



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Stephen M. Haase

**SUBJECT:** SEE BELOW

**DATE:** January 27, 2005

**COUNCIL DISTRICT:** 5  
**SNI AREA:** Alum Rock

**SUBJECT: C04-038. A CONVENTIONAL PREZONING FROM COUNTY TO R-1-8 RESIDENTIAL ZONING DISTRICT ON APPROXIMATELY 4.6 GROSS ACRES AND A STAFF INITIATED PREZONING OF AN ADJACENT PROPERTY FROM COUNTY TO CP PEDESTRIAN COMMERCIAL ON APPROXIMATELY 0.6 ACRES, LOCATED ON THE NORTH SIDE OF MCKEE ROAD APPROXIMATELY 300 FEET EASTERLY OF TOYON AVENUE.**

## **RECOMMENDATION**

The Planning Commission voted 6-0-1 (Commissioner Platten absent) to recommend that the City Council approve the proposed prezoning.

## **BACKGROUND**

On January 26, 2005, the Planning Commission held a public hearing to consider a privately initiated-conventional prezoning from County to R-1-8 Single Family Detached Residence District on a 4.17 gross acre site on the north side of McKee Road, 300 feet easterly of Toyon Avenue. Planning staff additionally proposed that the prezoning include an adjacent 0.62 acre parcel to the west from County to CP Pedestrian Commercial District as part of the pending and associated annexation application (McKee 127). The expanded boundary of the annexation and prezoning to CP Pedestrian Commercial District is necessary to comply with the Local Agency Formation Commission (LAFCO) policy to avoid the creation of an unincorporated "island", or County pocket.

The Director of Planning, Building and Code Enforcement recommended approval of the proposed prezoning.

The Planning Commission held a public hearing on the proposed prezoning on January 26, 2005.

The applicant for the prezoning application, Verizon Wireless, stated that she was present and available for any questions from the Planning Commission.

Additionally, Mr. Reek, the owner of the property within the expanded boundary proposed for rezoning to CP Pedestrian Commercial, spoke in opposition to the rezoning and the pending annexation application. Mr. Reek stated that staff had contacted him early on in the process to ask whether he wished to voluntarily annex into the City of San José as party to the subject application. Mr. Reek declined at that time. He then stated that he was unaware that because of LAFCO policy to avoid creation of unincorporated islands, staff would later initiate the expanded annexation and rezoning of his 0.6 acre property despite his original rejection. Mr. Reek stated that he feels he should not be subject to rezoning and future annexation just so the neighboring church can earn revenue by leasing land to a cellular phone carrier. He expressed concern that his property would incur additional property tax assessments as a result of the pending rezoning and annexation application and asked whether his property could be left out of the proposed rezoning.

Commissioner Levy asked Mr. Reek to confirm the size of his property that is being considered for rezoning, which Mr. Reek clarified that his property is approximately 0.6 acres.

Commissioner Zito asked staff if the pending annexation application (McKee 127) would be heard by the Planning Commission and requested some background on the LAFCO policies that require the rezoning and annexation of Mr. Reek's property.

The City Attorney responded to Commissioner Zito about the proposed rezoning and annexation and stated that annexations are only heard by the City Council, and that the Commission would only consider and make a recommendation on the proposed rezoning. The City Attorney further explained that LAFCO, a local commission, obtained its authority over annexations and incorporations via the Cortese-Knox Local Government Reorganization Act. LAFCO's powers are enacted to prevent irregular and disorganized growth occurring without apparent design or plan which would result in the inefficient delivery of urban services (police, fire, water, and sanitation). Thereby, rezoning and the future annexation of the church property without the rezoning and annexation of Mr. Reek's property would create an island of County land surrounded by the City and thus result in an inefficient delivery of services.

Commissioners Campos and Levy asked whether Mr. Reek was going to be charged a fee from staff for the rezoning and annexation and to clarify what impact the rezoning and future annexation may have on Mr. Reek's property.

Planning staff addressed the question by stating that since staff had initiated the expansion of the rezoning boundary that there would be no cost to Mr. Reek. Additionally, staff stated that the rezoning itself would not change the existing property taxes assessed for Mr. Reek's lot. If the City Council does approve annexation of the property, additional future taxes could be assessed on the property and would include fees for City police and library services. These changes in assessments are anticipated to be relatively minor if the single-family residential use remains on the site.

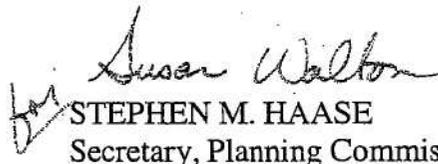
The Planning Commission then closed the public hearing.

**PUBLIC OUTREACH**

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1000 feet of the project site. In addition, the Planning Division's website contains information regarding the zoning process, the legal nonconforming use process, the Zoning Ordinance, and the *San José 2020 General Plan*. In addition, information on this proposed rezoning application, including staff reports and public hearing schedule, is also available. Staff has also made itself available to discuss the subject project on an individual meeting-basis with property owners and members of the public.

**COORDINATION**

As standard procedure in the development review process, this project was coordinated with the Santa Clara Valley Water District, Department of Public Works, Fire Department, Police Department, Environmental Services Department and the City Attorney.

  
STEPHEN M. HAASE  
Secretary, Planning Commission

CITY OF SAN JOSÉ, CALIFORNIA  
 Department of Planning, Building and Code Enforcement  
 801 North First Street, Room 400  
 San José, California 95110-1795

Hearing Date/Agenda Number  
 P.C. 01-26-05 Item No. 3.c.  
 C.C. 02-15-05

# STAFF REPORT

File Number  
 C04-038

Application Type  
 Conventional Rezoning

Council District 5

Planning Area  
 Alum Rock

Assessor's Parcel Number(s)  
 599-37-068

**PROJECT DESCRIPTION**

Completed by: Mike Mena

Location: North side of McKee Road approximately 380 feet easterly of Toyon Avenue.

Gross Acreage: 4.79                      Net Acreage: n/a                      Net Density: n/a

Existing Zoning: Unincorporated County                      Existing Use: Religious Assembly/ Detached Single Family Residence  
 Proposed Zoning: R-1-8 Residence District (4.17 acres) and CP Pedestrian Commercial District (0.62 acres)                      Proposed Use: Religious Assembly/ Detached Single Family Residence

**GENERAL PLAN**

Completed by: MM

Land Use/Transportation Diagram Designation  
 Public/Quasi-Public and Neighborhood/Community Commercial                      Project Conformance:  
 Yes     No  
 See Analysis and Recommendations

**SURROUNDING LAND USES AND ZONING**

Completed by: MM

North:      Single Family Attached Dwellings                      Planned Development Zoning District and Unincorporated County  
 East:      Single Family Attached and Detached Dwellings                      Planned Development Zoning District and Unincorporated County  
 South:      Single Family Dwellings                      County  
 West:      Single Family dwelling and Commercial Uses                      CP Pedestrian Commercial District and County

**ENVIRONMENTAL STATUS**

Completed by: MM

Environmental Impact Report Use of 2020 General Plan EIR                       Exempt  
 Negative Declaration circulated on \_\_\_\_\_                       Environmental Review Incomplete

**FILE HISTORY**

Completed by: MM

Annexation Title: Unincorporated

Date:

**PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION**

Approval  
 Approval with Conditions

Date: January 20, 2005

Approved by: Susan Walton  
 Action  
 Recommendation

OWNER	DEVELOPER	APPLICANT
Foothill Presbyterian Church Attn: Harvey LeValley 5301 McKee Road San Jose, CA 95127	Mr. and Mrs. Reek 5299 McKee Road San Jose, CA 95127	Cal Com Systems, Inc. (Verison) Attn: Timothy Richardson 2001 Omega Road, Suite 201 San Ramon, CA 94583
		Cal Com Systems, Inc. (Verison) Attn: Timothy Richardson 2001 Omega Road, Suite 201 San Ramon, CA 94583

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: MM

Department of Public Works  
None received.

Other Departments and Agencies  
City of San Jose Fire Department

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**GENERAL CORRESPONDENCE**

None received.

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**ANALYSIS AND RECOMMENDATIONS**

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**-BACKGROUND**

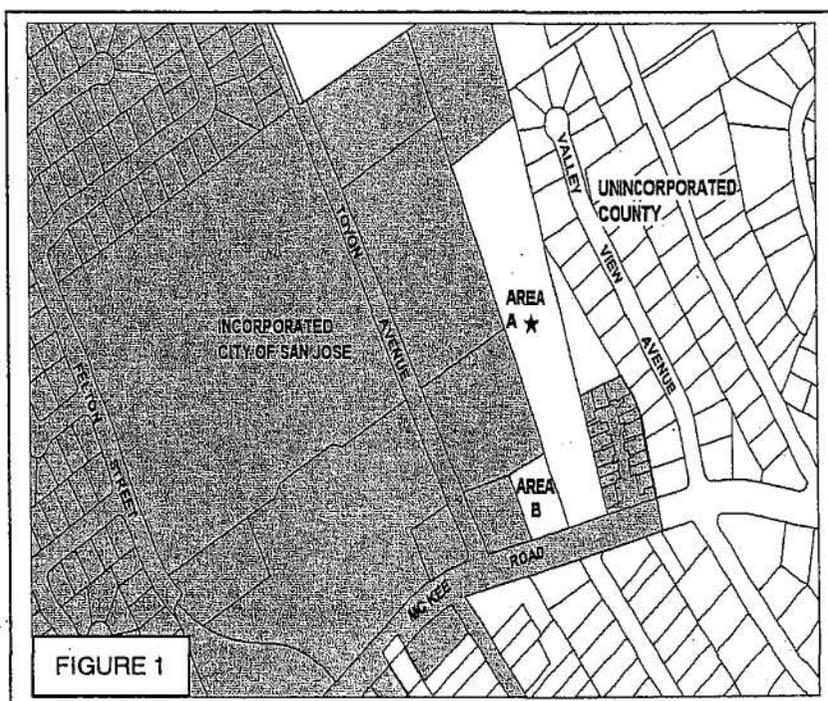
The applicant, Cal Com Systems, Inc. (Verison), is requesting a Conventional Rezoning of a 4.17 gross-acre site from Unincorporated County to R-1-8 Residence District in conjunction with the pending annexation (Area A in Figure 1). Planning staff is additionally proposing that the rezoning include an adjacent 0.62 acre parcel to CP Pedestrian Commercial District (Area B) as part of the pending and associated annexation application (see figure 1). The expanded boundary of the CP Pedestrian Commercial District is necessary to comply with the Local Agency Formation Commission (LAFCO) policy to avoid the creation of an unincorporated "island".

The applicant has expressed interest in the future construction/installation of a wireless communication antenna/monopole on the subject site in conjunction with the existing church.

The site is surrounded by single-family detached residential uses to the north, east and south. An existing single-family residence and commercial uses are located westerly of the subject property. The property is at the easterly edge of the existing City limit line, separated by a single unincorporated property (Area B).

**GENERAL PLAN CONFORMANCE**

The site is currently developed with a Church/Religious Assembly use and is designated Public/Quasi-Public on the General Plan Land Use/Transportation Diagram. The existing use is allowed under the proposed R-1-8 Residence District and is consistent with this designation. The ultimate annexation of this property furthers the Growth Management Goals and Policies of the General Plan by limiting the incorporation of land to within the City's Greenline/Urban Growth Boundary and Urban Service Area.



The adjacent property to the west of the site, also unincorporated County, is developed with an existing single-family detached residence and is designated Neighborhood/Community Commercial on the General Plan Land Use/Transportation Diagram. The proposed CP Pedestrian Commercial Zoning District for Area B is consistent with the Neighborhood/Community Commercial land use designation. See analysis below for additional discussion regarding General Plan conformance.

## **ENVIRONMENTAL REVIEW**

The environmental impacts of this project were addressed by a Final EIR entitled, "San Jose 2020 General Plan," and findings were adopted by City Council Resolution No. 65459 on August 16, 1994. The Program EIR was prepared for the comprehensive update and revision of all elements of the City of San Jose General Plan, including an extension of the planning timeframe to the year 2020.

The City of San Jose may take action on the proposed project as being within the scope of the General Plan and uses of the Program EIR in that (1) the Final EIR is a Program EIR pursuant to CEQA and CEQA Guidelines Section 15168, (2) it is determined that no new significant impacts will occur from this proposed project, and no new mitigation measures would be required beyond those contained in the General Plan and Final EIR pursuant to CEQA Guidelines 15162. The proposed Rezoning District are consistent with the existing General Plan Land Use Designations on the San Jose 2020 General Plan Land Use/Transportation Diagram and no new construction is proposed as part of the subject application.

## **ANALYSIS**

### **AREA A**

The proposed rezoning of the easterly 4.17 acre site conforms with the Public/Quasi-Public General Plan land use designation and with the annexation policies of the City of San Jose and LAFCO Policy, in that public/quasi-public uses, such as churches, are quasi-public uses allowed in the R-1-8 Residence District with a discretionary permit. The uses allowed by right in the R-1-8 Residence District are either residential in nature or considered to be compatible with single-family neighborhoods. Other uses may be allowed as an independent use upon the issuance of and in compliance with a Conditional or Special Use Permit (i.e., religious assembly/church uses). This rezoning does not include any approval of physical changes to the existing structures on-site or allow any new construction.

The applicant has expressed interest in constructing/installing a wireless communication antenna (monopole) and associated equipment on the church site. The existing church would remain on site. Any change in use or physical changes to the site will require the appropriate land use permits and environmental clearance and include noticed public hearings.

### **AREA B**

The proposed rezoning and annexation of Area A, necessitates the annexation of the adjacent smaller property to the west, described as Area B. This is in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. (Section 56757) which indicates that any proposal for reorganization/annexation in Santa Clara County must not create "islands" or areas in which it would be difficult to provide municipal services. In this case, the annexation of Area A to the City of San Jose without annexation and rezoning Area B, would result in Area B becoming an unincorporated pocket or island.. Therefore, staff has recommended the inclusion of Area B as part of this proposal.

The annexation and rezoning of Area B to the CP-Pedestrian Commercial Zoning District would result in the existing single-family residence on the property becoming a legal non-conforming use. Pursuant to the City's Zoning Ordinance, legal non-conforming residential uses in a non-residential district are permitted to remain indefinitely. Development standards for such uses shall maintain the minimum side and front setbacks as if it were located in the R-1-8 Residence Zoning District and shall, in addition comply with all other applicable regulations and development standards for lots with a one-family dwelling. Furthermore, any legal non-conforming use may be expanded upon the issuance of and in conformance with a Special Use Permit or Conditional Use Permit.

The CP Pedestrian Commercial Zoning District allows for a variety of pedestrian-oriented commercial activity. Future development of the site would be subject to review by the City through the appropriate permit process. Anything other than modifications to the existing single-family residence would be reviewed for conformance with the development regulations of the CP Commercial Pedestrian zoning district, including setback and height requirements, as well as the Commercial Design Guidelines. A future commercial development would also need to provide parking in accordance with the Zoning Ordinance requirements. Any future conversion from the existing single-family residence to a commercial use consistent with the proposed zoning district will require additional permit and environmental review.

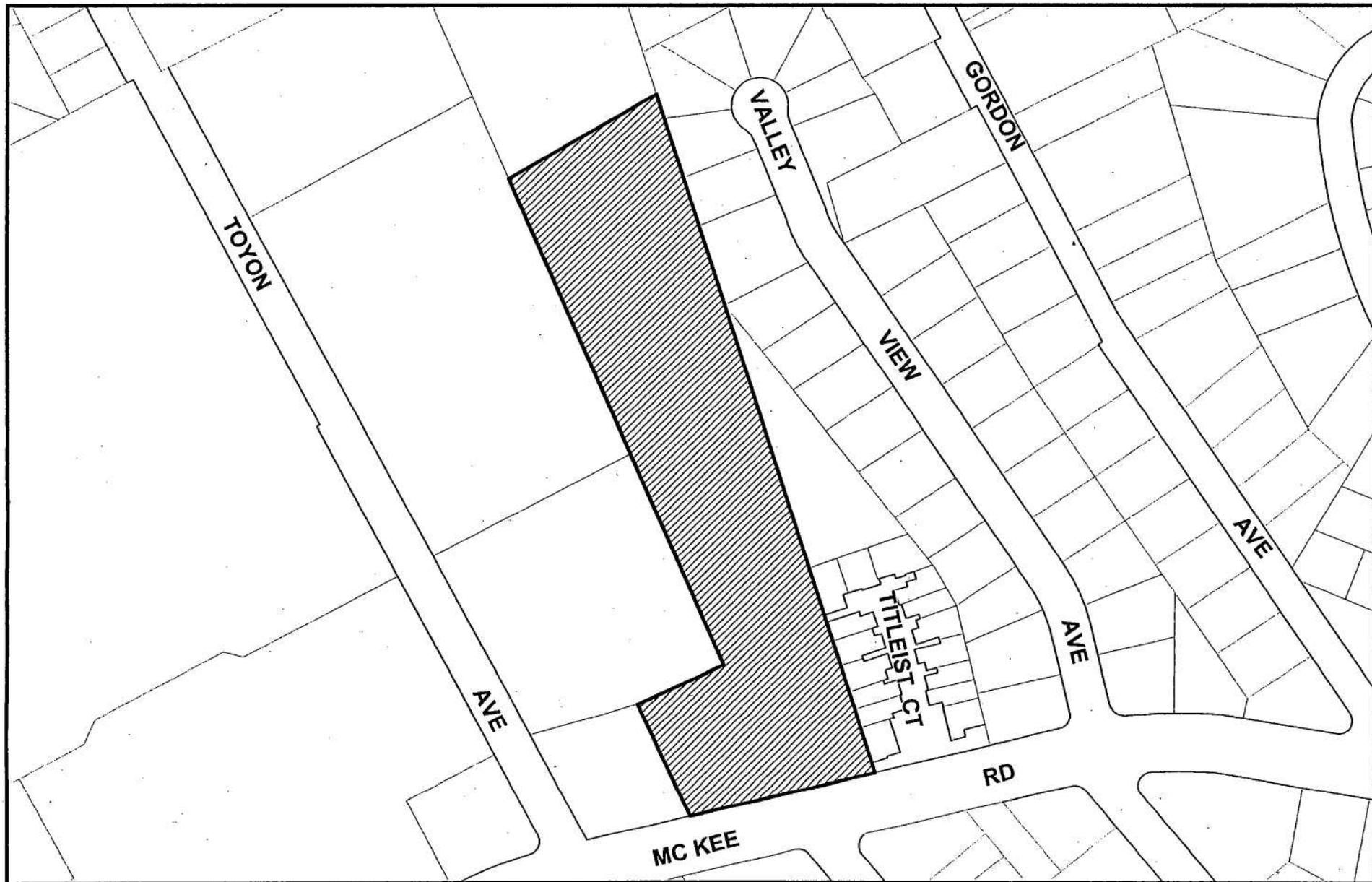
## **PUBLIC OUTREACH**

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1000 feet of the project site. Staff has been available to discuss the proposal with members of the public.

## **RECOMMENDATION**

Planning staff recommends approval of the proposed rezoning for the following reasons:

1. The proposed rezoning is in conformance with the General Plan Land Use/Transportation Diagram designations of Public/ Quasi-Public and Neighborhood/Community Commercial and will facilitate development that is in conformance with the General Plan.
2. The proposed rezoning is compatible with surrounding land uses.
3. The proposed rezoning will facilitate annexation of the property in conformance with City of San Jose and LAFCO policy.



**File Number: C04-038**

**Council District: 5**

**Quad Number: 52**

 **Subject Site**

**Scale: 1"= 200'**



# Memorandum

**TO:** Michael Mena  
Planning and Building

**FROM:** Nadia Naum-Stoian,  
Fire Prevention Engineer  
San Jose Fire Department

**SUBJECT:** INITIAL RESPONSE TO  
DEVELOPMENT APPLICATION

**DATE:** 04/29/04

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Approved

Date

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PLANNING NO.: C04-038  
DESCRIPTION: Conventional Rezoning from County to R-1-8 Residential Zoning District to allow residential uses on a 4.17 gross acre site  
LOCATION: north side of McKee Road approximately 380 feet easterly of Toyon Avenue  
ADDRESS: north side of McKee Road approximately 380 feet easterly of Toyon Avenue (5301 MCKEE RD)  
FOLDER #: 04 108961 ZN

The San Jose Fire Department has reviewed the related plans as submitted and has the following comments and requirements.

- Fire Department comments to Planning Department File No. C04-038 apply to this project.
  
- **THE FOLLOWING CORRECTIONS SHALL APPLY TO THE SUBJECT APPLICATION:**
  1. Site flow requirement may be as high as 4,500 GPM.
  
- We reserve the right to make comments at a future date.

If you have any questions regarding these items, please contact me at (408) 277-8754.

Planning and Building  
04/29/04  
Subject: C04-038  
Page 2

BY: Nadia Naum-Stoian, FPE  
Bureau of Fire Prevention  
San Jose Fire Department

Fire Site Memo to Planning Application

**USE OF A PROGRAM EIR  
 SAN JOSE 2020 GENERAL PLAN FINAL EIR**

Pursuant to Section 15168 of the CEQA Guidelines, the City of San Jose has determined that the project described below is pursuant to or in furtherance of the Final Environmental Impact Report (EIR) for the San Jose 2020 General Plan and does not involve new significant effects beyond those analyzed in this Final EIR. Therefore, the City of San Jose may take action on the project as being within the scope of the Final EIR.

**PROJECT DESCRIPTION AND LOCATION**

**C04-038.** A proposed Rezoning and ultimate annexation of properties located on the north side of McKee Road approximately 380 feet easterly of Toyon Avenue on a total of a 4.79-gross-acre site from County to R-1-8 Single Family Detached Residence Zoning District (4.1 acres) and from County to CP Commercial Pedestrian Zoning District (0.6 acres).

Council District 5.

County Assessor's Parcel Number 599-37-068, 599-37-042

The environmental impacts of this project were addressed by a Final EIR entitled, "San Jose 2020 General Plan," and findings were adopted by City Council Resolution No. 65459 on August 16, 1994. The Program EIR was prepared for the comprehensive update and revision of all elements of the City of San Jose General Plan, including an extension of the planning timeframe to the year 2020. The following impacts were reviewed and found to be adequately considered by the EIR:

Traffic and Circulation	Soils and Geology	Noise
Cultural Resources	Hazardous Materials	Land Use
Urban Services	Air Quality	Aesthetics
Energy	Facilities and Services	Water Quality/Resources
Open Space	Schools	Drainage and Flooding
Vegetation and Wildlife		

The City of San Jose may take action on the proposed project as being within the scope of the General Plan and uses of the Program EIR in that (1) the Final EIR is a Program EIR pursuant to CEQA and CEQA Guidelines Section 15168, (2) it is determined that no new significant impacts will occur from this proposed project, and no new mitigation measures would be required beyond those contained in the General Plan and Final EIR pursuant to CEQA Guidelines 15162. The proposed Rezoning District are consistent with the existing General Plan Land Use Designations on the San Jose 2020 General Plan Land Use/Transportation Diagram and no new construction is proposed as part of the subject application.

Mike Mena  
 Project Manager

Stephen M. Haase, AICP  
 Director, Planning, Building and Code Enforcement

Date 1/18/05

*Joali Choh*  
 Deputy