



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** September 14, 2006

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**COUNCIL DISTRICT:** 5  
**SNI AREA:** Not Applicable

**SUBJECT: C06-044. DIRECTOR INITIATED PREZONING FROM COUNTY OF SANTA CLARA TO RM – MULTIPLE RESIDENCE ZONING DISTRICT FOR MULTIPLE RESIDENCE PURPOSES ON AN APPROXIMATELY 10.57 GROSS ACRE SITE LOCATED ON THE SOUTHWESTERLY CORNER OF CAPITOL AVENUE AND GIMELLI WAY (POCKET ANNEXATION FILE NO. MCKEE 132).**

## RECOMMENDATION

The Planning Commission voted 6-0-1 (Commissioner Pham absent) to recommend the City Council consider and adopt an ordinance rezoning the property located on the southwesterly corner of Capitol Avenue and Gimelli Way from unincorporated County to R-M Multiple Residence Zoning District to allow multiple family residential uses on a 10.57 gross acre site.

## OUTCOME

Approval of the Director Initiated rezoning from unincorporated County to the R-M Multiple Residence Zoning District would facilitate subsequent annexation to the City of San Jose as part of the citywide county pocket annexation program. No new development is currently anticipated. The site is currently developed with single-family residences.

## BACKGROUND

On September 13, 2006 the Planning Commission held a public hearing to consider the proposed Prezoning. The Director of Planning, Building and Code Enforcement recommended approval of the proposed prezoning. The item was considered as a consent item on the Planning Commission Agenda. Neither the Planning Commission nor any members of the public requested to discuss the item.

## ANALYSIS

The proposed R-M Multiple Residence Zoning District will allow residential uses consistent with the Zoning Code, the existing neighborhood and the existing uses on the subject property. The proposed rezoning will also bring the zoning into conformance with the General Plan land use designation of

Transit Corridor Residential (20 + DU/AC) and will allow for subsequent annexation of the site under the citywide county pocket annexation program.

### **POLICY ALTERNATIVES**

If the City Council chooses to deny the subject rezoning, the property could not be annexed at this time and would continue to remain as unincorporated property, and used for residential uses.

### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The rezoning was also published in a local newspaper, the Post Record. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

### **COORDINATION**

This project was coordinated with the Department of Public Works, Fire Department, Police Department, Environmental Services Department and the City Attorney.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with applicable General Plan policies and City Council approved design guidelines as discussed in attached staff report.

### **COST SUMMARY/IMPLICATIONS**

Not applicable.

### **BUDGET REFERENCE**

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

Date: September 14, 2006

**Subject:** File # C06-044

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**CEQA**

The environmental impacts of this project were addressed by a Final EIR entitled, "San Jose 2020 General Plan," and was certified on August 16, 1994, by the City of San Jose City Council.

  
JOSEPH HORWEDEL, SECRETARY  
Planning Commission

For questions please contact Principal Planner, Susan Walton, at 535-7847.

cc: Genevieve Merlino, 641 North Capitol Avenue, San Jose, CA 95133



# Memorandum

**TO: Planning Commission**

**FROM: Joseph Horwedel**

**SUBJECT: SEE BELOW**

**DATE: September 6, 2006**

**COUNCIL DISTRICT: 5**

## SUPPLEMENTAL MEMO

**C06-044. DIRECTOR INITIATED PREZONING FROM COUNTY OF SANTA CLARA TO RM—MULTIPLE RESIDENCE ZONING DISTRICT FOR MULTIPLE RESIDENCE PURPOSES ON AN APPROXIMATELY 10.89 GROSS ACRE SITE LOCATED ON THE SOUTHWESTERLY CORNER OF CAPITOL AVENUE AND GIMELLI WAY.**

### BACKGROUND

This Director-Initiated prezoning (File No. C06-044) was originally scheduled to be heard before the City Council at its August 15, 2006 hearing, as a conforming zoning, without review by the Planning Commission. However, the RM—Multiple Residence zoning district is not identified as a “conforming district” for the Transit Corridor Residential (20+ DU/AC) General Plan designation in Table 20-270 in the Zoning Code. Therefore, the proposed project must be agendized for the Planning Commission’s recommendation prior to Council action. The original staff report to City Council is attached.

The subject site is one of the unincorporated County islands or “pockets” being scheduled for annexation under a citywide County island annexation program directed by the City Council on April 26, 2006. As this program is getting underway, staff and the City Council have been identifying opportunities for additional public review and comment on the process for City annexation of these pockets. This Commission hearing on the prezoning will allow an additional opportunity for public comment on the subject proposal, prior to the City Council hearing on the proposed rezoning which has been continued to September 19, 2006.

### RECOMMENDATION

Staff recommends the Planning Commission recommend to the City Council approval of the proposed prezoning for the following reasons:

1. The proposed rezoning is in conformance with the General Plan Land Use/Transportation Diagram designation of Transit Corridor Residential (20+ DU/AC),

2. The proposed rezoning will facilitate the annexation and continued use or development of this site with a use that is consistent with the General Plan and compatible with surrounding land uses.



 Joseph Horwedel, Acting Director  
Planning, Building and Code Enforcement

Attachment

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San José, California 95113

Hearing Date/Agenda Number  
C.C. 8-15-06

File Number  
C 06-044

Application Type  
Director Initiated Rezoning

Council District  
5

Planning Area  
Alum Rock

Assessor's Parcel Number  
254-06-042

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Erin Morris

Location: Southwesterly corner of Capitol Avenue and Gimelli Way

Gross Acreage: 10.57

Net Acreage: n/a

Net Density: n/a

Existing Zoning: Unincorporated

Existing Use: Single-family residence/ outbuildings/ orchard

Proposed Zoning R-M Multiple Residence District

Proposed Use: No change

### GENERAL PLAN

Land Use/Transportation Diagram Designation  
Transit Corridor Residential (20+ DU/AC)

Project Conformance:  
 Yes  No  
 See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

North: North Capitol Avenue

Public Street

East: Multi-family residential

A(PD) Planned Development Zoning District

West: Single-family attached residential

A(PD) Planned Development Zoning District

South: Interstate 680

Freeway

### ENVIRONMENTAL STATUS

Environmental Impact Report - Use of 2020 General Plan EIR  
 Negative Declaration circulated on  
 Negative Declaration adopted on

Exempt  
 Environmental Review Incomplete

### FILE HISTORY

Annexation Title: McKee No\_132

Date: Pending

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions  
 Denial  
 Uphold Director's Decision

Date: July 26, 2006

Approved by: *Andrew Gebree*  
 Action  
 Recommendation

### OWNER

### APPLICANT

Genevieve Merlino  
641 North Capitol Avenue  
San Jose, CA 95133

City of San Jose

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: Erin Morris

**Department of Public Works**

None received

**Fire**

None received

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**OTHER CORRESPONDENCE**

See attached memorandum from Public Works

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

On April 26, 2006, the City Council voted to provide direction to City staff to proceed with a County island annexation program which involves the annexation of all unincorporated County pockets less than 150-acres in size. The subject project is a Planning Director-initiated rezoning which is being done in preparation for the annexation of the 10.57-acre area referred to as McKee No. 132 (one of the 59 unincorporated County islands or "pockets" scheduled for annexation). The subject site, located on the southwesterly corner of North Capitol Avenue and Gimelli Way, is surrounded by single-family residential to the west, multifamily residential to the east, Interstate 680 to the south, and North Capitol Avenue to the north. The subject site is approximately ¼ mile from the McKee Light Rail Station.

Rezoning is the process of assigning City of San Jose zoning district designation to a property in advance of annexation so that the property will have an appropriate zoning designation once the annexation is effective. All of the unincorporated island sites are within the City of San Jose's Sphere of Influence and thus currently have a General Plan Land Use/Transportation Diagram designation. The proposed rezoning designation should be consistent with the City's General Plan and also address existing uses on the subject property and surrounding sites. In this case, staff is recommending that the property be zoned R-M in conformance with the Transit Corridor Residential (20+ dwelling units per acre) General Plan designation.

No changes are proposed to the existing residential structures on the property. Any legal aspects of the existing condition that would no longer be in conformance after annexation in to the City of San Jose and after the new zoning district is adopted, shall become legal nonconforming. Any changes to the legal nonconforming aspects of the property would be subject to the provision of Chapter 20.150 of the San Jose Municipal Code.

**ENVIRONMENTAL REVIEW**

The environmental impacts of this project were addressed by a Final EIR entitled, "San José 2020 General Plan," and certified on August 16, 1994, by the City of San José City Council.

## **GENERAL PLAN CONFORMANCE**

The site is designated Transit Corridor Residential (20+ dwelling units per acre) on the San Jose 2020 General Plan Land Use/Transportation Diagram. This designation is intended for medium high and high density residential uses within, or very near, Transit Oriented Development Corridors such as the North Capitol Avenue corridor. The proposed R-M Multiple Residence Zoning District could allow higher density residential development (up to 25 dwelling units per acre) consistent with the lower range of the Transit Corridor Residential General Plan land use designation. Development of a higher density project (greater than 25 DU/AC) would require a subsequent Planned Development Zoning.

## **ANALYSIS**

The proposed R-M Multiple Residence Zoning District will allow residential uses consistent with the Zoning Code, the existing neighborhood and the existing uses on the subject property. As discussed above, the proposed rezoning will also bring the zoning into conformance with the General Plan.

## **PUBLIC OUTREACH**

A notice of the public hearing was published, posted on the City's web site and distributed to the owners and tenants of all properties located within 300 feet of the project site. Information on the County Pocket annexation program is available on the Planning Divisions website on the areas proposed for annexation and general information on what current county residents can expect upon the annexation of their property to the City of San Jose. Staff has been available to discuss the proposal with members of the public.

## **COORDINATION**

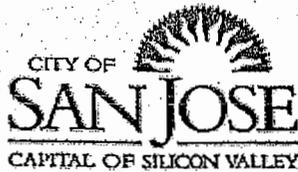
This project was coordinated with the Department of Public Works, Fire Department, Building Division, Environmental Services Department and the City Attorney.

## **RECOMMENDATION**

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

1. The proposed rezoning is in conformance with the General Plan Land Use/Transportation Diagram designation of Transit Corridor Residential (20+ DU/AC).
2. The proposed rezoning will facilitate the annexation and continued use or redevelopment of this site with a use that is consistent with the General Plan and compatible with the surrounding land uses.





## 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

C06-044. Conforming Conventional Rezoning for a project located on the southwesterly corner of Capitol Avenue and Gimelli Way (641 North Capitol Avenue) on a 10.57-gross-acre site with a San Jose 2020 General Plan Land Use/Transportation Diagram Designation of Transit Corridor Residential (20+ DU/AC) from unincorporated County to R-M Multiple Residence District.

Council District 5

County Assessor's Parcel Numbers 254-06-042

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.

Erin Morris  
Project Manager

Joseph Horwedel, Acting Director  
Planning, Building and Code Enforcement

Date

7/26/06

Deputy

**TO:** Rebekah Ross  
Planning and Building

**FROM:** Michael Liw  
Public Works

**SUBJECT: FINAL RESPONSE TO  
DEVELOPMENT APPLICATION**

**DATE:** 06/08/06

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**PLANNING NO.:** C06-044  
**DESCRIPTION:** Planning Director Initiated Rezoning from unincorporated county to R-M Multiple Residence Zoning District for multi family residential purposes on an approximately 10.57 gross acres area consisting of 1 parcel  
**LOCATION:** Southwesterly corner of Capitol Avenue and Gimelli Way  
**P.W. NUMBER:** 3-18073

Public Works received the subject project on 05/09/06 and has no comments related to this Planning application. The following comments and requirements are related to potential future Planning permit stages and are included for information only.

### **Project Conditions:**

**Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits.

1. **Transportation:** A Traffic Report is required prior to environmental clearance or the Planning Permit stage.
2. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29), which requires implementation of Best Management Practices (BMPs) that include site design measures, source controls, and stormwater treatment controls to minimize stormwater pollutant discharges. Post-construction treatment control measures, shown on the project's Stormwater Control Plan, meet the numeric sizing design criteria specified in City Policy 6-29 -or- the project shall provide an Alternative Measure, where installation of post-construction treatment control measures are impracticable, subject to the approval of the Director of Planning, Building & Code Enforcement.
3. **Flood: Zone D, portion in AO, Depth 1'**  
Although a Letter of Map Revision (LOMR) dated December 4, 1997 designated a majority of the property in Zone D, a portion is in Zone AO, depth 1'. We recommend

that all proposed structures, including the structures within the area designated as Zone D, comply with the following conditions:

- a) Elevate the lowest floor, including basement, more than 1 foot above the highest existing adjacent grade to the proposed structure.
- b) An Elevation Certificate (FEMA Form 81-31) for each structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, after the improvement is completed, an Elevation Certificate for each structure is required prior to issuance of an occupancy permit.
- c) Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.
- d) If applicable, provide vent openings for all enclosures below the base flood elevation, except basements (ex. crawlspace, at-grade garages). The design must either be certified by a registered professional engineer or meet the following requirements:
  - i) Provide vent openings on at least two exterior walls of each enclosure to automatically equalize the lateral pressure of the floodwaters. The bottom of each opening shall be no higher than twelve inches above the exterior adjacent grade. Provide a minimum of two vent openings having a total net area of not less than one square inch per one square foot of enclosed area.

4. **Grading/Geology:**

- a) A grading permit is required prior to the issuance of a Public Works Clearance.
- b) If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
- c) Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.

5. **Sanitary:**

- a) A conceptive sanitary sewer plan will be required prior to approval at the Planning Permit stage.
- b) Applicant may be required to provide flow-monitoring data of existing surrounding sanitary mains to evaluate potential capacity constraints for this proposed project. Upgrading/rehabilitation of surrounding sanitary mains or alternative points of connection to the sanitary system serving this site may be required. Meeting with applicant will be required to determine monitoring locations.

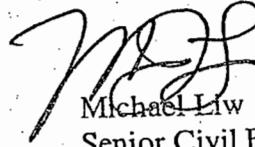
6. **Storm:**

- a) A conceptive grading/drainage plan will be required prior to approval at the Planning Permit stage.

- b) Indicate the overland release path in arrows.
  - c) The release path must be paved.
  - d) On-site ponding must be less than one foot.
  - e) Finished floor elevations must be one foot higher than overland release elevation.
7. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
8. **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Capitol Avenue prior to issuance of a Public Works clearance. One hundred percent of the base fee in place at the time of payment will be due. (Currently, the base fee is \$224 per linear foot of frontage.)
9. **Parks:** In accordance with the Parkland Dedication and Park Impact Ordinances (SJMC 19.38/14.25), the park impact fee will be due for any additional living units that are built.
10. **Electrical:** Install electroliers on the project frontage to the satisfaction of the Director of Public Works.
11. **Landscape:**
- a) Install street trees within the public right-of-way along the entire street frontage per City standards.
  - b) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
  - c) Contact the City Arborist at (408) 277-2756 for the designated street tree.
12. **Street Improvements:**
- a) Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
  - b) Construct curb, gutter, and sidewalk along Gimelli Way frontage. The ultimate right-of-way width for each street is 52 feet with 36 feet curb to curb.
  - c) A 10' sidewalk with tree wells is required along Capitol Avenue frontage.
  - d) Close unused driveway cut(s).
  - e) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
  - f) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
13. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.

14. **Complexity Surcharge (In-Fill):** This project has been identified as an in-fill project. Based on established criteria, the public improvements associated with this project have been rated high complexity. An additional surcharge of 50% will be added to the Engineering & Inspection (E&I) fee collected at the street improvement stage.
15. **Referrals:** This project should be referred to the Santa Clara Valley Transportation Authority.

Please contact the Project Engineer, Mirabel Aguilar, at (408) 535-6822 if you have any questions.



Michael Liw  
Senior Civil Engineer  
Transportation and Development Services Division

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