

STAFF REPORT
PLANNING COMMISSION

FILE NO.: UGB06-001/GP06-02-02

Submitted: March 23, 2006

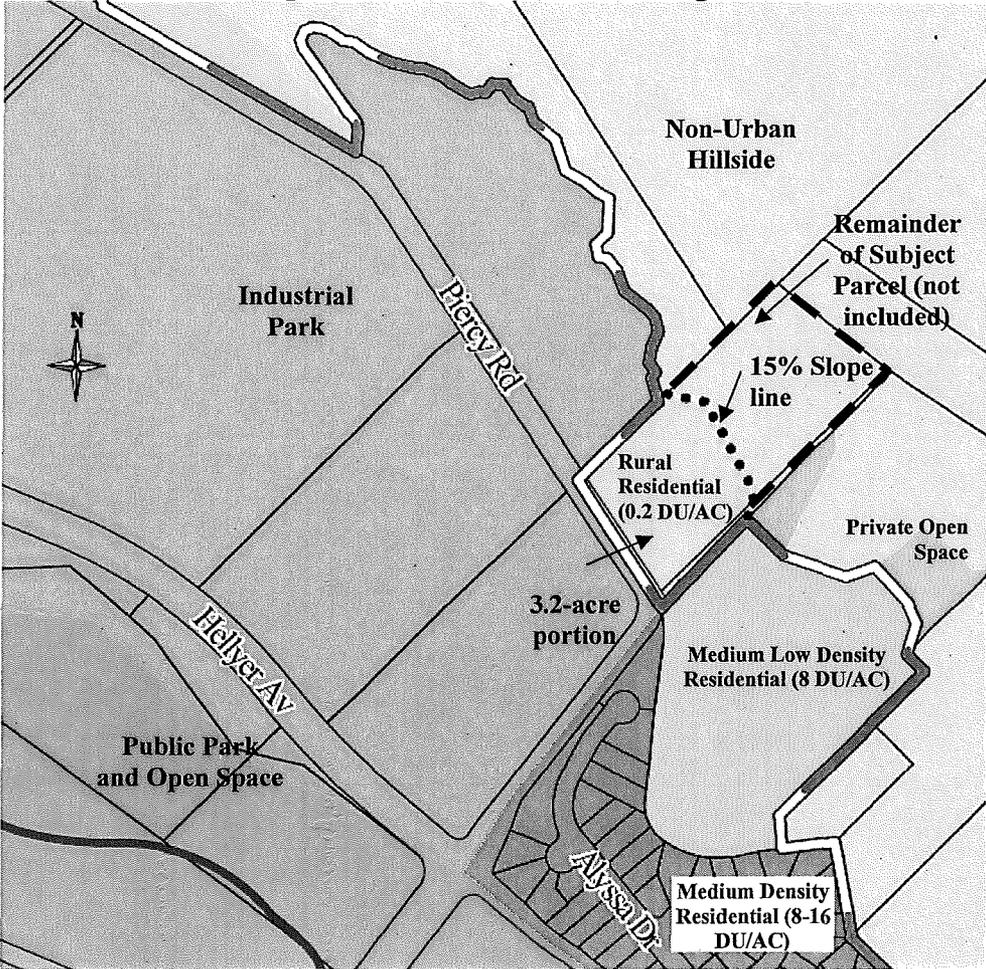
PROJECT DESCRIPTION:

1. **File No. UGB06-001.** Proposal to modify the Greenline/Urban Growth Boundary (UGB) to include approximately 3.2 acres of unincorporated territory.
2. **File No. GP06-02-02.** General Plan amendment and Urban Service Area (USA) expansion request to change the General Plan land use designation from Rural Residential (0.2 dwelling units per acre) to High Density Residential (25-50 dwelling units per acre) on an approximately 3.2-acre site.

LOCATION: Northeastly quadrant of the intersection of Piercy Road and Silicon Valley Road (formerly Tennant Avenue)

Existing General Plan	Rural Residential (0.2 DU/AC)
Proposed General Plan	High Density Residential (25-50 DU/AC)
Staff Recommendation	No Change to the General Plan
Zoning	Unincorporated
Council District	2
Annexation Date	N/A
SNI	N/A
Historic Resource	N/A
Redevelopment Area	Adjacent to Edenvale
Specific Plan	N/A
CEQA	Negative Declaration

Existing General Plan Land Use Designations



RECOMMENDATION

Planning staff recommends that the Planning Commission recommend to the City Council:

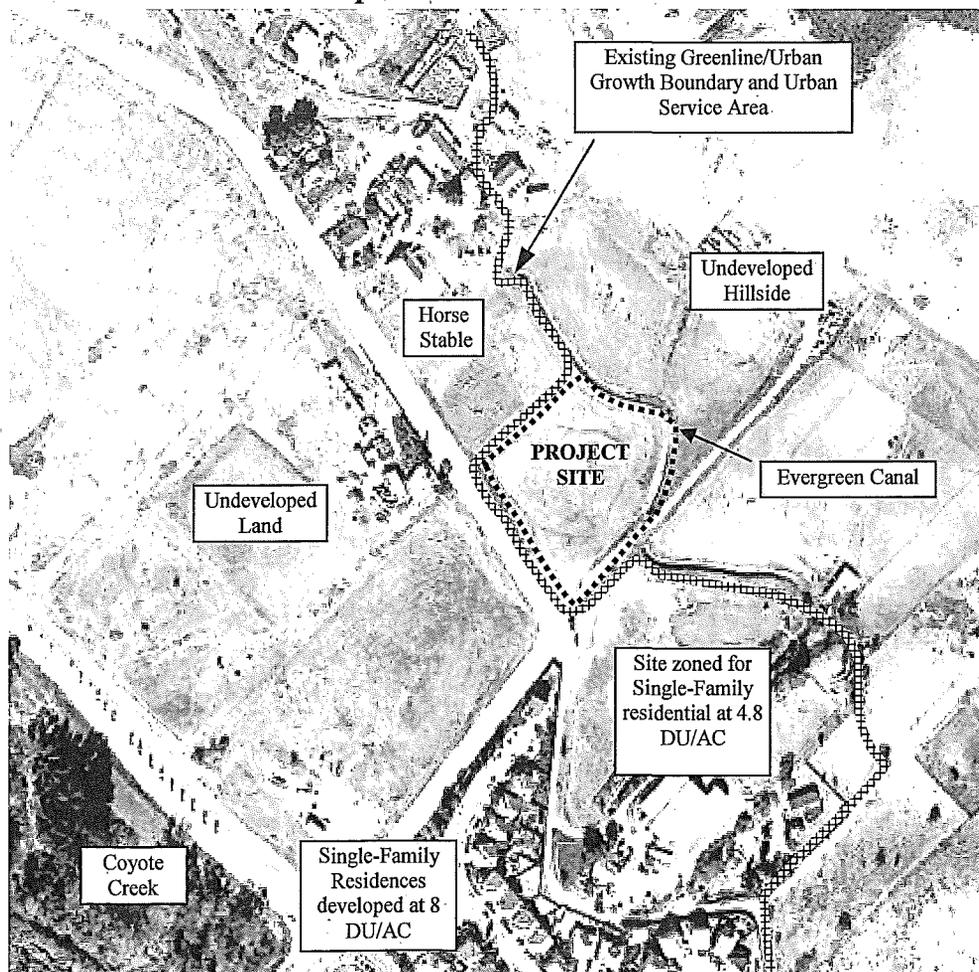
1. Approval of the proposal to modify the Greenline/Urban Growth Boundary (UGB) to include approximately 3.2 acres of unincorporated territory located at the northeasterly quadrant of the intersection of Piercy Road.
2. Denial of the General Plan amendment and request to change the General Plan land use designation from Rural Residential (0.2 dwelling units per acre (DU/AC)) to High Density Residential (25-50 DU/AC) on the 3.2-acre site.
3. Denial of the requested expansion of the Urban Service Area (USA) to include the 3.2-acre site.

Staff is recommending 1) approval of the Greenline/Urban Growth Boundary modification to include the subject site and, 2) denial of the General Plan amendment and USA expansion. Although the site may potentially be suitable for urban development in the future and the proposed UGB expansion is consistent with applicable policies, development of the site, including expansion of urban services, is not appropriate within the timeline of the San José 2020 General Plan.

BACKGROUND

The subject request for a General Plan amendment and modification to the UGB involves a 5.8-acre parcel located in the east foothills of unincorporated Santa Clara County, at the eastern edge of the City's Edenvale planning area. The subject site is the western 3.2-acre portion of the 5.8-acre parcel that is located between Piercy Road and the abandoned Evergreen Canal.

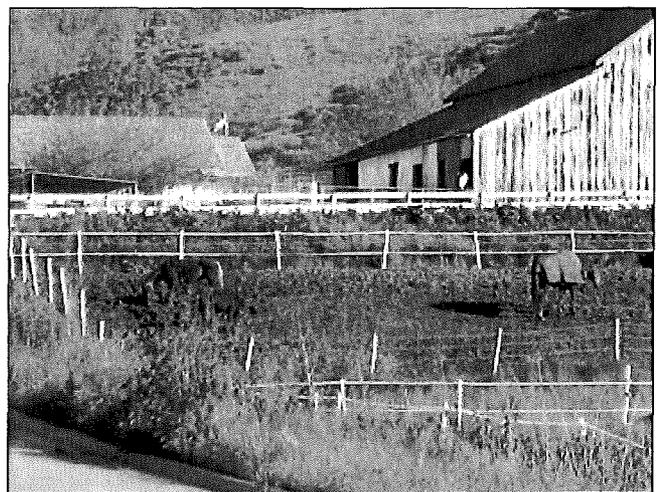
Aerial Map of UGB06-001 & GP06-06-02



The vicinity of the site is primarily characterized by undeveloped grasslands and horse pastures. To the north are large-lot single-family homes and an assortment of horse stables and out-buildings. To the east of the site is the Evergreen Canal, an abandoned man-made channel that once conveyed water from Coyote Creek to Thompson Creek and Silver Creek. The canal marks the location of the fifteen percent slope line, and uphill to the east are grasslands and hilly terrain. Across Piercy Road to the west are undeveloped lands designated for Industrial Park uses in the Edenvale Redevelopment Project area, and to the south are undeveloped lands designated Medium Low Density Residential (8 DU/AC) in the General Plan and approved for single-family residential development at a density of 4.8 dwelling units per acre. Further south on Basking Ridge Avenue is an existing single-family residential development designated Medium Density Residential (8-16 DU/AC) and developed at eight dwelling units per acre. All parcels adjacent to the site, with the exception of the hillsides to the east, are located within the UGB and USA. The UGB was modified to include the adjacent site to the south for residential development in 2006.

The subject site is designated Rural Residential (0.2 DU/AC) and is intended for single-family development on lots at least five acres in size. This land use designation is considered non-urban in the General Plan (urban development is defined as a minimum of one dwelling unit per acre). Non-urban land uses are specifically applied to foothill areas to avoid issues associated with development in areas subject to potential geologic hazards. The existing General Plan land use designation on the site is consistent with the General Plan Major Strategies, Goals, and Policies that support non-urban uses at the urban fringe, outside of the UGB and USA. The existing residential General Plan land use designations in the project vicinity also are intended for low intensity development: existing and approved single-family residential development to the south is between 4.8 to eight dwelling units per acre.

Photos of the Vicinity of the Site and Adjacent Horse Stable



PROJECT DESCRIPTION

The applicant, Barbaccia Investments, request a minor modification to the Greenline/Urban Growth Boundary (File No. UGB06-001) to include 3.2 acres of unincorporated territory located at the northeasterly quadrant of Piercy Road and Silicon Valley Road. The proposal includes a concurrent General Plan Land Use/Transportation Diagram amendment request (File No. GP06-02-02) to change the land use designation from Rural Residential (0.2 DU/AC) to High Density Residential (25-50 DU/AC) and to expand the Urban Service Area boundary to include the subject 3.2-acre site.

The realignment of the USA and UGB boundaries allows urban development to occur on the site and establishes the site's eligibility to receive City services. The proposed land use designation of High Density Residential (25-50 DU/AC) facilitates future development of three-to four-story apartments and

condominiums on the site ranging from approximately 64 to 128 dwelling units. (A 3.2-acre site developed under the High Density Residential (25-50 DU/AC) land use designation would normally yield 80 to 160 dwelling units, but geologic constraints on the site reduce the area suitable for residential development to 2.56 acres. These geologic constraints are discussed in the Analysis section of this staff report.)

Approval of the Greenline/Urban Growth Boundary modification and the General Plan amendment allow the applicants to pursue a residential development project through subsequent steps that could include: 1) Planned Development (PD) pre-zoning; 2) City Council petition to the County Local Agency Formation Commission (LAFCO) for approval of the Urban Service Area expansion and approval of annexation to the City; 3) Planned Development Permit; and 4) subdivision maps.

Greenline/Urban Growth Boundary (UGB)

The UGB defines the ultimate limit of urbanization by setting clear and definable limits to urban development both intended and anticipated in the General Plan. In hillside locations, the policies of the San José 2020 General Plan specify that the UGB should extend along an alignment, which is generally coterminous with the alignment of the USA boundary. General Plan policies require that both the UGB and USA follow the course of the fifteen percent slope line. The intent of the fifteen percent slope line is to provide a clear and definite limit for urban development at the base of the hillsides that ring the valley floor. The subject site slopes uphill from the Piercy Road frontage to the Evergreen Canal, after which the terrain experiences slopes greater than 15%; thus, the eastern edge of the canal defines the 15% slope line for the subject site.

Urban Service Area Boundary Expansion

The Urban Service Area Boundary (USA) directs urban development to those areas where municipal services and facilities can be provided in an efficient and orderly manner. The General Plan specifies that areas above the fifteen percent slope line should remain outside of the USA. Per the General Plan, no expansion of the USA is permitted outside of the UGB. These policies together govern the timing and location of future development and the extension of urban services; they ensure that development occurs in a clear and logical manner and that the City can provide adequate services to its residents and businesses. LAFCO is the decision-making body for USA boundary expansion requests.

ANALYSIS

Minor Modification to Greenline/Urban Growth Boundary (UGB)

Title 18 of the San José Municipal Code provides criteria for considering modifications to the UGB (see Attachment 4). There are two types of modifications to the UGB: major modifications and minor modifications. Major modifications involve modifying the UGB to include areas of five acres or more and may only be considered as part of a comprehensive update to the General Plan. Requests that qualify as minor modifications are considered by the City Council during the General Plan amendment process.

To be considered a minor modification, the subject proposal must meet the criteria in Sections 18.30.220(A) as follows:

18.30.220(A). *Subject to the limitations of subsections B., C., and D. below, Lands proposed for inclusion within the UGB must be:*

1. *No larger than five acres in size unless the proposal would further the goals of the UGB by creating a permanent open space buffer or other clear limit to future urban development in the vicinity; and*
2. *Located below the fifteen percent slope line, as defined in the general plan; and*
3. *Be contiguous to lands with an urban land use designation on the city's general plan land use/ transportation diagram.*

Based upon an interpretation of the criteria, the Planning Director determined that this proposal could qualify as a minor modification of the UGB (see Attachment 3). The area proposed for inclusion into the UGB is less than five acres in size, located below the fifteen percent slope line, and is contiguous to lands with an urban land use designation (defined as one dwelling unit or greater in the General Plan), and would require urban services to serve the subject site. Staff is recommending approval of the proposed modification of the UGB to include the subject 3.2-acre site based on this interpretation of the Municipal Code.

Inconsistency with the General Plan Growth Management Major Strategy

The efficient use of land, infrastructure, and urban services is becoming increasingly important as the City matures and vacant land is absorbed by urban development. The General Plan Growth Management Major Strategy encourages efficient use of lands for housing, directing more intensive residential development to key locations including the Downtown and Transit-Oriented Development Corridors, where City services are already in place.

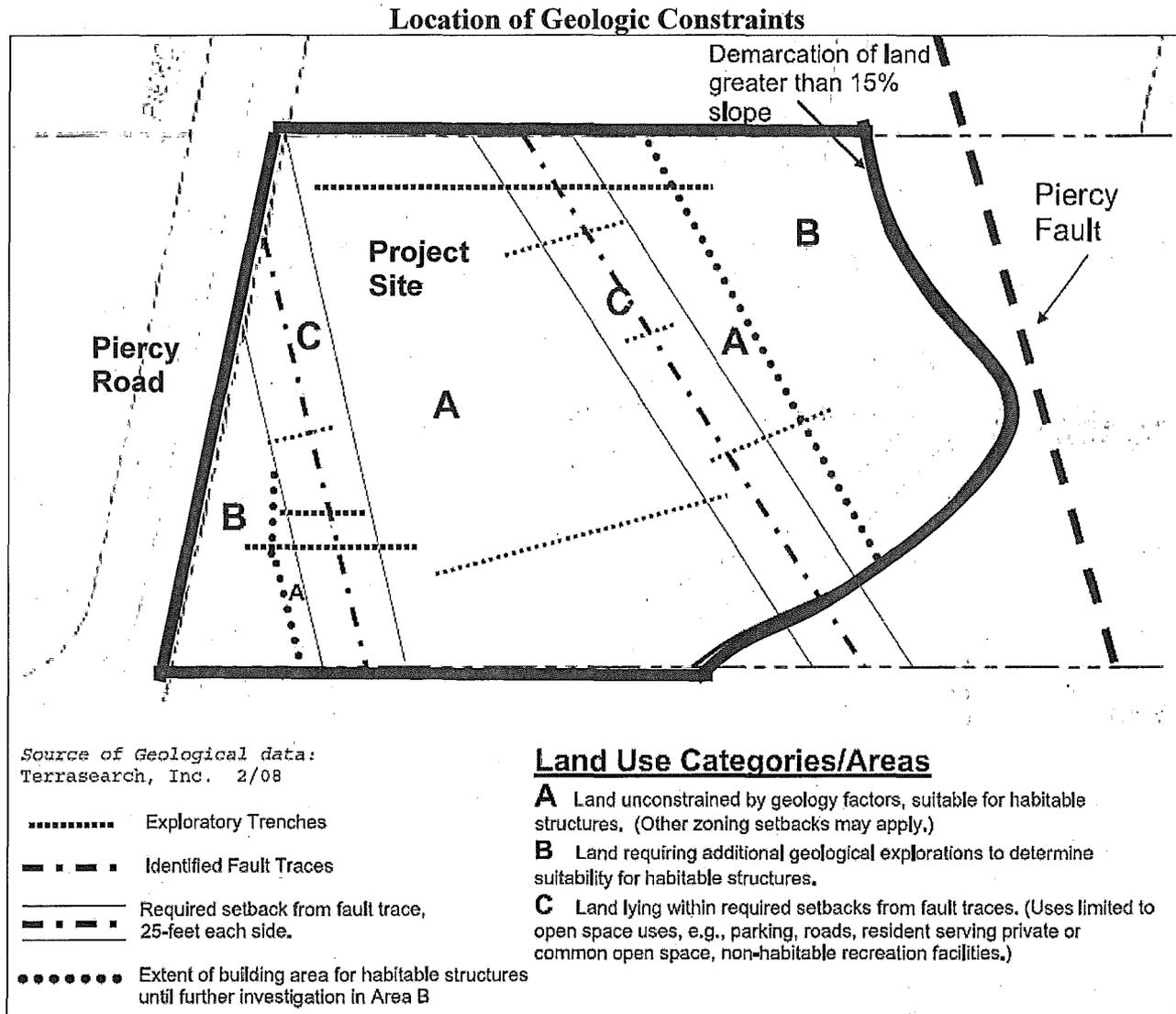
Per the General Plan, the High Density Residential (25-50 DU/AC) land use designation requested by the applicant is intended for the Downtown Core Area, near commercial centers with ready access to freeways and in the vicinity of rail stations within Transit-Oriented Development Corridors. The subject site is located on the edge of the City outside of the UGB/USA, and therefore the requested land use designation is inconsistent with the General Plan. Furthermore, future high-density development on the site may require the extension/upgrading of public infrastructure to serve the site. Therefore, the proposal does not further the Growth Management Major Strategy principle of maximizing existing resources to reduce costs of providing services.

Non-conformance with General Plan Policies

Urban Service Area Policy No. 2 recognizes that the Urban Service Area should be expanded only when it can be demonstrated that existing services and facilities are available and adequate to serve the proposed expansion area. While utility service capacity may be available to serve future urban development on the site, it requires the construction of new sewer mains and upsizing of the existing mains in the vicinity. Moreover, the public infrastructure in the immediate area is financed through an Assessment District in the Edenvale Redevelopment Project Area that was not intended to provide capacity for development on sites outside of the UGB/USA. Future development on the site would be responsible for constructing all necessary on-site and off-site infrastructure improvements.

San José has been a leader in providing housing, and additional housing capacity in the San José 2020 General Plan is available for over 60,000 new dwelling units. The capacity of new residential development primarily exists in the Downtown, near planned transit stations and job centers, and in areas where neighborhood services such as parks and schools are readily available. The Urban Service Area and Urban Growth Boundary policies seek to avoid extending infrastructure to serve a site located on the urban fringe when sufficient housing opportunity sites are available in urbanized areas. Therefore, the proposal is substantially inconsistent with the General Plan.

Hillside Development Policy No. 3 states that hillside residential development (one dwelling unit per acre or greater) may occur only where adequate services and facilities can be feasibly provided and where environmental hazards can be reasonably avoided. Geotechnical investigations conducted in February 2008 found two fault traces traversing the center of site. The identification of fault traces on the site effectively reduces the area developable with habitable structures, as minimum 25-foot setbacks are required from habitable structures and the location of the fault traces. Per the City Geologist, other areas of the site, along the Evergreen Canal, and portions along Piercy Road, also have the potential for fault traces, and additional geotechnical studies would be required prior to approval of any future development on the site. Based on staff's knowledge of the geologic constraints hazards found on the site, the proposal for high-density residential uses on the site is inconsistent with this Hillside Development Policy.



Soils and Geologic Hazards Policy No.2 also specifies that the City should not locate public improvements and utilities in areas with identified soils or geologic hazards to avoid extraordinary maintenance and operating expenses. Future development on the site would be subject to a Geologic Hazard Clearance to demonstrate that potential hazard impacts to residences and public infrastructure can be mitigated to an acceptable level. However, future development on the site would be constrained by the identified fault traces on the site.

Earthquake Policy No. 3 states that the City should only approve new development in areas of identified seismic hazard if such hazard can be adequately mitigated. The environmental Initial Study prepared for this proposal concluded that implementation of General Plan policies and specific mitigation measures required as part of a future development project would reduce geologic impacts to a less than significant level per purposes of the California Environmental Quality Act (CEQA). However, allowing development to occur in areas of identified seismic hazards when areas more suitable for residential development is available in the city is contrary to the fundamental policies in the General Plan concerning the appropriate locations for urban development.

Land Use Compatibility

The proposed density range of 25 to 50 dwelling units per acre is incompatible with nearby single-family residences. The Medium Low Density Residential (8 DU/AC) designation applied immediately to the south is typified by lots of 6,000 square feet in size or greater. The lower density provided by this land use designation allows development designed to address geologic constraints in a manner that is consistent with the City's Residential Design Guidelines in avoiding retaining walls and flat plane slopes. Development on the site at the proposed High Density Residential (25-50 DU/AC) land use designation would represent an abrupt transition between future development and the single-family residential uses, and could result in design features that are incompatible with the Residential Design Guidelines given the geologic constraints found on the site.

Conclusion

Urban development on the site under the proposed High Density Residential (25-50 DU/AC) land use designation is incompatible with the character of the immediate surroundings. Furthermore, development on the site would subject future residents to potential geologic hazards found on the site. While such hazards would be required to be fully mitigated prior to development on the site, the fundamental question remains whether the timing of development is appropriate on a site located outside of the UGB/USA with geologic constraints given that the sufficient residential capacity exists in other areas more suitable for housing.

Staff has determined that the proposal conforms to the criteria of a minor modification as outlined in Title 18, and staff is recommending approval of File No. UGB06-001. The intent of the UGB is to delineate the ultimate limit of urbanization and to encourage compact, efficient infill development while discouraging more costly development at the edge of the city. The General Plan Growth Management Major Strategy and goals and policies also call for locating new development in infill areas to maximize efficiency in existing public services. Extending the USA to include the site would be contradictory to these goals. The proposal for development under the High Density Residential (25-50 dwelling units per acre) land use designation is inconsistent with the overall General Plan goals and policies. Therefore, staff recommends denial of the General Plan amendment and denial of the proposed expansion of the USA.

ENVIRONMENTAL REVIEW

A Draft Negative Declaration was circulated for public review on April 1, 2008. Staff anticipates the Negative Declaration will be adopted on April 21, 2008.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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 the Council Public Outreach Policy. A community meeting was held in the project vicinity on March 10, 2008, and three residents from the nearby single-family neighborhood were present. They expressed concerns over the proposed density range of 25 to 50 dwelling units per acre and the potential for future traffic impacts to their neighborhood. Planning staff has been available to answer questions from the public.

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the site. The public hearing notice was also posted on the City's website. This staff report is also posted on the City's website. In addition, the Notice of the Spring 2008 hearings on the General Plan was published in the San José Post-Record. A description of the proposed General Plan amendment/text amendment was posted on the Planning Division web page. The draft amendment was presented at the Neighborhood Roundtable on February 12, 2008 and at the Developers Roundtable on February 15, 2008 for review and comment. The draft amendment was also presented at the Housing and Community Development Commission meeting on April 10, 2008, and the Commission recommended denial of both the subject UGB minor modification and the General Plan amendment/USA expansion.

No comments were received by the public regarding the proposed amendment. Staff has been available to respond to questions from the public.

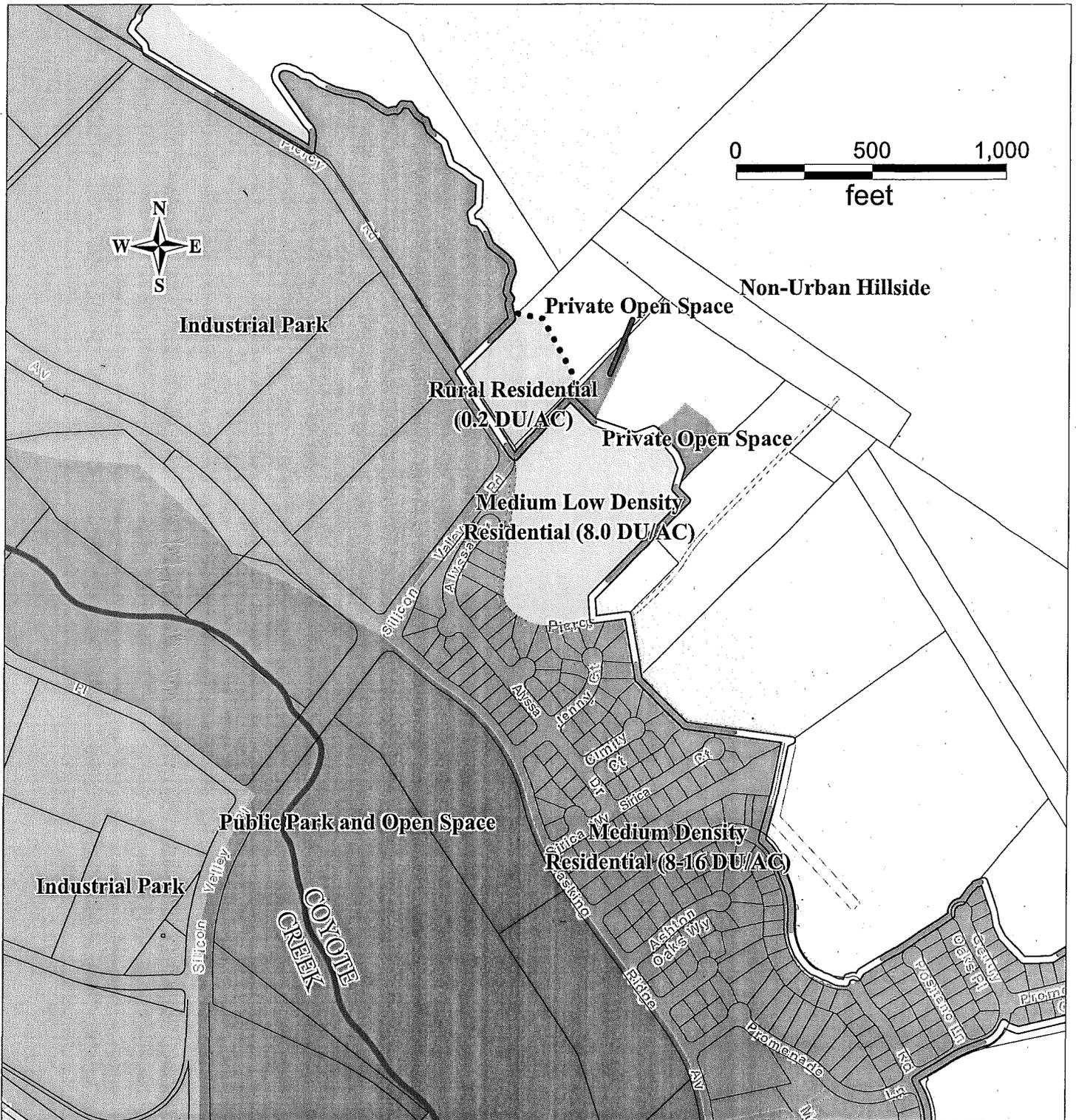
Project Manager: Allen Tai

Approved by: Andrew C. Luttrell **Date:** 04/14/2008

Owner/Applicant:	Attachments:
Owner and Applicant: Barbaccia Investments 950 South Bascom Avenue San José, CA 95128	1. Map of existing and proposed General Plan land use designations 2. Map of current zoning districts 3. Director of Planning's Minor Modification Determination 4. San José Municipal Code Chapter 18.30 – Greenline/Urban Growth Boundary 5. Draft Negative Declaration 6. Correspondence from City departments, commissions, and other local and federal agencies 7. Public Correspondence

UGB06-001 & GP06-02-02

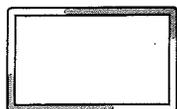
Location Map with General Plan



Prepared by the Department of Planning, Building, and Code Enforcement
 City of San Jose, California
 Joseph Horwedel, Director



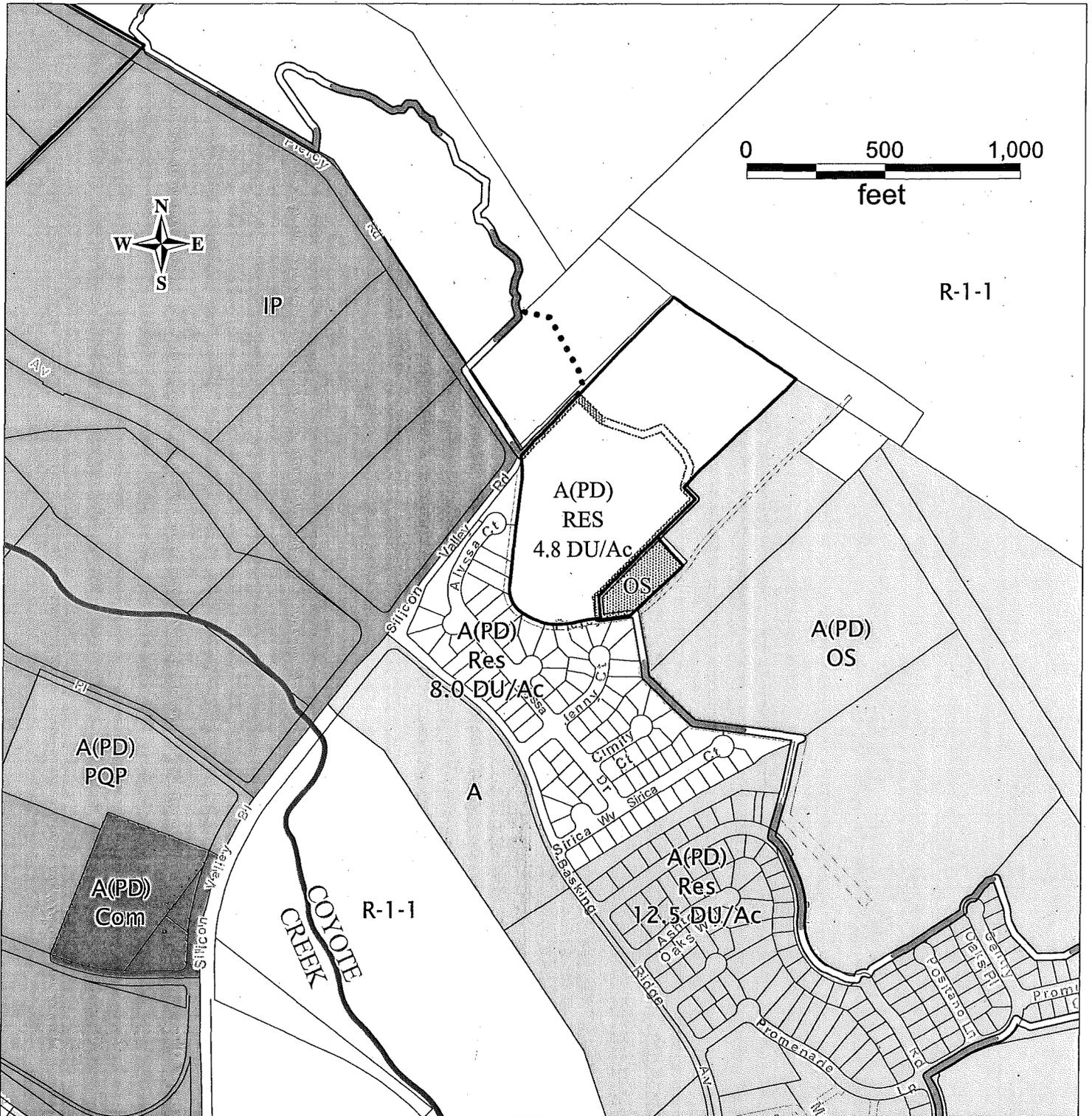
Proposed Expansion Area
 for USA and UGB



Existing Urban Service Area and
 Urban Growth Boundary

District: 2
 Quad: 130

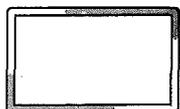
UGB06-001 & GP06-02-02 Location Map with Zoning



Prepared by the Department of Planning, Building, and Code Enforcement
City of San Jose, California
Joseph Horwadel, Director



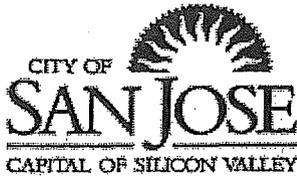
Proposed Expansion Area
for USA and UGB



Existing Urban Service Area and
Urban Growth Boundary

District: 2
Quad: 130

Map Created On:
4/11/2008



Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, ACTING DIRECTOR

June 21, 2006

Cy Barbaccia
Barbaccia Investments
950 S Bascom Avenue, Suite 1113
San Jose, CA 95128
Fax No. (408) 275-1008

SUBJECT: File No. UGB06-001. Proposal to amend the San Jose 2020 General Plan Land Use/Transportation Diagram designation to modify the alignment of the Greenline/Urban Growth Boundary (G/UGB) to include a 3.2 acre-portion of a 5.85-acre parcel.

Dear Mr. Barbaccia:

This letter is to confirm that Planning staff has met with the Director of Planning, Building and Code Enforcement to determine whether the above indicated project meets the criteria to qualify for a Minor Modification to the Greenline/Urban Growth Boundary.

Based on Planning staff's review of the supplemental exhibits provided, the Director has determined that your G/UGB expansion request qualifies as a minor modification to the UGB, based upon the criteria in Title 18 of the San Jose Municipal Code. As a next step we will continue to process your UGB modification request in association with your application for a General Plan amendment and Urban Service Area (USA) expansion as part of the General Plan amendment process. Your request would be tentatively scheduled for the Fall 2006 General Plan public hearings if environmental clearance can be completed prior to this hearing cycle.

As we indicated in our May 12, 2006 letter your applications will be reviewed for conformance to applicable General Plan policies, potential environmental impacts and service delivery issues.

Please do not hesitate to contact me if you have any questions.

Sincerely,


JOE HORWEDEL, ACTING DIRECTOR
Planning, Building and Code Enforcement

Cc: Jack Previte
Bryan Kientz

Chapter 18.30 GREENLINE/URBAN GROWTH BOUNDARY

Parts:

- 1 General Provisions
- 2 Modification Process

Part 1 GENERAL PROVISIONS

Sections:

- 18.30.100 Intent.
- 18.30.130 Land use changes outside the UGB.

18.30.100 Intent.

A. The Greenline/Urban Growth Boundary (UGB), as shown on the land use/transportation diagram and as described in the text of the general plan, is intended to be the ultimate limit to urbanization within which all future urban development in San José should occur and is designed to encourage compact, efficient infill development and discourage more costly development at the edge of the city. The UGB also helps to ensure that urban services provided by the city to existing neighborhoods will not be reduced by service demands of new urban development at the city's fringe.

B. Significant modifications to the UGB, or significant modifications to the general plan text supporting the boundary, will only be considered in the context of a major, comprehensive update of the general plan which fully considers all of the implications of expanding the limits of urbanization.

C. The procedures established in this Chapter 18.30 shall be used to process any request for a modification filed prior to the effective date of this chapter.

(Ords. 25301, 25302, 25706, 26082.)

18.30.130 Land use changes outside the UGB.

Any request for a general plan amendment proposing to change non-urban land use designations to urban land use designations on lands located outside of the UGB shall be processed in conjunction with a request to modify the UGB in accordance with this chapter.

(Ords. 25301, 25302, 25706, 26082.)

Part 2 MODIFICATION PROCESS

Sections:

- 18.30.200 Modifications.
- 18.30.220 Criteria - Minor modification.
- 18.30.260 Modification - Hearings.
- 18.30.270 Significant modifications.
- 18.30.280 Fees.

18.30.200 Modifications.

A. Any request for a modification to the UGB, as shown on the land use/transportation diagram

or the text of the general plan with regard to the UGB, shall be filed by December 1 to qualify for hearing during the annual review process of the general plan for the succeeding year.

B. If, within ninety days after the application is filed, the director determines the request clearly qualifies as a minor modification based on the strict interpretation of the criteria set forth in Section 18.30.220, the modification may be considered during the annual review of the general plan.

C. If, within ninety days after the application is filed, the director determines the request does not qualify as a minor modification based on the strict interpretation of the criteria set forth in Section 18.30.220, the request shall be set for hearing pursuant to Section 18.30.260.

(Ords. 25301, 25302, 25706, 26082.)

18.30.220 Criteria - Minor modification.

To qualify as a minor modification, a proposed modification to the UGB must meet the criteria in subsections A., B., C., or D. below.

A. Subject to the limitations of subsections B., C., and D. below, lands proposed for inclusion within the UGB must be:

1. Be no larger than five acres in size unless the proposal would further the goals of the UGB by creating a permanent open space buffer or other clear limit to future urban development in the vicinity; and
2. Located below the fifteen percent slope line, as defined in the general plan; and
3. Be contiguous to lands with an urban land use designation on the city's general plan land use /transportation diagram.

B. Lands adjacent to the Coyote Valley Urban Reserve, proposed for inclusion within the UGB must meet all of the following additional criteria:

1. Be no larger than five acres in size; and
2. Be located partly within the UGB; and
3. Be proposed for development with a single, master plan process and coordinated implementation, such as a single planned development zoning and permit, that addresses uses and development on the entirety of such lands and that is compatible with neighboring uses and development.

C. Land proposed for inclusion in the UGB for public service or facility uses must meet all of the following additional criteria:

1. Require urban services; and
2. Be required to serve existing or planned development within the urban service area.

D. Lands within the Alviso Planning Area proposed for inclusion within the UGB must meet all of the additional criteria set forth in either subsection 1. or subsection 2. below:

1. Type I criteria:

- a. Be no larger than five acres in size; and
- b. Be located partly within the UGB; and
- c. Be proposed for development with a single master plan process and coordinated implementation, such as a single planned development zoning and permit, that addresses uses and development on the entirety of such lands and that is compatible with neighboring uses and development; or

2. Type II criteria:

- a. Notwithstanding the five-acre size requirement set forth in subsection A. above, be no larger than twenty acres in size; and
- b. Have a solid waste disposal site designation on the city's general plan land use/transportation diagram; and
- c. Be proposed for a use and for development in a manner that is auxiliary to or connected with an adjacent landfill use; and
- d. Be contiguous to lands with an urban land use designation on the city's general plan land use/transportation diagram and to the city's urban service area on at least twenty percent of its boundaries; and
- e. Be visually not distinguishable from contiguous, existing urban uses; and
- f. Be proposed for development with a single master plan process and coordinated implementation, such as a single planned development zoning and permit, that addresses uses and development on the entirety of such lands and that is compatible with neighboring uses and development; and
- g. Inclusion of the lands proposed for inclusion within the UGB will be consistent with the goals of the UGB by creating a permanent open space buffer or other clear limit to future urban development in the vicinity; and
- h. No lands immediately adjacent to the lands proposed for inclusion within the UGB have been processed under the minor modification provisions of this section; and
- i. Development of the lands will provide an environmental benefit.

(Ords. 25301, 25302, 25706, 26082, 26631.)

18.30.260 Modification - Hearings.

A. If the director determines that the application does not qualify as a minor modification, the director shall set hearings before the planning commission and the city council on the issue of whether:

1. The application qualifies as a minor modification; or
2. A comprehensive update of the general plan is currently underway or scheduled, and that the application should be referred to that process; or
3. A comprehensive update of the general plan shall be undertaken.

B. Notice of the time and place of the hearing by one publication in a newspaper of general circulation in the city at least ten days before the date set for the planning commission and city council hearings.

C. If the city council initiates a comprehensive update of the general plan, the request for a significant modification shall be referred to the update process.

D. The modification request shall be denied unless the city council:

1. Determines that the application qualifies as a minor modification; or
2. Refers the application to an existing comprehensive update of the general plan; or
3. Initiates a comprehensive update of the general plan based on the findings in Section 18.30.270.

(Ords. 25301, 25302, 25706, 26082.)

18.30.270 Significant modification.

A. Significant modifications to the UGB are strongly discouraged in order to ensure the long term stability of the boundary by directing urban growth to areas of the city that are urbanized or planned for urbanization.

B. The city council shall refer a significant modification to a comprehensive update of the general plan only if it makes one of the following findings:

1. A comprehensive update of the general plan is being scheduled for reasons independent of this application; or
2. The applicant has demonstrated that without the modification, an owner would be denied economically viable use of his or her land.

(Ords. 25301, 25302, 25706, 26082.)

18.30.280 Fees.

A filing fee, as set forth in the schedule of fees adopted by resolution of the city council, shall be submitted with each request for a modification to the UGB.

(Ords. 25301, 25302, 25706, 26082.)

TITLE 18 FOOTNOTES

1. For statutory provisions on local planning, see Gov. Code § 65100 et seq.
2. For statutory provisions on the scope of general plans, see Gov. Code § 65300 et seq.
3. For statutory provisions on adoption of general plans, see Gov. Code § 65350 et seq.
4. For statutory provisions on adoption of specific plans, see Gov. Code § 65500 et seq.
5. For statutory provisions on administration of specific plans, see Gov. Code § 65550 et seq.



Department of Planning, Building and Code Enforcement

JOSEPH HORWEDEL, DIRECTOR

**DRAFT
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.

NAME OF PROJECT: Piercy Road General Plan Amendment and Minor Modification to the Urban Growth Boundary

PROJECT FILE NUMBER: GP06-02-02 and UGB06-001

PROJECT DESCRIPTION:

A) File No. UGB06-001: Proposal to modify the City's Greenline/Urban Growth Boundary (UGB) to include approximately 3.2 acres of unincorporated territory

B) File No. GP06-02-02: General Plan amendment and Urban Service Area (USA) expansion request to change the General Plan land use designation from Rural Residential (0.2 dwelling units per acre) to High Density Residential (25-50 dwelling units per acre) on approximately 3.2 acres.

Approval of this UGB modification and General Plan amendment/USA expansion request would facilitate subsequent rezoning and annexation to allow urban development including extension of City services on approximately 3.2 acres.

PROJECT LOCATION & ASSESSORS PARCEL NO.: 678-13-012; Located generally at the northeasterly quadrant of the intersection of Piercy Road and Silicon Valley Road (formerly Tennant Avenue);

COUNCIL DISTRICT: 2

APPLICANT CONTACT INFORMATION: Bryan Kientz, Barbaccia Properties Holdings, LLC.
950 South Bascom Avenue, Suite 1113 San Jose, CA 95128

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release

of this draft Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

- I. **AESTHETICS** – Future development of the site is required to conform to applicable General Plan policies, the Residential Design Guidelines, and the Outdoor Lighting Policy.
- II. **AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- III. **AIR QUALITY** – Future development of the site is required to conform to applicable General Plan policies and the City's Grading Ordinance.
- IV. **BIOLOGICAL RESOURCES** – No rare or endangered species of flora or fauna are known to inhabit the site. Future development on the site is required to conform to applicable General Plan policies and regulations (e.g. State and Federal endangered species legislation, Federal Migratory Bird Act, State Fish and Game Code).
- V. **CULTURAL RESOURCES** – The project is located in an area of potential archaeological and cultural sensitivity. Prior to development on the site, a report will be required to determine potential impacts on archaeological resources and identify appropriate mitigation.
- VI. **GEOLOGY AND SOILS** – The project is located in an area of potential geological sensitivity. Prior to development on the site, a geotechnical study and further field investigation will be required to demonstrate that all potential problems can be mitigated to a non-significant level.
- VII. **HAZARDS AND HAZARDOUS MATERIALS** – Future development of the site is required to conform to applicable General Plan policies.
- VIII. **HYDROLOGY AND WATER QUALITY** – Future development of the site is required to conform to applicable General Plan policies.
- IX. **LAND USE AND PLANNING** – Future development of the site is required to conform to applicable General Plan policies (and conservation plans as appropriate).
- X. **MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XI. **NOISE** – Future development of the site will be required to conform to the City's General Plan noise policies and State of California Title 24, Part 2 of the Administrative Code.
- XII. **POPULATION AND HOUSING** – Future development of the site is required to conform to applicable General Plan policies.
- XIII. **PUBLIC SERVICES** – Future development of the site is required to conform to applicable General Plan policies, State law, and the City's Park Impact Ordinance and/or Parkland Dedication Ordinance.

- XIV. RECREATION** – Future development of the site is required to conform to applicable General Plan policies and the City’s Park Impact Ordinance and/or Parkland Dedication Ordinance.
- XV. TRANSPORTATION / TRAFFIC** – Long-term traffic capacity is available to serve this proposal. Any future development of this site will be in conformance with the City's General Plan and Transportation Level of Service Policy.
- XVI. UTILITIES AND SERVICE SYSTEMS** – Future development of the site is required to conform to applicable General Plan policies.
- XVII. MANDATORY FINDINGS OF SIGNIFICANCE** – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on April 21, 2008, any person may:

- 1. Review the Draft Negative Declaration (ND) as an informational document only; or
- 2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft ND. Before the ND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft ND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final ND.

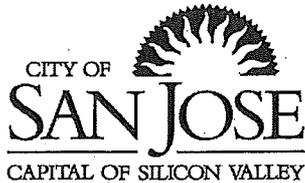
Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on: _____

Deputy

Adopted on: _____

Deputy



Department of Parks, Recreation and Neighborhood Services

PARKS AND RECREATION COMMISSION

April 2, 2008

Mayor and Members of the City Council
City of San José
200 East Santa Clara Street,
San José, California 95113

Subject: Spring 2008 – General Plan Amendments

The Honorable Mayor and Members of the City Council:

The Parks and Recreation Commission (hereinafter “Commission”) reviewed the proposed Spring 2008 General Plan Amendments dealing with future residential projects at the Commission’s regular business meeting on April 2, 2008. This letter transmits the Commission’s comments regarding the following General Plan Amendments to be considered by the Planning Commission and the City Council.

- 1) **GP05-02-02:** The Commission is neutral on the conversion of this land from General Commercial to Residential. However, if this General Plan Amendment request for Medium High Density Residential is approved by the City Council, the proposed housing range is 17 to 36 new dwelling units. A future housing project will be under 50 units and therefore the City can only request the associated park in-lieu fees from this project in CD2. The Commission understands that the City can not request land dedication under this General Plan request for a future housing project. A future housing project will still need to comply with the requirements of the PDO or PIO, depending on housing types.
- 2) **GP06-02-02 & UGB06-001:** The Commission is neutral on both the conversion of this land from Rural Residential to High Density Residential and the change in the Urban Growth Boundary. If this General Plan Amendment request for Medium High Density Residential is approved by the City Council, along with the Urban Growth Boundary change, the proposed housing range is approximately 80 to 160 new dwelling units. A future housing project will be over 50 units and therefore the Commission can recommend land dedication under the Parkland Dedication Ordinance (PDO) or the Park Impact Ordinance (PIO). In this case, the Commission understands that a new neighborhood park is proposed on the property just south of site. Therefore, the Commission is not requesting land dedication from this site as part of a future housing project in CD2. A future housing project will still need to comply with the requirements

of the PDO or PIO. Depending on housing types, the project will be required to submit the required park fees in lieu of land dedication.

- 3) **GP07-03-04 & GPT07-03-04:** If this General Plan Amendment request for Mixed Use is approved by the City Council, the proposed housing range is approximately 600 new dwelling units with a three quarter acre park/plaza and a 10,000 to 20,000 square foot performing art center. A future housing project will be over 50 units and therefore the City can recommend land dedication under the PDO or PIO. The Commission is concerned with the size of the proposed park/plaza has not kept pace with the proposed increase in density for this project. The Jackson-Taylor Residential Strategy Plan calls for mix use development on this 5.14 acres site and states: "The residential component must develop to a minimum of 25 du/ac and may be a maximum density of 50 du/ac. For densities above 35 du/ac, projects must exhibit exemplary architectural design that is urban in character and express the essence of the design guidelines contained in the Residential Strategy." Therefore the original range for this property is 110 units at 25 du/ac to 220 units at 50 du/ac. The proposed project would allow 600 units, or approximately 137 du/ac without increasing the size of the proposed park/plaza. The Plan further states: "The amount of parks within the study area is based on the City's population-based parkland objective." This objective per the City's General Plan is 3.5 acres per 1,000 population. The proposed density increase is equal to approximately 382 units, or 2.6 acres of additional parkland is needed within the Jackson-Taylor Residential Strategy Plan Area. The Commission support's Parks, Recreation and Neighborhood Service Department (PRNS) recommendation to request land dedication for a new central located neighborhood park/plaza from the future housing project on this site. The Commission also supports the inclusion of the performing art center as part of this housing project in Japan Town. However, the Commission is concern with the increase in density; the proposed park/plaza will be over crowned and the 2.6 acres of additional parkland will never be achieved within the Plan Area.
- 4) **GP07-03-05 & GPT07-03-05:** If this General Plan Amendment request to lower density to Medium High Density Residential on this property in the Jackson-Taylor Residential Plan Area is approved by the City Council , the proposed housing range is 26 to 55 new dwelling units. A future housing project may be under 50 units and therefore the City can only request the associated park in-lieu fees from this project in CD3. The Commission understands that the City can not request land dedication under this General Plan request for a future housing project. Furthermore, the Jackson-Taylor Residential Plan did not indicate a future public park on this site. Any future housing project will still need to comply with the requirements of the PDO/PIO, depending on housing types. This reduction would also off-set 0.3 acres of future parkland increase from GP07-03-04.
- 5) **GP06-04-05:** The Commission supports the conversion of this land from Light Industrial to Transit Corridor Residential. If this General Plan request is approved by the City Council, the proposed minimum housing range is approximately 270 new dwelling units at 20 units to the acre. A future project may be over 50 units and therefore the City

can recommend land dedication under the PDO/PIO. PRNS staff has will be requesting land dedication for the Penitencia Creek Trail connection from this future housing project. The new trail is a missing link in the Penitencia Creek Trail Alignment from King Road to Berryessa Road in CD4. The Commission is in support of this future trail alignment and the proposed General Plan Amendment which could deliver the proposed trail alignment to the City.

- 6) **GP05-05-03:** If the General Plan Amendment request is approved by the City Council, the proposed minimum housing range is approximately 30 new dwelling units at 20 units per acre. A future housing project may be under 50 units and therefore the City can only recommend the collection of in-lieu fees under the PDO/PIO. PRNS is interested in acquiring the nearby Water District's land and part of the adjacent parcel for a new neighborhood park site along the west side of Silver Creek at the intersection of Alum Rock Road and Sunset in CD5. The Commission is in support of such an endeavor to create a new park at this location.

- 7) **GP07-06-01 & GPT07-06-01:** If approved by the City Council, the proposed housing range is approximately 61 to 127 new dwelling units. A future housing project will be over 50 units and therefore the City can recommend land dedication under the PDO/PIO. PRNS has requested land dedication from this future housing project to expand Frank Santana Park in CD6 with a second sport field. The Commission strongly support this proposed General Plan Amendment by the Developer on the conversion of this land from Regional Commercial to Residential on 5.1 acres, which would provide additional parkland to expand Frank Santana Park through land dedication under the PDO/PIO.

The Parks and Recreation Commission will be glad to answer any questions the Planning Commission may have regarding these recommendations.

Sincerely,

Melanie Richardson
Chair, Parks and Recreation Commission

cc: PRNS
PBCE

Memorandum

TO: Jenny Nusbaum
PBCE Dept.

FROM: David J. Mitchell
PRNS Dept.

SUBJECT: General Plan Amendments
Spring 2008

DATE: 2-08-08

The Department of Parks, Recreation and Neighborhood Services has reviewed the following proposed Amendments to the City's General Plan. PRNS comments are attached to this memorandum regarding possible land dedications from future housing associated with the following Amendments:

GP05-02-02

GP06-02-02

GP07-03-04

GP07-03-05

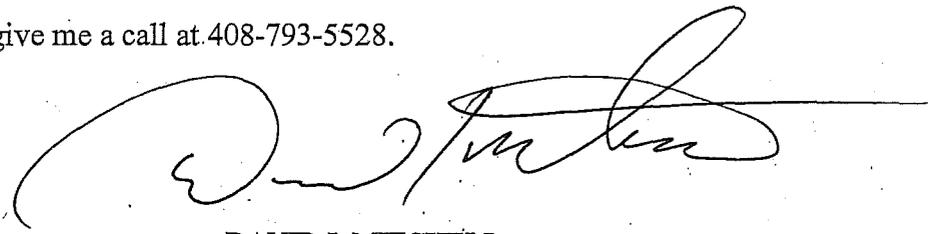
GP06-04-05

GP05-05-03

GP07-06-01

If these amendments are approved by the City and lead to future housing projects, then at the rezoning or site development permit process for such new housing, which ever occurs first, will be the phase for which PRNS to actually declare its position regarding future land dedication for public parks and trails. New residential projects over 50 units are subject to land dedication requirements of the Parkland Dedication Ordinance (PDO) and/or Park Impact Ordinance (PIO).

If you have any questions, please give me a call at 408-793-5528.



DAVID J. MITCHELL
Parks Planning Manager

PROPOSED GENERAL PLAN AMENDMENTS

SPRING 2008

No.	GPA File No. and Location	Existing Use	Proposed Use	Hearing Schedule	PRNS Recommendation
1	GP05-02-02 West side of Snell Avenue, approximately 400 feet southerly of Santa Teresa Boulevard (1.46 acres)	General Commercial	Medium High Density Residential (12-25 DU/AC)	Spring 2008 Planning Commission March 26, 2008 City Council April 22, 2008	If approved by the City, the proposed Project's housing range is 17 to 36 new dwelling units. A future housing project will be under 50 units and therefore PRNS can only request the associated park in-lieu fees from this project in CD2.
2	GP06-02-02 & UGB06-001 Easterly side of Piercy Road, northeasterly corner of Piercy Road and Silicon Valley Road (3.2 acres)	Rural Residential (0.2 DU/AC)	Medium High Density Residential (10-25 DU/AC) and a Urban Growth Boundary Change	Spring 2008 Planning Commission April 21, 2008 City Council May 20, 2008	If approved by the City, the proposed Project's housing range is approximately 80 to 160 new dwelling units. A future housing project will be over 50 units and therefore PRNS can recommend land dedication under the PDO or PIO. In this case, PRNS will request the associated park in-lieu fees from this project do to a proposed new neighborhood park on the adjacent property to the south in CD2.
3	GP07-03-04 & GPT07-03-04 Block bounded by E. Jackson Street, N. 6th Street, E. Taylor Street, and N. 7th Street (675—696 North 6th Street) (5.78 acres)	Jackson-Taylor Planned Residential Community Specific Land Use Plan Mixed Use 2 and Public Park/Open Space. Maximum height 65 feet.	Jackson-Taylor Planned Residential Community Specific Land Use Plan Mixed Use 2A to allow (1) up to 600 multiple-dwelling units, (2) 16,000 to	Spring 2008 Planning Commission April 21, 2008 City Council May 20, 2008	If approved by the City, the Project's proposed housing is up to 600 new dwelling units. This proposed Project is over 50 units and therefore PRNS can recommend land dedication under the PDO or PIO. PRNS will request land dedication for a new park from the future housing project. Land dedication for the new park is based on the developer proposal, hereto attached for a plaza/park and a community performing art center in CD3. Remaining units, minus any exempt units, and/or private recreational credits will pay the associated park in-lieu fee.

TO: Jenny Nusbaum
Planning, Building
and Code Enforcement

FROM: P. Paul Ma

**SUBJECT: TRAFFIC IMPACT ANALYSIS
FOR GP06-02-02**

DATE: 06-20-06

Approved

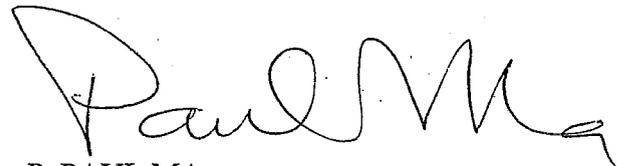
Date

File Number: GP06-02-02
Location: N/E corner of Piercy Rd. and Silicon Valley Rd.
Acreage: 2.6 ac.
Description: Rural Res. (0.2 DU/AC) to High Density Res. (25-50 DU/AC)
(Add 127 HH)
Outside Special Subarea (Remainder of City)

We have reviewed the subject General Plan Amendment (GPA) and submit the following comments. The estimated number of new PM peak hour trips resulting from the proposed land use change is below the exemption threshold established for this area. Therefore, this GPA is exempt from a computer model traffic impact analysis.

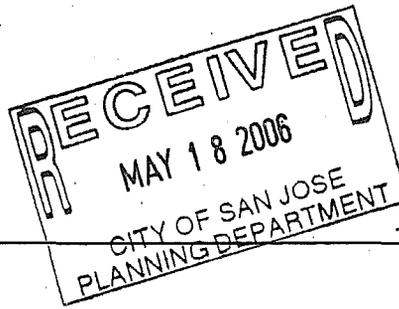
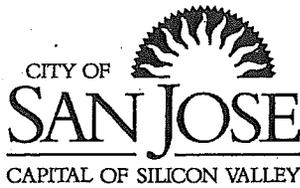
If an Environmental Impact Report (EIR) is required for this GPA for other reasons, the EIR must include a traffic impact analysis report for the project and a cumulative analysis for all GPAs on file this year. Additional traffic data will be provided to the applicant's traffic engineering consultant for the preparation of the report.

Please contact Paul Ma at 975-3272 if you have any questions.



P. PAUL MA
Transportation Systems Planning Manager
Department of Transportation

PM
cc: Ben Corrales



Memorandum

TO: Ben Corrales
Planning and Building

FROM: Ebrahim Sohrabi
Public Works

**SUBJECT: RESPONSE TO GENERAL PLAN
AMENDMENT APPLICATION**

DATE: 05/17/06

PLANNING NO.: GP06-02-02
DESCRIPTION: GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Rural Residential(0.2 DU/AC) to High Density Residential (25-50 DU/AC) on a 2.6-acre site, and incorporation to the Urban Service Area Boundary /Urban Growth Boundary on the 2.6-acre site. (Barbaccia Investments, Owner/Jack Previte, Applicant)
LOCATION: easterly side of Piercy Road, northeasterly corner of Piercy Road and Silicon Valley Road
P.W. NUMBER: 3-16991

Public Works received the subject project on 03/30/06 and submits the following comments:

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

Comments:

Sanitary Sewer – Construct sanitary sewer main on Piercy Road and Tenant Avenue from project frontage to Basking Ridge. Flow monitoring will be required.

Inadequate Storm Capacity – The design of the storm sewer main on Tenant Avenue did not include the proposed project. The project will be required to upsize the existing storm main or construct a new main.

Traffic Impact Analysis – A Traffic Report is required prior to environmental clearance or zoning.

The public infrastructure in the area of this project was financed and constructed through an Assessment District. Assessments are being collected on industrially zoned properties benefiting from the additional capacity created by the infrastructure improvements. The assessments on the

Planning and Building

05/17/06

Subject: GP06-02-02 &UGB06-001

Page 2 of 2

Industrial properties continue through July 2023. The improvements were designed to provide necessary services for the ultimate build out of the Industrial lands and did not include future intensification of use of the subject properties.

Please contact the Project Engineer, Amit Mutsuddy at 535-6828 if you have any questions.

A handwritten signature in black ink, appearing to read 'Ebrahim Sohrabi', is written over the typed name.

EBRAHIM SOHRABI

Senior Civil Engineer

Transportation and Development Services Division

ES:AM:

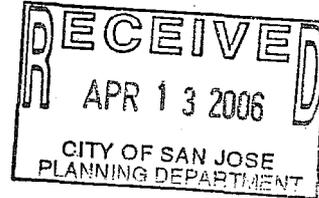
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Memorandum

DATE: 04/12/06

TO: Ben Corrales

FROM: Nadia Naum-Stoian



Re: Plan Review Comments

PLANNING NO: GP06-02-02

DESCRIPTION: GENERAL PLAN AMENDMENT request to change the Land Use/Transportation Diagram designation from Rural Residential(0.2 DU/AC) to High Density Residential (25-50 DU/AC) on a 2.6-acre site, and incorporation to the Urban Service Area Boundary /Urban Growth Boundary on the 2.6-acre site. (Barbaccia Investments, Owner/Jack Previte, Applicant)

LOCATION: easterly side of Piercy Road, northeasterly corner of Piercy Road and Silicon Valley Road

ADDRESS: easterly side of Piercy Road, northeasterly corner of Piercy Road and Silicon Valley Road

FOLDER #: 06 009248 AO

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.

Planner to check with Hazardous Materials Division, , Michael Murtiff, for Environmental concerns, and Fire Administrative Officer Geoff Cady for response impact.

A handwritten signature in black ink, appearing to read "Nadia Naum-Stoian".

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

Corrales, Ben

From: Theodore Hipol [thipol@valleywater.org]
Sent: Tuesday, October 03, 2006 1:58 PM
To: JSchwarz@davidjpowers.com
Cc: ben.corrales@sanjoseca.gov; Theodore Hipol
Subject: District File 28597 - GPA for APN 678-13-012

John,

As per your phone message to me on September 28, 2006, the Santa Clara Valley Water District (District) has the following general comments.

The District prepared a preliminary study for the abandonment of the canal. Although the overall project has been deferred, the District's easement within the property may revert to the property owner subject to the following conditions:

- Provide an appraisal for the area to be purchased.
- Indemnify, defend, and hold harmless the District from every expense, claim, or liability to persons or damage to property arising from the existence and subsequent removal of the canal.
- Accept responsibility for compliance with applicable environmental laws associated with the removal of the canal and as required by all regulatory agencies.
- Mitigate all impacts arising from the removal of the canal including the discharge of storm water formerly accumulated and conveyed by the canal.
- If necessary, convey a temporary ingress-egress easement for District access to the District's remaining easements.

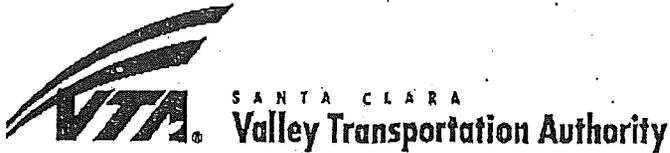
If the above conditions are acceptable, please contact me so we can proceed with the quitclaim process and prepare the necessary documents.

If you have any questions, please contact me at (408)265-2607, extension 2494.

Thanks,

Theo Hipol

11/27/2006



April 12, 2006

City of San Jose
Department of Planning and Building
200 East Santa Clara Street
San Jose, CA 95113

Attention: Ben Corrales

Subject: City File No. GP06-02-02 / Piercy Road GPA

Dear Mr. Corrales:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the General Plan amendment for high-density residential (25-50 du/ac) on 2.6 acres at the northeast corner Piercy Road and Silicon Valley Road. We have no comments at this time.

Thank you for the opportunity to review this project. If you have any questions, please call me at (408) 321-5784.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roy Molseed".

Roy Molseed
Senior Environmental Planner

RM:kh

cc: Ebrahim Sohrabi, San Jose Development Services



GREAT OAKS WATER COMPANY

P. O. Box 23490
San Jose, California 95153
(408) 227-9540

April 10, 2006

Attn: Ben Corrales
City of San Jose
200 East Santa Clara Street
San Jose CA 95113

RE: City File No. UGB 06-001 APN: 678-13-012
Dear Sirs this project is in the Great Oaks Water Service area.
Great Oaks Water Company will serve water to this project referenced above under the rules and regulations of the State of California Public Utilities Commission and the California Department of Health. Also note that no Recycled Water can be place on the ground in the Great Oaks Water Company service area.
If you have any question please contact me.

Sincerely

Robert Moore
Director of Construction Services
(408) 227-9540



APR 6 2006

MAR 9 2006

April 4, 2006

Ben Corrales, Project Manager
City of San Jose
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street, Tower 3
San Jose, CA 95113

Re: City of San Jose No. GP06-02-02

General Plan Amendment request to change the Land Use/Transportation Diagram designation from Rural Residential (.2 DU/AC) to High Density Residential (25-50 DU/AC) on a 2.6-acre site, and incorporation to the Urban Service Area Boundary/Urban Growth Boundary on the 2.6 -acre site located on the east side of Piercy Road, northeast corner of Piercy Road and Silicon Valley Road (APN 678-13-012)

City of San Jose No. UGB06-001

Proposed modification to the Urban Service Area and Urban Growth Boundary to include approximately 2.6 acres within the Urban Service Area and Urban Growth Boundary on a property located generally at the northeast quadrant of the east side of Piercy Road, northeast corner of Piercy Road and Silicon Valley Road (APN 678-13-012)

Dear Ben:

I am writing in response to the City of San Jose's referral of the above-referenced project. The project site is located approximately 4.4 miles from the nearest referral zone, Reid-Hillview Airport. Therefore, the project site lies outside the Airport Land Use Commission (ALUC) project referral boundaries and the ALUC has no comments.

ALUC staff appreciates the opportunity to review this project. If you have any, please contact me at (408) 299-5798.

Sincerely,

Dana Peak
ALUC Staff Coordinator

Corrales, Ben

From: Chris_Nagano@fws.gov
Sent: Friday, July 07, 2006 1:54 PM
To: ben.corrales@sanjoseca.gov
Cc: djohnston@dfg.ca.gov; Ryan_Olah@fws.gov; Darryl.Boyd@sanjoseca.gov; Michael.Mena@sanjoseca.gov; Eric_Tattersall@fws.gov; Jonathan.Ambrose@noaa.gov; Mike_Thomas@fws.gov; Cori_Nagasawa@fws.gov
Subject: General Plan Amendment request to change the Land Use/Transportation Diagram from Rural Residential (0.2 DU/AC) to High Density Residential (25-50DU/AC) on a 3.2-acre site and incorporation to the Urban Service Area/Urban Growth Boundary on the 3,2-acre

Dear Mr. Corrales:

This electronic mail message is in response to the proposed DU/AC) to High Density Residential (25-50 DU/AC) on a 3.2-acre site and incorporation to the Urban Service Area/Urban Growth Boundary on the 3,2-acre site on Piercy Road in the City of San Jose, Santa Clara County, California (SJ File GP06-02-02; APN: 678-13-012). At issue are the potential adverse effects of the proposed project on the threatened bay checkerspot butterfly (*Euphydryas editha bayensis*), threatened California red-legged frog (*Rana aurora draytonii*), threatened California tiger salamander (*Ambystoma californiense*), endangered Santa Clara Valley dudleya (*Dudleya setchellii*), endangered Metcalf Canyon jewelflower (*Streptanthus albidus ssp. albidus*), and other listed species under the authority of the U.S. Fish and Wildlife Service (Service). This review is based on the information dated June 22, 2006, that was provided to the Service by the San Jose Planning, Building, and Code Enforcement Department. The information was received by this Field Office on June 27, 2006. Based on the information provided by the City of San Jose and otherwise available to us, the proposed project is located in an area of Santa Clara County that may provide suitable habitat for the bay checkerspot butterfly, California red-legged frog, California tiger salamander, Santa Clara Valley dudleya, Metcalf Canyon jewelflower, and other listed species under the authority of the Service, or is otherwise naturally accessible to them.

Section 9 of the Act prohibits the take of any federally listed animal species by any person subject to the jurisdiction of the United States. As defined in the Act, take is defined as "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." "Harm has been further defined to include habitat destruction when it injures or kills a listed species by interfering with essential behavioral patterns, such as breeding, foraging, or resting. Thus, not only are the bay checkerspot butterfly, California red-legged frog, and California tiger salamander protected from such activities as collecting and hunting, but also from actions that result in their death or injury due to the damage or destruction of their habitat. The Act prohibits activities that "...remove and reduce to possession any listed plant from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law." The term "person" is defined as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States."

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project and a listed species is going to be adversely affected, then initiation of formal consultation between that agency and the Service pursuant to section 7 of the Act is required. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species and may authorize a limited level of incidental take. If a Federal agency is not involved in the project, and federally listed species may be taken as part of the project, then an incidental take permit pursuant to section 10(a) (1)(B) of the Act should be obtained. The Service may issue such a permit upon completion of a satisfactory conservation plan for the listed species that would be taken by the project.

As part of the environmental review for this proposed project, the Service recommends that habitat evaluations and/or

7/20/2006

surveys, as appropriate, by qualified biologists following Service and California Department of Fish and Game protocols be completed for the bay checkerspot butterfly, California red-legged frog, California tiger salamander, Santa Clara Valley dudleya, and the Metcalf Canyon jewelflower in the action area. We recommend the City of San Jose provide us and the California Department of Fish and Game with the results of these assessments and/or surveys. If it is determined that the proposed project may result in take or adverse effects to the bay checkerspot butterfly, California red-legged frog, California tiger salamander, Santa Clara Valley dudleya, Metcalf Canyon jewelflower, and/or other federally listed species under the authority of the Service, we recommend that the City of San Jose require the applicant to obtain authorization for incidental take for the appropriate listed species pursuant to sections 7 or 10(a)(1)(B) of the Act prior to certification of the final environmental documents.

We also recommend adequate habitat assessments/surveys, as appropriate, for the burrowing owl (*Spetylo canicularia*), loggerhead shrike (*Lanius ludovicianus*), horned lark (*Eremophila alpestris*), and nesting raptors be completed in the action area. Photocopies of the data and findings from the habitat assessments/surveys should be provided to the Service and the California Department of Fish and Game. The Service recommends that adequate avoidance or conservation measures be implemented if it is determined that any of these species will be adversely affected by the proposed project.

The City of San Jose should contact NOAA - Fisheries regarding the potential effects of this project on the threatened Central California steelhead (*Oncorhynchus mykiss*), threatened California coast coho salmon (*Oncorhynchus kisutch*), and other listed species, and animals and plants under their authority. The NOAA - Fisheries contact may be reached at: Jonathan.Ambrose@noaa.gov.

If you have any questions, please contact me via electronic mail or at telephone 916/414-6600.

s/Christopher D. Nagano

Deputy Assistant Field Supervisor
Endangered Species Program
Sacramento Fish and Wildlife Office
U.S. Fish and Wildlife Service
2800 Cottage Way Room W-2605
Sacramento, California 95825

Corrales, Ben

From: Corrales, Ben
Sent: Tuesday, September 26, 2006 4:17 PM
To: 'Nicole Marin'
Subject: RE: Piercy Road

Nicole:

Thanks for your email. We will keep it as public record when writing our staff report. Regarding your question, there is no rezoning or pre-zoning application on file at this time. The applicant has requested two things only, one the General Plan amendment to change the existing Land Use designation from Rural Residential to High Density Residential (25-50 dwelling units per acre). What this means is that, if the project is approved by City Council, they could potentially build a minimum of 80 residential units to a maximum of 160. In order to do that, the General Plan amendment has to be approved and then a pre-zoning project has to be approved as well. Those are two separate processes.

At the same time, the applicant is requesting that this property be included in the Urban Service Area and Urban Growth Boundary. This means that as it is right now the property is outside the area in the City that doesn't receive services from the City of San Jose, but through the County of Santa Clara. The expansion of the Urban Growth Boundary is the limit where we want the City to grow. Most of the time this is due to the topography of the property.

If all those projects get approval from Council, they could potentially develop the property and increase the density (residential) in the area.

Staff is still reviewing this proposal. We have indicated to the applicant that the proposed use is too intense. At the same time, they need to go through environmental clearance and they haven't started yet. Most likely is that this project would go to hearing sometimes in March or April of next year. By then staff would have decided if we are going to support or deny the proposal.

I hope this helps. Let me know if you have more questions.

Ben Corrales
(408) 535-7868

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

From: Nicole Marin [mailto:Nicole.Marin@baesystems.com]
Sent: Monday, September 25, 2006 2:31 PM
To: ben.corrales@sanjoseca.gov
Subject: Piercy Road

Mr. Corrales;

I lease property on Piercy Road, and manage a stable for my parents. (<http://www.hamptonplace.net>). I have some concerns with the proposed zoning and would like some more information.

Urban sprawl has led to so many Stables closing in the bay area, that I must wonder if our children and their children will only see farm animals in Zoo's in the future. We provide homes for abandoned and abused horses and hope that any zoning change would not keep us from continuing in this endeavor.

Some information about proposed plans on Parcel 678-13-012 would be great.

Kind regards,

Nicole Marin
Sr. Lean Implementation Specialist
BAE Systems
Ground Systems Division
1205 Coleman Ave- Upper A wing

11/27/2006