by the Subdivider pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 19 applicable to such Vesting Tentative Map.
2. **Expiration of Vesting Tentative Map.** This Vesting Tentative Map shall automatically expire 30 months from and after the date of issuance hereof by the City Council of the City of San José. 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 Master Tentative Tract Map PT21-030 Lands of Facchino," dated November 28, 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. PD21-009 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. **Homeowner's Association and/or Maintenance District.** A Homeowner's Association or Maintenance District shall be established for maintenance of all common areas, including but not limited to, private streets, pedestrian walkways, easements, landscaping, and landscaping in the public right-of-way that is not already in a maintenance district. The Permittee shall provide to the Homeowners Association a copy of the Vesting Tentative Map Permit, the accompanying Plan Set, any approved Amendments or Adjustments to the Development Permit, and a complete set of approved building and all improvement plans within 30 days of completion of each construction phase.
  8. **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.

9. **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.
10. **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.
11. **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.
12. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José - Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José - Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
13. **Housing Conditions of Approval.** Inclusionary Housing Ordinance Requirements for Mixed Use Developments.

- a. Prior to earliest of: approval of any parcel or final map or issuance of any building permits, the permittee must execute and record their Affordable Housing Agreement memorializing the IHO obligations against the property, any other property required for the satisfaction of the compliance option selected in the Plan, and record the Affordable Housing Agreement or a City covenant against contiguous property under common ownership and control. No building permit may issue except consistent with the requirements of the IHO and the proposed Plan to fulfill the affordable housing obligations.
- b. Permittee 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 or its guidelines and submit any additional or updated documents requested by the Housing Department in connection with the satisfaction of the compliance option selected in the Plan.
- c. Permittee must strictly comply with the following conditions:
  - i. The security should be either a City performance bond (by a California licensed surety) or a letter of credit using the City forms.
  - ii. The Developers will be required to record the IHO agreement prior to the recording of the parcel map, and it will include the following conditions:
    - 1) The entire market rate obligation for in-lieu security is due for the entire market rate project prior to the first Certificate of Occupancy for the first unit. The amount of the fee security should be based on the current fiscal year fee when the security is provided. Alternatively, the market rate phase 1 obligations for in-lieu security could be due for the entire market rate project prior to the first C of O for the first phase 1 unit and with the same conditions applying to phase 2. The amount of the fee security should be based on the current fiscal year fee when the security is provided.
    - 2) The fees would be refundable to the payor upon the financing closing and the building permit issuance for the 697-unit restricted affordable project. If this does not occur within five (5) years of the 1st Certificate of Occupancy for the first phase 1 market-rate unit, then the fees would go to the City for the in-lieu obligation.
    - 3) No building permit should issue for Phase 3 except in accordance with the affordability restrictions for that site.
    - 4) Required minimum standards and amenities.
- d. No Temporary Certificate of Occupancy, Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the IHO, its guidelines and the Affordable Housing Agreement are met.

14. **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.
15. **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 Jose Municipal Code) or the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose 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.
16. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
17. **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. [REDACTED].
18. **Standard Environmental Conditions.** 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 Standard Environmental conditions as described in the Planned Development Permit (PD21-009).
19. **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 Public Works conditions as described in the Planned Development Permit (PD21-009).
20. **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 is hereby approved.

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ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
MATT MAHAN  
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.*



EXHIBIT "A"  
FOR ZONING PURPOSES

**Parcel One**

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Parcels 1 & 2 and a portion of Parcel 3 as described in the Gift Deed recorded July 7, 2005, in Document No. 18456695 of Official Records, Santa Clara County Records, described as follows:

BEGINNING at the westerly corner of said Parcel 3;  
Thence along the southwesterly line of said Parcel 3, South 37°13'17" East, 854.86 feet, to Point A designated hereon;  
Thence North 48°50'52" East, 39.25 feet;  
Thence along a tangent curve to the right, having a radius of 190.00 feet, through a central angle of 06°39'07" for an arc length of 22.06 feet;  
Thence North 55°30'00" East, 65.11 feet;  
Thence along a tangent curve to the left, having a radius of 210.00 feet, through a central angle of 02°43'16" for an arc length of 9.97 feet;  
Thence North 52°46'43" East, 195.70 feet;  
Thence along a tangent curve to the left, having a radius of 60.00 feet, through a central angle of 65°35'57" for an arc length of 68.70 feet;  
Thence North 75°57'13" East, 1.51 feet, to the general westerly line of the Parcel of Land described in the Grant Deed recorded May 17, 2012, in Document No. 21671768 of Official Records, Santa Clara County Records;  
Thence along said general westerly line the following four courses:  
1. Thence North 14°02'47" West, 847.79 feet;  
2. Thence westerly, along a non-tangent curve to the left, having a radius of 10.00 feet, whose center bears South 75°57'56" West, through a central angle of 112°43'09" for an arc length of 19.67 feet;  
3. Thence South 53°14'47" West, 10.00 feet;  
4. Thence North 36°45'13" West, 21.69 feet, to the northwesterly line of said Parcel 3;  
Thence along said northwesterly line, South 53°13'56" West, 702.67 feet, to the POINT OF BEGINNING.

Containing 10.84 acres, more or less.

**Parcel Two**

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel 3 as described in the Gift Deed recorded July 7, 2005, in Document No. 18456695 of Official Records and a portion of Parcel C as shown on that certain Record of Survey, filed for record on February 17, 1969, in Book 249 of Maps, page 1, all of Santa Clara County Records, described as follows:

BEGINNING at Point A designated above, being on the southwesterly line of said Parcel 3;

Thence North 48°50'52" East, 39.25 feet;  
Thence along a tangent curve to the right, having a radius of 190.00 feet, through a central angle of 06°39'07" for an arc length of 22.06 feet;  
Thence North 55°30'00" East, 65.11 feet;  
Thence along a tangent curve to the left, having a radius of 210.00 feet, through a central angle of 02°43'16" for an arc length of 9.97 feet;  
Thence North 52°46'43" East, 195.70 feet;  
Thence along a tangent curve to the left, having a radius of 60.00 feet, through a central angle of 65°35'57" for an arc length of 68.70 feet;  
Thence North 75°57'13" East, 1.51 feet, to the general westerly line of the Parcel of Land described in the Grant Deed recorded May 17, 2012, in Document No. 21671768 of Official Records, Santa Clara County Records;  
Thence along said general westerly line the following three courses:  
1. Thence South 14°02'47" East, 137.76 feet;  
2. Thence South 30°57'40" West, 15.38 feet;  
3. Thence South 14°01'55" East, 206.48 feet;  
Thence South 46°05'08" West, 239.78 feet, to the southwesterly line of said Parcel 3;  
Thence along said southwesterly line, North 37°13'17" West, 315.90 feet, to the POINT OF BEGINNING.

Containing 2.09 acres, more or less.

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

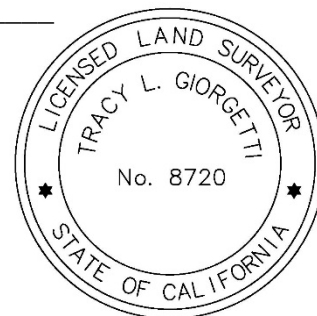
#### END OF DESCRIPTION

*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.*

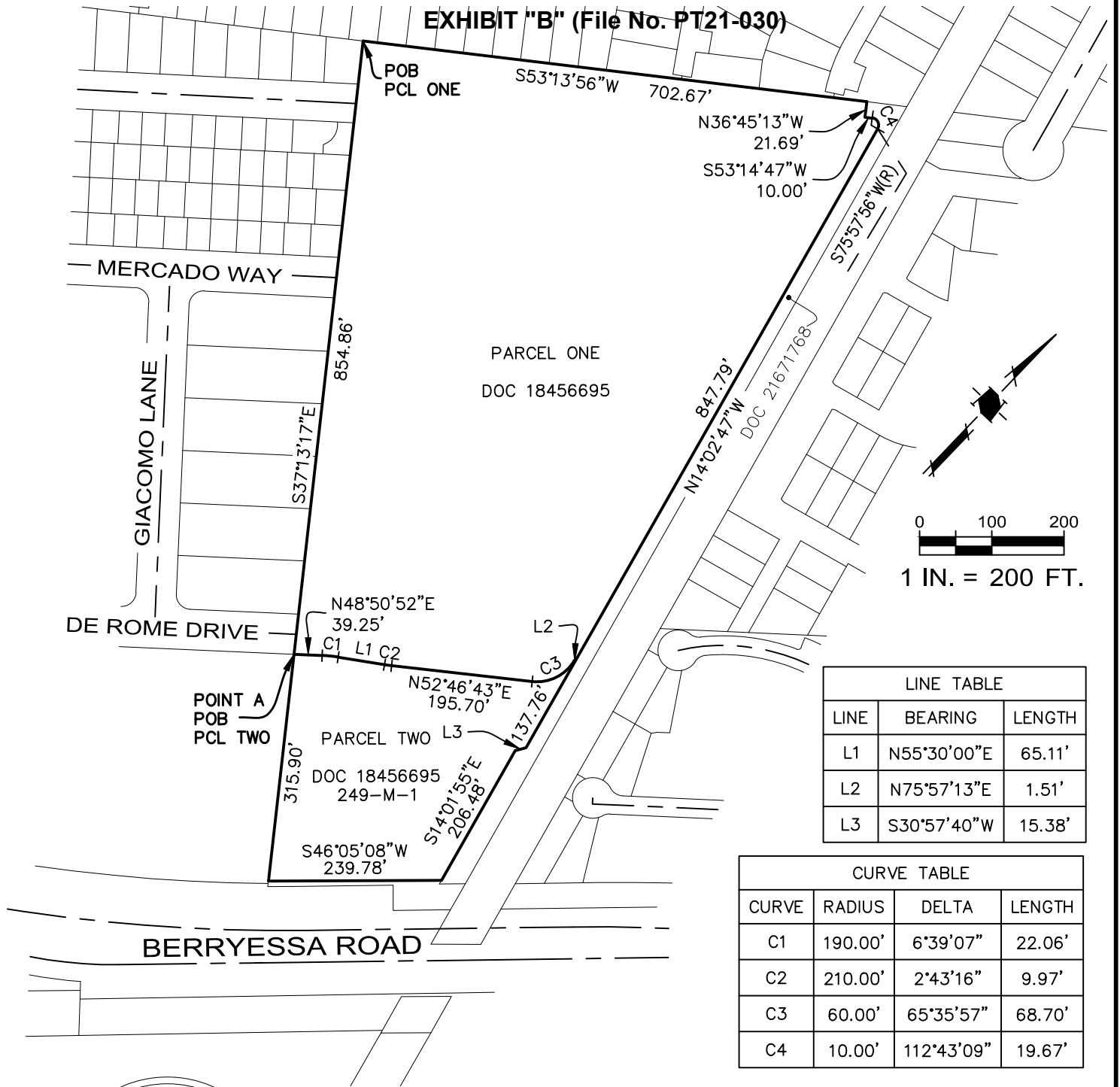
This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 4-18-23

  
Tracy L. Giorgetti, LS 8720



# EXHIBIT "B" (File No. PT21-030)



SHEET 1 OF 1

Date: 2023-04-18  
Designed: DM  
Drawn: RF  
Checked: TG  
Proj. Engr.: —  
522100PL01



SAN JOSE

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

CALIFORNIA

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.