

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

CC 12/04/07

11.3

File Number

C06-107

Application Type

Director Initiated Rezoning

Council District

5

Planning Area

Alum Rock

Assessor's Parcel Number 484-26-064; -065;  
-066; -067

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Justin Fried

Location: Southwest side of South White Road, 400 feet southeast of East Hills Drive.

Gross Acreage: 0.74

Net Acreage: 0.74

Net Density: 5.4 du/ac

Existing Zoning: Unincorporated

Existing Use: Residential and Commercial

Proposed Zoning R-1-8

Proposed Use: Residential

### GENERAL PLAN

Land Use/Transportation Diagram Designation  
Medium Low Density Residential (8 DU/AC)

Project Conformance:

Yes  No

See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

North: Single Family Residence and Commercial Unincorporated, CP Commercial, R-1-8 Residential

East: Single and Multiple Family Residence (9.5 DU/Acre); White Road Baptist Academy R-1-8 and A(PD) Residential

West: Lyndale Elementary School R-1-8 Single Family Residence

South: Single Family Residence R-1-8 Residential and Unincorporated

### ENVIRONMENTAL STATUS

Environmental Impact Report found complete (San Jose 2020 General Plan; August 16, 1994)

Negative Declaration circulated on

Negative Declaration adopted on

Exempt

Environmental Review Incomplete

### FILE HISTORY

Annexation Title: Capitol No. 55 (Pending)

Date: \_\_\_\_\_

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

- Approval  
 Approval with Conditions  
 Denial  
 Uphold Director's Decision

Date: 11-15-07

Approved by: Andrew Crabtree  
 Action  
 Recommendation

### OWNER/APPLICANT

Jesse and Olga Villarreal  
Emilia Gonzales  
Alex and Gloria Banuelos

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: Justin Fried

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Department of Public Works  
See attached memorandum.

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Fire  
See attached memorandum.

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**OTHER CORRESPONDENCE**

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See attached memorandum from Santa Clara Valley Water District.

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**ANALYSIS AND RECOMMENDATIONS**

**BACKGROUND**

The subject project is a Planning Director-initiated rezoning to the R-1-8 Single Family Residence District which is being done in conjunction with the annexation of the 0.74 acre County island referred to as Capitol No. 55. The area is one of the 49 unincorporated County islands or "pockets" scheduled for annexation as part of the County Island Annexation program (initiated by the City Council in April 2006) that includes the annexation of all remaining unincorporated County islands that are less than 150-acres in area. The City of San Jose is initiating the annexation of the subject area as part of Phase 2 of this program which includes 11 islands in total. Phase 1 of this program resulted in the annexation of 21 County islands. Phase 3 of the program is scheduled to begin in early 2008 and includes 14 islands which are larger and more populous.

Rezoning is the process of assigning City of San Jose zoning district 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 Director's recommendation of a proposed zoning is determined based on consideration of a site's General Plan designation and the existing, legally established uses on the site and in the surrounding area. In this case, staff is recommending that the property be zoned R-1-8 Single Family Residence which allows single family homes on lots of no less than 5,445 square feet and reflects the existing use of the properties.

The owner of Equity Real Estate, one of the parcels which is being used for commercial purposes, is conducting activities on the property that is in violation of the County zoning requirements and has paved the rear and side of the building for parking. The owner filed a preliminary review application for a General Plan Amendment for conversion to commercial use on his property in 2004 (PRE04-379) to see whether he could rezone the property to permit the existing use at the time of annexation. Staff responded that the proposal did not comply with the policies and goals of the General Plan and that City policies encouraged intensifying nearby neighborhood business districts along Story Road and Alum Rock Avenue instead. No subsequent General Plan Amendment application was filed.

**Site and Surrounding Uses**

The subject site, consisting of 4 parcels on approximately 0.74 acres, is located on the southwest side of South White Road, 400 feet southeast of East Hills Drive and is currently developed with single family residences, one of which is being used for commercial purposes without benefit of permits from the County of Santa Clara and in violation of County Zoning. The site is surrounded by residential uses to

the north and south, single and multi family residences and institutional uses to the east, and the Lyndale Elementary School to the west. The site is one parcel away from another County pocket (prezone file C06-108)



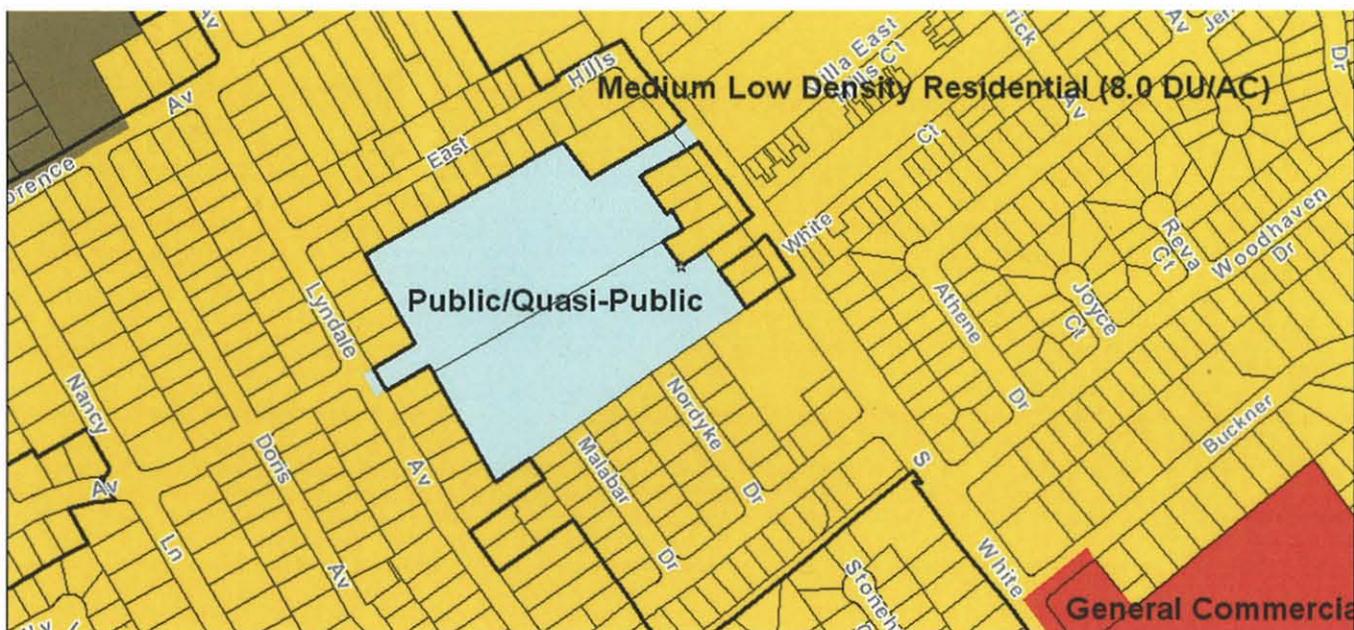
**Aerial photograph of subject site showing existing development conditions**

**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 Medium Low Density Residential (8.0 DU/AC) on the San Jose 2020 General Plan Land Use/Transportation Diagram.



**General Plan Land Use / Transportation Diagram**

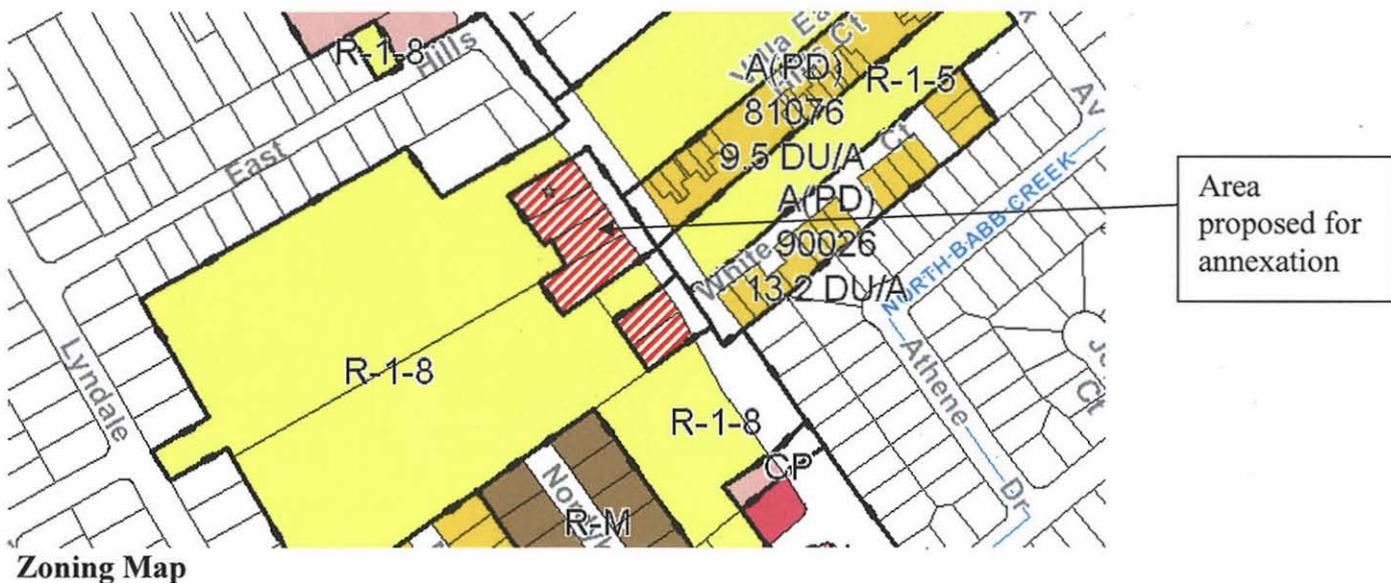
The subject properties are developed with single family residences, one of which has been illegally converted to commercial use. General Plan Commercial Land Use Policies do not support either zoning or amending the General Plan Land Use / Transportation Diagram to support this conversion, stating that “New commercial uses should be located in existing or new shopping centers or in established strip commercial areas. Isolated spot commercial developments and the creation of new strip commercial areas should be discouraged.” Conversion of residential properties to commercial uses should be consistent with the General Plan Land Use / Transportation Diagram designation.

The proposed R-1-8 Single Family Residence Zoning District allows uses consistent with the current General Plan Medium Low Density Residential (8.0 DU/AC) land use designation and the General Plan Commercial Land Use Policies.

The zoning and annexation of this unincorporated pocket furthers the General Plan Urban Service Area policies that encourage the County and LAFCO to join in cooperative efforts to seek the annexation of urbanized County pockets within the City’s Urban Service Area.

## ANALYSIS

The San Jose 2020 General Plan Land Use/Transportation Diagram designates the site Medium Low Density Residential (8.0 DU/AC). The site is developed with single family residences, one of which is used for commercial purposes. Neighboring uses are predominantly residential, religious and institutional, and neighborhood serving commercial as well as the Lyndale Elementary School to the west of the subject site.



The R-1-8 Single Family Residence Zoning will allow single family residential use consistent with the existing neighborhood, the existing R1 Residential County zoning on the subject site, and the General Plan. If nonconforming uses were legally established in the County, they will become legal nonconforming.

The existing commercial use of Equity Real Estate Inc. would not be permitted in the proposed R-1-8 zoning district and may be subject to Code Enforcement action by the City subsequent to annexation.

Staff does not support commercial use of this site given the surrounding residential uses and General Plan policies discouraging isolated commercial developments in residential areas.

Rezoning the property is necessary in order to proceed with the County Island Annexation Program as outlined in the phasing schedule provided to the City Council in a memorandum dated July 19, 2006 and adopted on August 8, 2006.

## **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. An Answer Book has been distributed to all residents and property owners within the areas to be annexed as a part of Phase 2 of the program. Staff held a community meeting on August 23, 2007, with residents of Phase 2 County pockets. Staff has also been available to discuss the proposal with members of the public.

The owner of Equity Real Estate Inc. told staff that he had not received any mailing regarding the annexation program. Staff sent the Answer Book to the owner's office address and sent a hearing notice to this address as well. Staff has informed the owner of the staff recommendation to proceed with residential rezoning for his property. Another owner in this area called and was provided information regarding City street sweeping.

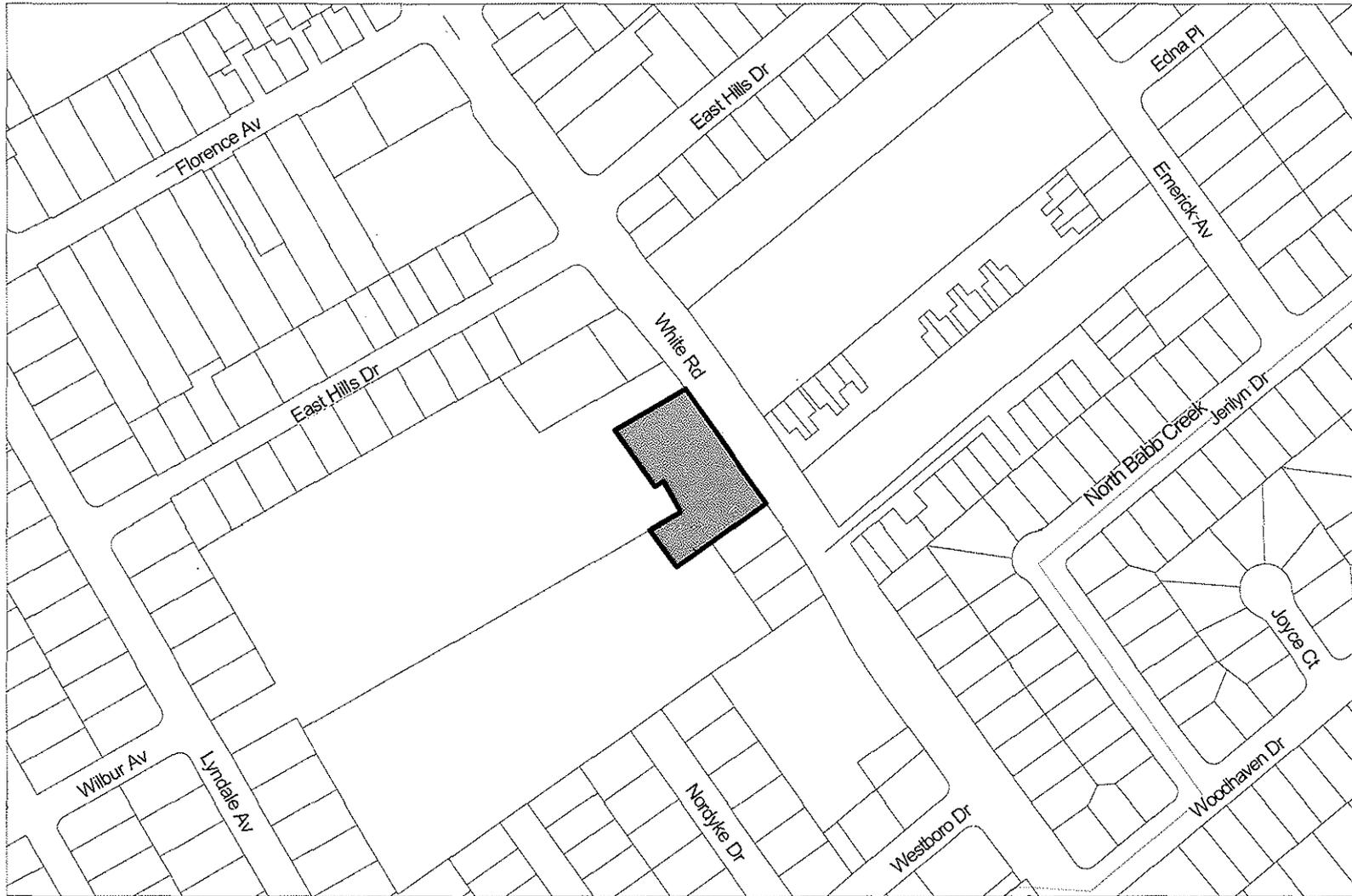
## **COORDINATION**

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 Medium Low Density Residential (8.0 DU/Acre).
2. The proposed rezoning will facilitate the re-development of this site with a use that is consistent with the General Plan and compatible with the surrounding uses.
3. The proposed rezoning will facilitate the elimination of a County pocket.



**N**  
  
Map Created On:  
10/11/2006

Scale 1 in = 250 ft 1:3000  
Noticing Radius: 300 ft  
  
0 200 400  
feet

**File No: C06-107 / CAPITOL\_55**  
**District: 05**  
**Quad No: 068**

WDW

**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**

C06-107 / Capitol No. 55. Planning Director-initiated rezoning to R-1-8 Single Family Residence District and reorganization/annexation to the City of San José of an approximately 0.74 gross-acre site referred to as Capitol No. 55, located on the southwest side of South White Road, 400 feet southeast of East Hills Drive.

Council District 8

County Assessor's Parcel Numbers: 484-26-064; -065; -066; -067

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.

Justin Fried  
Project Manager

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

Date

11/9/07

Deputy

  
Deputy

# Memorandum

**TO:** Hadasa Lev  
Planning and Building

**FROM:** Ebrahim Sohrabi  
Public Works

**SUBJECT: RESPONSE TO PLANNING  
APPLICATION**

**DATE:** 11/22/06

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PLANNING NO.: C06-107  
DESCRIPTION: Planning Director Initiated Prezoning from unincorporated county to R-1-8 Single-Family Residence Zoning District for single family residential purposes of an approximately 0.91 gross acres area consisting of 4 parcels.  
LOCATION: Southwest side of South White Road, 400 feet southeast of East Hills Drive  
P.W. NUMBER: 3-18152

Public Works received the subject project on 10/12/06 and submits the following comments:

D Flood Zone  
NO Geological Hazard Zone  
NO State Landslide Zone  
NO State Liquefaction Zone  
NO Inadequate Sanitary capacity  
NO Inadequate Storm capacity  
NO Major Access Constraints  
NO Near-Term Traffic Impact Analysis

Please contact the Project Engineer, Ryan Do, at 408-535-6897 if you have any questions.



EBRAHIM SOHRABI  
Senior Civil Engineer  
Transportation and Development Services Division

RTD  
ES:rd:gf  
6065\_31329075080.DOC

**DATE:** 10/25/06

**TO:** Hadasa Lev

**FROM:** Nadia Naum-Stoian

Re: Plan Review Comments

**PLANNING NO:** C06-107

**DESCRIPTION:** Planning Director Initiated Rezoning from unincorporated county to R-1-8 Single-Family Residence Zoning District for single family residential purposes of an approximately 0.91 gross acres area consisting of 4 parcels.

**LOCATION:** Southwest side of South White Road, 400 feet southeast of East Hills Drive

**ADDRESS:** Southwest side of South White Road, 400 feet southeast of East Hills Drive (441 S WHITE RD)

**FOLDER #:** 06 030121 ZN

The Fire Department's review was limited to verifying compliance of the project to Article 9, Appendix III-A, and Appendix III-B of the 2001 California Fire Code with City of San Jose Amendments (SJFC). Compliance with all other applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.

The application provided does not include adequate information for our review; Fire Department staff will provide further review and comments when additional information is received as part of subsequent permit applications.

County Territories may be fire flow/hydrants deficient.



Nadia Naum-Stoian  
Fire Protection Engineer  
Bureau of Fire Prevention  
Fire Department  
(408) 535-7699

**Lev, Hadasa**

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**From:** Maddox, Helen  
**Sent:** Wednesday, October 25, 2006 4:10 PM  
**To:** Roche, Jeff; Lev, Hadasa; Saha, Suparna; Davis, Martina; Chu, Tracy; Baty, John; Nusbaum, Jenny; Early, Dionne  
**Subject:** Comments received from Santa Clara Valley Water District

-----Original Message-----

**From:** Samuel Yung [mailto:SYung@valleywater.org]  
**Sent:** Wednesday, October 25, 2006 3:56 PM

Please note the following regarding this week's agenda:

PT06-097 (Manager: Jeff Roche) - Vincent Stephens from our office is currently reviewing the zoning for this site and comments will be submitted shortly. For our records, please send a copy of the tentative map.

C06-107 & CAPITOL\_55, C06-108 & CAPITOL\_56 (Manager: Hadasa Lev & Suparna Saha) - We have no objections to the rezoning/annexation. Please note that the District's East Pipeline is located within South White Road. If or when a project is proposed that could potentially impact the District's pipeline, please have the project proponent submit plans for our review.

C06-109 (Manager: Martina Davis) - We completed our review of this project. Comments will be sent by the end of the week.

TR06-183 (Manager: (Maddox, Helen) Tracy Chu ) - Please note that the site is directly adjacent to Los Gatos Creek. Mitigation trees, used to replace the loss of the illegally removed tree, should be from a plant species native to the local watershed. If that is not feasible, the plant should be non invasive and have a very low potential in hybridizing with the existing riparian plants. If the work will occur within 50 feet from the creek banks, please have the applicant apply for a permit from the District.

Thanks,

**Samuel Yung**

Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118-3686

Ph. (408)265-2607 ext. 3174  
Fax (408)979-5635