

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.

PROJECT NAME: 1190 Roberts Avenue Residential Development Project

PROJECT FILE NOS.: PDC24-040, PD24-005, ER24-092

PROJECT DESCRIPTION: The project consists of a rezoning of the project site parcel, and the construction of a new residential development at 1190 Roberts Avenue. Proposed development at the project site would include construction of eight new single-family residences with private garages and on-site driveway parking spaces. The project site would include a new private residential street that would be accessible via Roberts Avenue on an approximately 1.09-acre project site.

LOCATION: The project is located on an approximately 1.09-acre site located at 1190 Roberts Avenue in San José.

ASSESOR'S PARCEL NO.: 477-11-001

COUNCIL DISTRICT: 7

APPLICANT CONTACT INFORMATION: Pan-Cal Corporation, 4125 Blackford Avenue #200, San José, CA 95117; David S. Chui, dschui@pancal.com

FINDING

The Director of Planning, Building and Code Enforcement finds the project described above would not have a significant effect on the environment if certain mitigation measures are incorporated into the project. The attached Initial Study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this Mitigated Negative Declaration (MND), has made or agrees to make project revisions that will clearly mitigate the potentially significant effects to a less than significant level.

ENVIRONMENTAL RESOURCE AREAS AND MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- A. **AESTHETICS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- B. **AGRICULTURE AND FORESTRY RESOURCES** – The project would not have a significant impact on this resource, therefore no mitigation is required.

C. AIR QUALITY

Impact AQ-1: Construction of the proposed project would expose sensitive receptors to substantial concentrations of air pollutant emissions.

MM AQ-1: Prior to the issuance of any tree removal, demolition, or grading permits (whichever occurs first), the project proponent shall provide documentation to the Director of Planning, Building and Code Enforcement or Director's designee for review and approval, demonstrating that any off-road equipment greater than 50 horsepower to be used during construction of the project shall meet United States Environmental Protection Agency Tier 4 Final emission standards, unless it can be demonstrated to the City that such equipment is not commercially available. For purposes of this mitigation measure, "commercially available" shall mean the availability of Tier 4 Final engines similar to the availability for other large-scale construction projects in the city at the same time and taking into consideration factors such as (i) potential significant delays to critical-path timing of construction and (ii) geographic proximity to the project site of Tier 4 Final equipment. Where such equipment is not commercially available, as demonstrated by the construction contractor, Tier 4 Interim equipment or Tier 3 equipment retrofitted with a California Air Resources Board's Level 3 Verified Diesel Emissions Control Strategy (VDECS) shall be used. Furthermore, all off-road equipment of 50 horsepower or less, if used, shall be fitted with a Level 3 diesel particulate filter.

MM AQ-2: Prior to the issuance of any tree removal, demolition, or grading permits (whichever occurs first), the project proponent shall submit a list of all operating equipment in use on the construction site for verification by the City of San José. The construction equipment list shall state the makes, models, equipment identification numbers, engine family numbers, and number of construction equipment on-site.

D. BIOLOGICAL RESOURCES

Impact BIO-1: Removal of trees and building demolition during project construction may result in the inadvertent destruction of active bat roosts unless appropriate precautions are followed.

MM BIO-1: Prior to the issuance of any tree removals, grading permits, demolition permits or building permits (whichever comes first), adequate measures shall be taken to avoid inadvertent take of special status bat species if present in trees on the project site. This shall be accomplished by taking the following steps:

- A qualified biologist shall visually inspect trees to be removed and structures to be demolished for bat roosts within 7 days prior to their removal. The biologist shall look for signs of bats, including sightings of live or dead bats; bat calls or squeaking; the smell of bats; bat droppings, grease stains, or urine stains around openings in trees; or flies around such openings. Trees with multiple hollows, crevices, forked branches, woodpecker holes, or loose and flaking bark have the highest chance of occupation and shall be inspected the most carefully.
- If signs of bats are detected, confirmation on presence or absence shall be determined by the qualified biologist, which may include night emergency or acoustic surveys.
- Due to restrictions of the California Health Department, direct contact by workers with any bat is not allowed. The qualified bat biologist shall be contacted immediately if a bat roost is discovered during project construction.
- If an active maternity roost is encountered during the maternity season (April 15 to August 31),

the California Department of Fish and Wildlife shall be contacted for direction on how to proceed, and an appropriate exclusion zone established around the occupied tree or structure until young bats are old enough to leave the roost without jeopardy. The size of the buffer would take into account:

- Proximity and noise level of project activities;
- Distance and amount of vegetation or screening between the roost and construction activities; and
- Species-specific needs, if known, such as sensitivity to disturbance.

A report of all findings shall be submitted by a qualified biologist to the Director of Planning, Building and Code Enforcement or the Director's designee, prior to the issuance of any tree removals, grading permits, demolition permits, or building permits.

Impact BIO-2: The project would interfere with the movement of nesting and migratory birds due to the number of trees on the parcel.

MM BIO-2: Prior to the issuance of any tree removals, grading permits, demolition permits or building permits (whichever occurs first), the project proponent shall schedule construction activities outside of the nesting season (generally defined as September 1 through January 31, inclusive). If construction activities occur within the bird nesting season (generally defined as February 1 through August 30, inclusive), a qualified biologist shall conduct pre-construction nesting bird surveys within 7 days prior to the proposed start date to identify any active nests (including Cooper's hawk) within 500 feet of the project site. If an active nest is found, the nest shall be avoided, and a suitable buffer zone shall be delineated in the field such that no impacts shall occur until the chicks have fledged the nest as determined by a qualified biologist. Construction buffers shall be 300 feet for passerines and up to 500 feet for any raptor species; however, avoidance buffers may be reduced at the discretion of the biologist, depending on the location of the nest, the species' tolerance to human presence, and construction-related noises and vibrations.

A report of all findings shall be submitted by a qualified biologist to the Director of PBCE or the Director's designee, prior to the issuance of any tree removals, grading permits, demolition permits, or building permits.

MM BIO-3: Prior to the issuance of any tree removals, grading permits, demolition permits or building permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee.

E. CULTURAL RESOURCES

Impact CUL-1: Ground-disturbing activities during construction of the proposed project would have the potential to uncover, damage, or destroy archaeological resources.

MM CUL-1: Implement Mitigation Measures TCR-1 and TCR-2.

F. ENERGY – The project would not have a significant impact on this resource, therefore no mitigation is required.

G. GEOLOGY AND SOILS – The project would not have a significant impact on this resource,

therefore no mitigation is required.

- H. GREENHOUSE GAS EMISSIONS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- I. HAZARDS AND HAZARDOUS MATERIALS** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- J. HYDROLOGY AND WATER QUALITY** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- K. LAND USE AND PLANNING** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- L. MINERAL RESOURCES** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- M. NOISE**

Impact N-2: Operational HVAC noise levels would exceed General Plan Policy EC-1.3 noise limits of 55 dBA DNL at the residential receptors to the north and east of the proposed project site. With operational HVAC noise levels, a substantial permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies would occur.

MM N-2: Prior to issuance of any tree removal, grading, or demolition permits (whichever occurs first), mechanical HVAC equipment shall be selected and designed to reduce noise levels to meet City requirements at the nearby noise-sensitive land uses to the north and east of the project site. A qualified acoustical consultant shall be retained to review mechanical noise as these systems are selected to determine specific noise reduction measures necessary to reduce noise to comply with the City's noise level requirements, and a report shall be prepared and submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee for review and approval, to demonstrate compliance. The project applicant shall conform with any special building construction techniques requested by the City's Building Department prior to issuance of occupancy permits. Noise reduction measures could include, but are not limited to, selection of equipment that emits low noise levels, locating equipment farther from adjacent neighbors, and shielding units with barriers to interrupt direct line of sight.

- N. POPULATION AND HOUSING** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- O. PUBLIC SERVICES** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- P. RECREATION** – The project would not have a significant impact on this resource, therefore no mitigation is required.
- Q. TRANSPORTATION** – The project would not have a significant impact on this resource, therefore no mitigation is required.

R. TRIBAL CULTURAL RESOURCES

Impact TCR-1: Ground-disturbing activities during construction of the proposed project would have the potential to uncover, damage, or destroy tribal cultural resources.

MM TCR-1: Cultural Awareness Training. Prior to the issuance of any demolition, grading, or building permits (whichever occurs first), the project applicant, in association with the City of San José, shall implement a cultural awareness training program for workers that may be present on the project site during ground disturbing activities. Training shall be required for all construction personnel participating in ground disturbing construction activities to alert them to the archaeological sensitivity of the project area and provide protocols to follow in the event of a discovery of archaeological materials. The training shall be provided by a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. The qualified archaeologist, to be retained by the applicant on an on-call basis, shall develop and distribute for job site posting an “ALERT SHEET” summarizing potential archaeological finds that could be exposed and the protocols to be followed as well as points of contact to alert in the event of a discovery. Documentation verifying that the cultural awareness training program has been completed shall be submitted to the Director of Planning, Building and Code Enforcement (PBCE) or the Director’s designee within 20 days of completion of the training. The project applicant shall note on any plans that require ground disturbing excavation that there is a potential for exposing buried cultural resources including prehistoric Native American burials.

MM TCR-2: Monitoring Plan. Prior to the issuance of any demolition, grading, or building permits (whichever occurs first), a qualified archaeologist, in consultation with a Native American representative registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall prepare a monitoring plan for all earthmoving activities. The Plan shall be submitted to the Director of Planning, Building and Code Enforcement (PBCE) or the Director’s designee for review and approval. The plan shall include, but is not limited to, the following: Monitoring schedules, contract information, recommended monitoring methods, and timing of reporting finds. A qualified archeologist in collaboration with a Native American monitor, registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, shall be present during applicable earthmoving activities in accordance with the Monitoring Plan. These could include but are not limited to, trenching, initial or full grading, lifting of foundation, boring on site, or major landscaping.

S. UTILITIES AND SERVICE SYSTEMS – The project would not have a significant impact on this resource, therefore no mitigation is required.

T. WILDFIRE – The project would not have a significant impact on this resource, therefore no mitigation is required.

U. MANDATORY FINDINGS OF SIGNIFICANCE.

Cumulative impacts would be less than significant. The project would comply with existing regulations and City standard conditions of approval. The proposed project would implement the identified mitigation measures and would either have no impacts or less than significant impacts

on applicable air quality, biological resources protection ordinances, noise and cultural resources, including tribal cultural resources. Therefore, the proposed project would not contribute to any cumulative impact for these resources. The project would not cause changes in the environment that have any potential to cause substantial adverse direct or indirect effects on human beings.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **July 28, 2025 at 5:00 p.m.** any person may:

1. Review the Draft Mitigated Negative Declaration (MND) and attached Initial Study as an informational document only; or
2. Submit written comments regarding the information and analysis in the Draft MND/Initial Study. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND/Initial Study, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND. Please submit comments to: Cort Hitchens, Environmental Project Manager; 200 E. Santa Clara Street – Tower 3; San Jose, CA 95113 or via e-mail at cort.hitchens@sanjoseca.gov.

CHRISTOPHER BURTON, Director
Planning, Building and Code Enforcement



Deputy

6/27/25

Date

Cort Hitchens
Environmental Project Manager

Circulation period: July 8, 2025 to July 28, 2025