

**PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA**

Lands of DAL Properties – San Felipe, File No. GP08-08-02 and PDC09-007.

The proposed project includes a General Plan Amendment request to change the Land Use/ Transportation Diagram designation from Very Low Density Residential (2 DU/AC) to Low Density Residential (5 DU/AC) on 9.1 acres; and a Planned Development (PD) Rezoning application and subsequent permits for a 35-unit single family detached residential development on approximately 19.13 gross acres, located on the northeasterly side of San Felipe Road, approximately 400 feet northwesterly of Silver Creek Road. The project is located in Council District: 8

California State Law requires the City of San José to conduct environmental review for all pending projects. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. Based on an initial study, the Director of Planning, Building & Code Enforcement has concluded that the project described above will not have a significant effect on the environment. The project location **does not** contain a listed toxic site.

The purpose of this notice is to inform the public of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on May 27, 2008, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **April 27, 2009** and ends on **May 27, 2009**. Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance.

The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 200 East Santa Clara Street, San José CA 95113-1905. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, at the Evergreen Branch Library, 2635 Aborn Rd. San José, CA 95121, and online at <http://www.sanjoseca.gov/planning/eir/MND.asp>

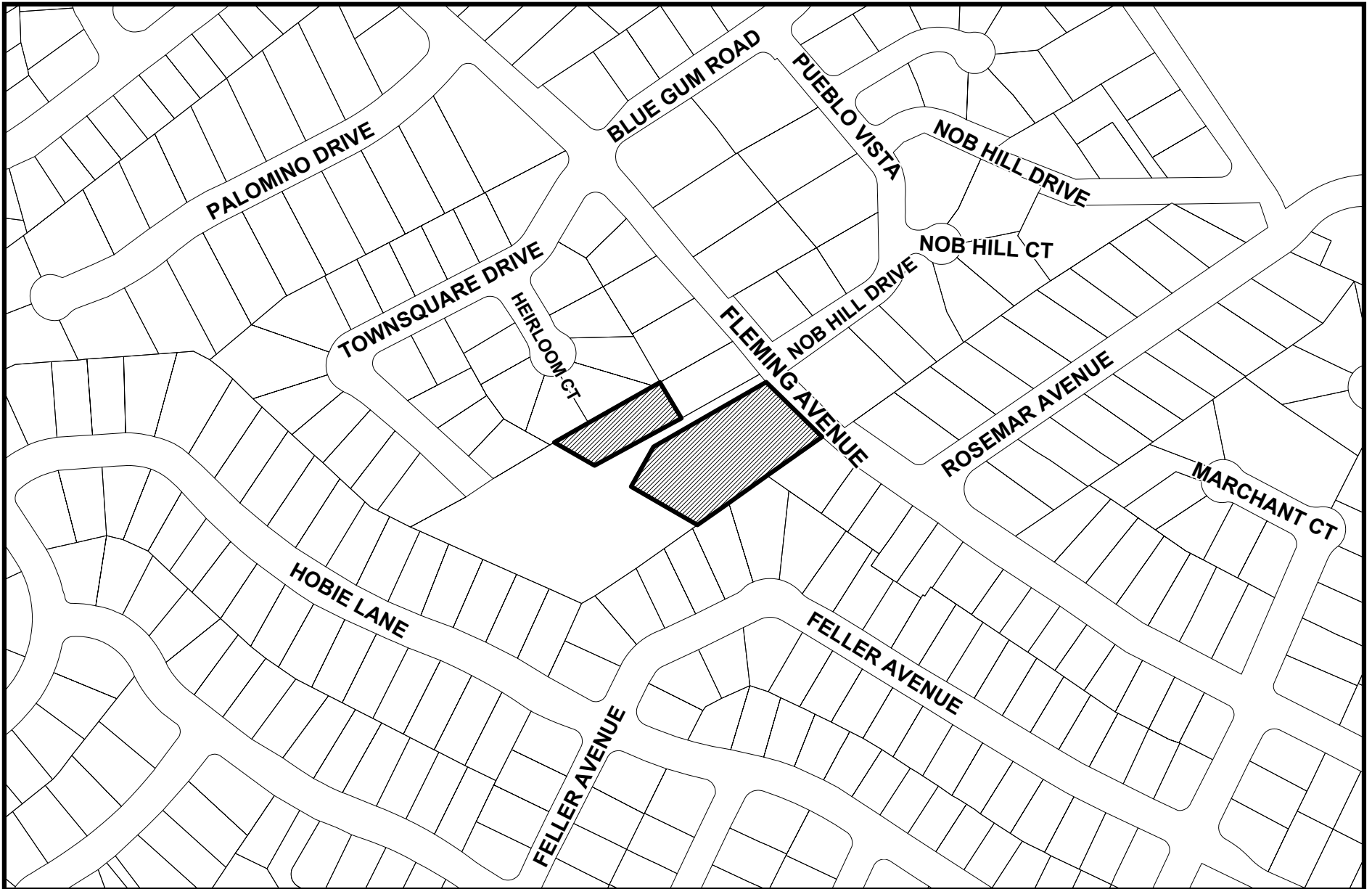
For additional information, please call Lesley Xavier at (408) 535-7852.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on: April 27, 2009

Susan Walsh
Deputy





Scale: 1"= 250'

Map Created On: 02/01/2006

Noticing Radius: 500 feet

File No: PDC06-007

District: 5

Quad No: 69

**DRAFT
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Fleming Avenue Residential Project

PROJECT FILE NUMBER: PDC06-007, Story No. 64

PROJECT DESCRIPTION: Planned Development Rezoning from Unincorporated County to A(PD) Planned Development Zoning District to allow up to 6 single-family detached residences on a 1.25 gross acre site.

PROJECT LOCATION & ASSESSORS PARCEL NO.: West terminus of Fleming Avenue and Nob Hill Drive; 601-29-006 and 601-29-008.

COUNCIL DISTRICT: 5

APPLICANT CONTACT INFORMATION: The Constructive Investment Group, 663 Walnut Street, San Jose, CA 95110. Contact: Erik Schoennauer, The Schoennauer Company, (408) 947-7774.

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

1. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
2. **AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

3. **AIR QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.

4. **BIOLOGICAL RESOURCES** –

Trees – The proposed project will obtain a permit for the removal of ordinance-sized trees and provide for the replacement of removed trees in conformance with the City of San José Tree Ordinance (“Tree Removal Controls,” Municipal Code Chapter 13.32.).

a. All trees to be removed shall be replaced at the following ratios:

Table 4.4 Standard Tree Replacement Ratios			
Diameter of Tree to be Removed	Native Tree	Non-Native Tree	Minimum Size of Each Replacement Tree
18 inches or greater	5:1	4:1	24-inch box
12 - 18 inches	3:1	2:1	24-inch box
Less than 12 inches	1:1	1:1	15-gallon container
x:x = tree replacement to tree loss ratio. Note: Trees greater than 18” diameter shall not be removed unless a Tree Removal Permit has been approved for the removal of such trees.			

The species and exact number of trees to be planted on the site will be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building, and Code Enforcement.

- b. In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
- The size of a 15-gallon replacement tree can be increased to a 24-inch box and count as two replacement trees.
 - An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement. Contact Jaime Ruiz, PRNS Landscape Maintenance Manager, at 975-7214 or jaime.ruiz@sanjoseca.gov for specific park locations in need of trees.
 - Alternatively, the replacement tree requirement may be satisfied by payment of \$300 per tree removed to “Our City Forest” non-profit organization: (408) 998-7337 or www.ourcityforest.org. These funds will be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting will be provided to the Planning Project Manager prior to issuance of a development permit.

- c. The following tree protection measures will also be included in the project in order to avoid damage to trees to be retained on site, and to the trees off-site that are near the property line:

Pre-construction treatments

- The applicant shall retain a consulting arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
- Prior to issuance of a grading permit, plans shall be revised to show fencing for all trees to be retained to completely enclose the “tree protection zone” prior to demolition, grubbing or grading. Fences shall be six foot chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction is completed.
- Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.

During construction

- No grading, construction, demolition or other work shall occur within the “tree protection zone. Any modifications must be approved and monitored by the consulting arborist.
- Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist.
- Supplemental irrigation shall be applied as determined by the consulting arborist.
- If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the “tree protection zone”.
- Any additional tree pruning needed for clearance during construction must be performed or supervised by an arborist and not by construction personnel.
- As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees shall be designed to withstand differential displacement.

Nesting Raptors, Migratory Birds, Burrowing Owls & Bats

- a. If possible, construction should be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30)

days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests.

- b. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.
- c. The developer shall have a qualified biologist conduct a survey and prepare a report not more than one month prior to construction activities to determine the presence of burrowing owls on the site. If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (March through August). Prior to the issuance of any grading or building permits, the developer shall submit a biologist's report to the City's Environmental Principal Planner to the satisfaction of the Director of Planning indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.
- d. Removal of sheds and mature trees may result in harm or injury to roosting special status bat species. A preconstruction survey shall be conducted prior to the start of demolition and or grading by a qualified biologist following CDFG protocols to ensure that no special status bat species are using the abandoned structures on site. No activities that would result in disturbance to active maternity roosts shall proceed prior to the completed surveys. Should a special status bat species be found in one of the buildings, the roof will be removed after the bats have left to forage for the night. The roof will remain off for three days and nights, and another survey shall be performed to ensure no bats remain, and which point the buildings may be removed.

5. **CULTURAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

6. **GEOLOGY AND SOILS** – The following mitigation measures must be followed:

- a. All recommendations in the project's geologic and geotechnical report, dated October 2008, must be followed.
- b. The proposed final grading and drainage plan must be reviewed and approved by the City Geologist prior to issuance of a grading permit for the project.
- c. Any changes to the geotechnical report or project must be reviewed and approved by the City's Engineering Geologist. Significant changes will require a new Geologic Hazard Clearance.

- d. All earthwork, foundations, drainage improvements, geologic hazard mitigation measures and related facilities must be inspected by the project engineering geologist and geotechnical engineer during each phase of site grading and construction, and documented by final geotechnical and geologic reports to the City.
- e. If any unanticipated hazardous geologic or subsurface conditions are encountered during grading, or if there are any modifications in the grading or geologic hazard mitigation measures, the City's Engineering Geologist must be immediately notified. In such an event, a supplemental geologic/geotechnical investigation must be performed and submitted to the City for review and approval, prior to progressing further with the project.

- 7. **HAZARDS AND HAZARDOUS MATERIALS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- 8. **HYDROLOGY AND WATER QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- 9. **LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- 10. **MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- 11. **NOISE** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- 12. **POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- 13. **PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- 14. **RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- 15. **TRANSPORTATION / TRAFFIC** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- 16. **UTILITIES AND SERVICE SYSTEMS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- 17. **MANDATORY FINDINGS OF SIGNIFICANCE** – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on _____, 2009 Tuesday, any person may:

- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San José CA 95113-1905 and include a \$100 filing fee. The written protest should make a "fair argument" based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on: 1/27/09


Deputy

Adopted on: _____

Deputy

Revised 8/26/05 JAC