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: 469 Piercy Road Site Development Project

PROJECT FILE NUMBER: H22-014 and ER22-075

PROJECT DESCRIPTION: The project site is located at 459 and 469 Piercy Road in the City of San José. The 5.93 acre project site is on the northeast corner of North King Road and Las Plumas Avenue. The proposed project would demolish the existing single-family residential structure and redevelop the property with an approximately 134,605 square foot (sf) warehouse building.

PROJECT LOCATION: 459 and 469 Piercy Road, in the City of San José.

ASSESSORS PARCEL NO.: 678-93-039 and 678-93-040

COUNCIL DISTRICT: 2

APPLICANT CONTACT INFORMATION: Xebec Realty, 2010 Old Ranch Parkway, Suite 470, Seal Beach, CA 90740.

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

D. BIOLOGICAL RESOURCES.

Impact BIO-1: Impact BIO-1: Construction activities associated with the proposed project could potentially interfere with suitable burrowing and nesting habitat for the burrowing owl.

MM BIO-1.1: Prior to the issuance of any tree removal and construction activities or issuance of any demolition, grading, or building permits (whichever occurs first), the project applicant shall prepare a construction monitoring plan that includes procedures for conducting a burrowing owl survey. A burrowing owl survey shall be conducted by a qualified biologist within 2 calendar days prior to ground disturbance, following the survey methods described in Condition 15 of the Santa Clara Valley Habitat Plan

(SCVHP), and the results of these surveys shall be submitted to the Director of Planning, Building, and Code Enforcement, or the Director's designee. If evidence of burrowing owl is detected during the pre-construction surveys, then the California Department of Fish and Wildlife (CDFW) shall be notified.

If the pre-construction surveys detect evidence of burrowing owl on-site, then the project applicant shall implement the following avoidance measures:

1. Avoid occupied nests within a 250-foot buffer during breeding season (February 1–August 31) or develop a monitoring plan approved by the CDFW that allows activity within 250-foot buffer.
2. Avoid occupied burrows during nonbreeding season (September 1–January 31) or meet requirements in Condition 15 of the SCVHP if allowing activity within a 250-foot buffer. If evidence of burrowing owl is detected on-site, the applicant shall develop and submit a construction monitoring plan to the City's Director of Planning, Building, and Code Enforcement, or the Director's designee, for review and approval. The construction monitoring plan shall include the following construction monitoring measures:
    - Establish 250-foot buffer zones around active nests.
    - Establish 250-foot buffer zones around occupied burrows during nonbreeding season if applicable.
    - Implement construction monitoring consistent with monitoring plan or requirements if activities occur within the buffer.
    - Construction or maintenance personnel must participate in avoidance training.

Impact BIO-2: Construction activities on the project site could impede the movement of nesting raptors or other migratory birds.

MM BIO-2: Preconstruction Bird Surveys:

- Avoidance: Prior to the issuance of demolition, grading, or tree removal (whichever occurs first), the project applicant shall schedule demolition, grading, and/or tree removal activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive), as amended.
- Nesting Bird Surveys: If demolition, grading, and/or tree removal activities cannot be scheduled to occur outside of the nesting season (between September 1st and January 31st (inclusive)), pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th inclusive) and no more than 30 days prior to the initiation of these activities during the late part of breeding season (May 1st through August 31st inclusive), unless a shorter pre-construction survey is determined to be appropriate based on the presence of a species with a shorter nesting period. During this survey the ornithologist shall inspect all trees and other possible nesting habitats in and immediately adjacent to the construction areas for nests.
- Buffer Zones: If an active nest is found in an area that would be disturbed by construction, the ornithologist, in consultation with the California Department of Fish and Wildlife, shall determine the extent of a construction free buffer zone to be established around the nest, (typically 250 feet for raptors and 100 feet for other birds), to ensure that raptor or migratory bird nests shall not be disturbed during project construction. The buffer would ensure that raptor or migratory bird nests would not be disturbed during project construction or until the biologist determines the nest is no longer active or the nesting season ends. If construction ceases for two days or more then resumes again during the nesting season, an additional survey shall be necessary to avoid impacts to active bird nests that may be present.
- Reporting: Prior to any tree removal and construction activities or issuance of any demolition, grading, 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 Director of Planning, Building and Code Enforcement or the Director's designee.

Implementation of MM BIO-1 and MM BIO-2 would reduce impacts to burrowing owl and migratory bird nests resulting from construction activities to a less than significant level.

E. CULTURAL AND TRIBAL CULTURAL RESOURCES.

Impact CUL-1: Construction activities on the project site could result in the disturbance of an archaeological resource pursuant to § 15064.5.

MM CUL-1.1: Preliminary Investigation. Prior to excavation activities, including grading and potholing for utilities, a qualified archaeologist who is trained in both local prehistoric and historical archaeology, in collaboration with a Native American 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, shall complete subsurface exploration at the site, to determine if there are any indications of discrete historic-era subsurface archaeological features. Exploring for historic-era features shall consist of at least one trench mechanically excavated below existing stratigraphic layers to evaluate the potential for Native American and historic era resources. If any archaeological resources are exposed, these should be briefly documented, tarped for protection, and left in place. The results of the presence/absence exploration, including any treatment recommendations if any, shall be submitted to the Director of the City of San José Department of Planning, Building, and Code Enforcement or Director's designee for review and approval prior to issuance of any grading permit. Based on the findings of the subsurface testing, an archaeological resources treatment plan as described in MM CUL-1.2 shall be prepared by a qualified archaeologist in collaboration with a Native American 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, if necessary.

MM CUL-1.2: Treatment Plan. If investigation undertaken under MM CUL-1.1 identifies archeological resources, then the project applicant shall prepare a treatment plan that reflects permit-level detail pertaining to depths and locations of excavation activities. The treatment plan shall be prepared and submitted to the Director of the City of San José Department of Planning, Building, and Code Enforcement or Director's designee prior to approval of any grading permits. The treatment plan shall contain, at a minimum:

- Identification of the scope of work and range of subsurface effects (including location map and development plan), including requirements for preliminary field investigations.
- Description of the environmental setting (past and present) and the historic/prehistoric background of the parcel (potential range of what might be found).
- Monitoring schedules and individuals
- Development of research questions and goals to be addressed by the investigation (what is significant vs. what is redundant information).
- Detailed field strategy to record, recover, or avoid the finds and address research goals.
- Analytical methods.
- Report structure and outline of document contents.
- Disposition of the artifacts.
- Security approaches or protocols for finds.
- Appendices: all site records, correspondence, and consultation with Native Americans, etc. Implementation of the plan, by a qualified archaeologist, shall be required prior to the issuance of any grading permits. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.

MM CUL-1.3 Evaluation. Should any resources be found during investigations undertaken under MM CUL-1.1, the project applicant shall notify the Director of the City of San José Department of Planning, Building, and Code Enforcement or Director's designee of any finds during the preliminary field investigation, grading, or other construction activities. Any historic or prehistoric material identified in the project area during the preliminary field investigation and during excavation activities shall be evaluated for eligibility for listing in the California

Register of Historic Resources as determined by the California Office of Historic Preservation. Data recovery methods may include, but are not limited to, backhoe trenching, shovel test units, hand augering, and hand-excavation. The techniques used for data recovery shall follow the protocols identified in the approved treatment plan. Data recovery shall include excavation and exposure of features, field documentation, and recordation. All documentation and recordation shall be submitted to the Northwest Information Center and Native American Heritage Commission (NAHC) Sacred Land Files, and/or equivalent prior to the issuance of an occupancy permit. A copy of the evaluation shall be submitted to the City of San José Department of Planning, Building, and Code Enforcement or Director's designee.

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: Due to the agricultural history, there is a potential that the shallow soil contains residual organochlorine pesticides and/or pesticide-based metals arsenic and lead from historic pesticide application. Additionally, the project site is located within 1000 feet of a known, suspected, or likely geographic ultramafic rock unit with a potential for encountering Naturally Occurring Asbestos (NOA) during activities that involve soil disturbance. If pesticides and/or asbestos are present and not mitigated, construction of the project could result in exposure of construction workers, adjacent properties and future site workers to pesticide contamination and/or asbestos fibers.

MM HAZ-1: Phase II Site Assessment

Prior to issuance of a grading permit, the project applicant shall retain a qualified environmental professional to complete a Phase II soil contamination investigation to evaluate past agricultural use and the potential for encountering asbestos. The Phase II shall include soil sampling and analysis for asbestos in accordance with the California Air Resources Board (CARB) test method 435, organochlorine pesticides and pesticide-based metals, arsenic and lead to determine if these chemicals are present above the regulatory environmental screening levels for construction worker safety and commercial/industrial uses. The results of the soil sampling and testing must be provided to the Supervising Environmental Planner of the City of San José Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

If the Phase II results indicate soil concentrations of pesticides or metals above the environmental screening levels, the applicant must obtain regulatory oversight from the Department of Toxic Substances Control, or the Santa Clara County Department of Environmental Health under their Site Cleanup Program. A Site Management Plan

(SMP), Removal Action Plan (RAP), or equivalent document shall be prepared by a qualified

environmental consultant under regulatory oversight and approval that identifies remedial measures and/or soil management practices to ensure construction worker safety and the health of future site occupants. If asbestos is present above 0.25%, an Asbestos Dust Mitigation Plan (ADMP) will be prepared and submitted to the Bay Area Air Quality Management District (BAAQMD) for approval prior to construction. The ADMP would include track-out prevention and control, storage piles, onsite traffic control, preparation of areas prior to earth moving activities, and control for offsite transport, consistent with the California Air Resources Board's Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations. The plan and evidence of regulatory oversight shall be provided to the Director of Planning, Building, and Code Enforcement or Director's designee and the Environmental Compliance Officer in the City of San José Environmental Services Department.

Implementing MM HAZ-1 would reduce worker exposure to contaminants in the soil during construction activities to a less than significant level.

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 –

Impact TRANS-1: The proposed project would exceed the City's industrial VMT per employee threshold of 14.37 by 0.25 and would trigger a potentially significant VMT impact.

MM TRANS-1: **Tier 2 Multi-Modal Infrastructure**. The project applicant shall coordinate with the City and implement the following improvements for VMT mitigation:

- Corners of Silver Creek Valley Road / Piercy Road. Potential civil improvements such as drainage, signal, and utility modifications would be needed to implement the raised crosswalk for VMT mitigation.
- Install Class IV protected bike lanes along the project frontage as well as Piercy Road from Hellyer Avenue to Silver Creek Valley Road per City of San Jose Better Bike Plan

2025. The project will be required to provide a monetary in-lieu fee contribution of $141 per linear foot (LF) for the class IV protected bike lane along the Hellyer Avenue project frontage.

Implementation of Mitigation Measure TRANS-1 effectively improve pedestrian access and reduce the project's distance to the nearest existing bicycle facility from approximately 2,000 feet to 1,000 feet, and reduce project VMT to 14.31, below the City's industrial VMT per employee threshold of 14.37. As demonstrated in the Transportation Analysis (Appendix J), the above Mitigation Measure TRANS-1 would reduce the Project VMT to a less than significant level.

R. TRIBAL CULTURAL RESOURCES – Refer to item E. Cultural and Tribal Cultural Resources above.

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 proposed Project would implement the identified mitigation measures and would have either have no impacts or less-than-significant impacts on riparian habitat or other sensitive natural communities, migration of species, or applicable biological resources protection ordinances. 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

The public review period starts on **May 9, 2023,** and end on **May 29, 2023.** Before **May 29, 2023, 5:00pm**, any person may:

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

May 4, 2023 — Tina Garg

Date — Deputy

Tina Garg
Environmental Project Manager

Circulation Period: May 9, 2023 to May 29, 2023