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: 761 Fleming Avenue Subdivision Project

PROJECT FILE NUMBERS: T24-029, C24-054, and ER24-211

PROJECT DESCRIPTION: The proposed project would include the prezoning of the currently unincorporated property at 761 Fleming Avenue to the R-1-8 zoning district and the annexation of the parcel into the City of San José to facilitate subdivision of the site into nine separate residential lots. One single-family home would be constructed on each subdivided lot except for lot 4, which already includes an existing residence to be retained, for a total of nine houses on the project site. The new lots would range from approximately 6,015 square feet to 22,571 square feet. No accessory dwelling units (ADUs) are currently proposed but would be allowed in the future at the discretion of each property owner subject to applicable regulations. The project would include the extension of Townsquare Drive as a public street that terminates in a cul-de-sac to provide access to the proposed lots 5 through 9. The existing, unnamed private street that connects to Fleming Avenue would extend as a continuation of Townsquare Drive to the proposed cul-de-sac and provide access to lots 1-4, with the private street connecting to Fleming Avenue, and continuing to provide access to Fleming Avenue for the several existing adjacent residences that currently rely on the existing driveway for street access.

PROJECT LOCATION: The Project site is located at 761 Fleming Avenue. The Project site consists of one parcel, assessor's parcel number (APN) 601-29-009, and encompasses approximately 2.08 acres.

ASSESSORS PARCEL NO.: (APN) 601-29-009 **COUNCIL DISTRICT: 5**

APPLICANT CONTACT INFORMATION: VIAM Fleming Partners LLC (Atten: Ryan Do and Van-Thi Huynh); 2189 Monterey Road, San José, California 95125; ryan.do@viamcapital.com and vanthi.huynh@viamcapital.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.

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 AIR-1: Project construction-related cancer risks would exceed the Air District thresholds for single-sources at the maximally exposed individual (MEI).

MM AIR-1.1: The project shall implement a feasible plan to reduce diesel particulate matter emissions by 50 percent such that increased cancer risk from construction would be reduced below toxic air contaminant (TAC) significance levels as follows:

1. All construction equipment larger than 25 horsepower used at the site for more than two continuous days or 20 hours total shall meet U.S. EPA Tier 4 interim emission standards for PM (PM10 and PM2.5), if feasible, otherwise the option below would be implemented.

MM AIR-1.2: As an alternative to Mitigation Measure MM AIR-1.1, the applicant may develop another construction equipment plan demonstrating that the construction equipment used on-site would achieve a reduction in construction diesel particulate matter emissions by 50 percent or greater. Elements of the plan could include a combination of some of the following measures:

- Installation of electric power lines during early construction phases to avoid use of diesel portable equipment,
- Use of electrically-powered equipment,
- Forklifts and aerial lifts used for exterior and interior building construction shall be electric or propane/natural gas powered,
- Change in construction build-out plans to lengthen phases, and
- Implementation of different building techniques that result in less diesel equipment usage

Such a construction operations plan would be subject to review by an air quality expert and approved by the City's Director of Planning, Building and Code Enforcement or the Director's designee prior to construction.

D. BIOLOGICAL RESOURCES

Impact BIO-1: The project would fill the 0.23 acre seasonal wetland onsite resulting in a significant impact to state jurisdictional wetlands.

MM BIO-1.1: Wetland Delineation and Mitigation. Prior to recordation of the Final Map, or issuance of any tree removal, demolition, grading, ground disturbance and/or building permits (whichever occurs first), a qualified wetland specialist shall conduct a formal delineation of wetlands and other waters of the State, and any other potentially jurisdictional aquatic resources within the project impact area. The delineation shall be prepared in accordance with procedures acceptable to applicable regulatory agencies and shall be submitted to the appropriate regulatory agencies for verification, as required.

Prior to any discharge of dredged or fill material into delineated wetlands or waters, the project applicant shall obtain all required authorizations, such as Waste Discharge Requirements from the Regional Water Quality Control Board, as applicable.

For unavoidable permanent impacts to wetlands or waters, the project applicant shall provide compensatory mitigation at a ratio approved by the regulatory agencies, but not less than 1:1 unless otherwise authorized. Mitigation may include purchase of credits from an approved mitigation bank, payment into an approved in-lieu fee program, or implementation of permittee-responsible restoration, establishment, re-establishment, enhancement, and/or preservation. The selected mitigation shall ensure no net loss of wetland acreage, functions, and values.

If permittee-responsible mitigation is used, a compensatory mitigation plan shall be prepared by a qualified restoration specialist and approved by the applicable regulatory agencies prior to impacts. The plan shall identify the mitigation site, existing conditions, target habitat types, planting palette, hydrologic design, grading plans, success criteria, maintenance requirements, monitoring schedule, adaptive management measures, long-term management, and financial assurances. Monitoring shall continue for a minimum of five years, or longer if required by the permitting agencies.

The applicant shall submit documentation and approved permit to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee prior to Final Map recordation or any tree removal, demolition, grading, and/or building permits (whichever occurs first).

Impact BIO-2: Project construction could result in the damage or loss of trees intended for preservation.

MM BIO-2.1: Tree Protection. The applicant shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.

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

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

Impact HAZ-1: Improper procedure during the removal of the septic tank on site could result in the release of hazardous materials into the environment.

MM HAZ-1.1: The following measures shall be implemented during the removal of the septic tank onsite.

- The septic tank shall be pumped out and cleaned by a licensed/registered septic tank pumper (certified by the local Environmental Health Department) to remove all septage, with contents hauled to and disposed of at an approved wastewater treatment facility or permitted disposal site.
- The septic tank cover/lids shall be removed, baffles broken down (if present), and the bottom and at least one side of the tank crushed or perforated to prevent future water accumulation or collapse hazards.
- The septic tank shall either be fully excavated and removed for proper off-site disposal/recycling or abandoned in place by filling with clean earth, gravel, concrete, or other approved inert material, followed by backfilling and compaction of the excavation.
- An inspection by the local Environmental Health (or Building) Department shall be required prior to backfilling (typically scheduled 48 hours in advance), with documentation (e.g., pumping receipts and photos) submitted for final approval.
- Submit documentation of the County Department of Environmental Health's approval of the permit for septic tank abandonment/destruction to the City of San José Director of Planning, Building, and Code Enforcement prior to the issuance of a grading permit.

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

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 -** The project would not have a significant impact on this resource; therefore, no mitigation is required.

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.**

The Project's contribution to cumulative impacts would be less than cumulatively considerable. With implementation of the identified mitigation measures, the project would not substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory. Therefore, the proposed project would not contribute to any cumulative impact for these resources. Implementation of the General Plan policies, Standard Permit Conditions, and mitigation measures that have been identified in the Initial Study would reduce direct or indirect environmental effects on human beings to a less than significant level.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **November 18, 2026,** any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only; and/or

2. Submit written comments regarding the information and analysis 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.

CHRISTOPHER BURTON, Director
Planning, Building and Code Enforcement

October 14, 2026 — Cort Hitchens

Date — Deputy Signature of Cort Hitchens included above

Charlotte Yuen
Planner

Circulation period: October 19, 2026 to November 18, 2026