

**STAFF REPORT**  
**CITY COUNCIL**

**FILE NO.: C10-014**

**Application Type: Director-Initiated Prezoning**

**PROJECT DESCRIPTION:**

Director-initiated prezoning from unincorporated County of Santa Clara to the R-1-8 Single-Family Residence Zoning District on an approximately 64 gross acre County island.

**LOCATION:** Unincorporated area generally bounded by Gay Avenue, North Capitol Avenue, Alum Rock Avenue, and North White Road.

Existing Zoning	Unincorporated R-1, CN
Proposed Zoning	R-1-8 Single-family Residence
General Plan	Medium Low Density Residentail (8.0 du/ac) and Public/Quasi-Public
Council District	5
Historic Resource	No
Redevelopment Area	No
Specific Plan	No
CEQA	Reuse of SJ 2020 EIR

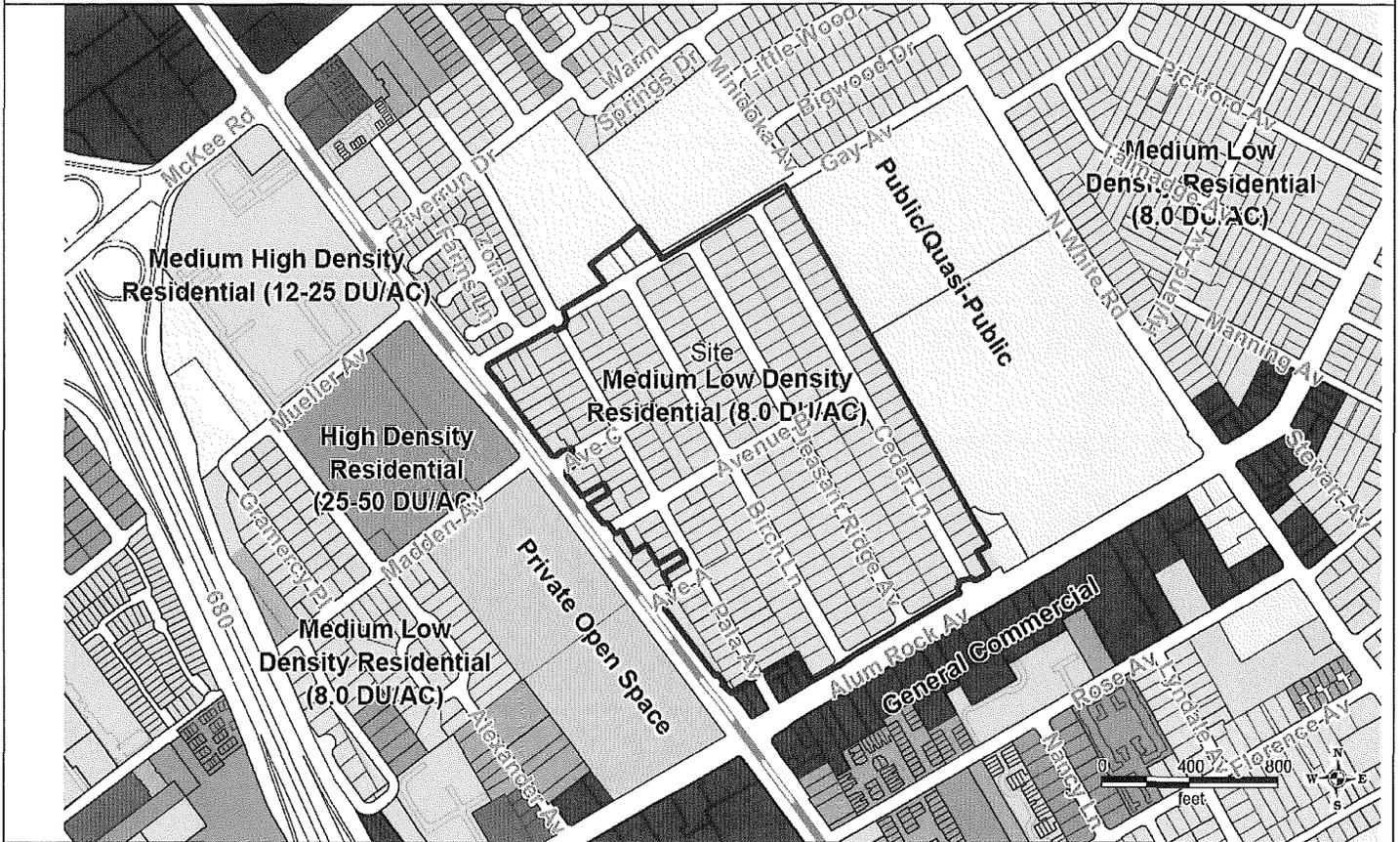
**Aerial Map**

N

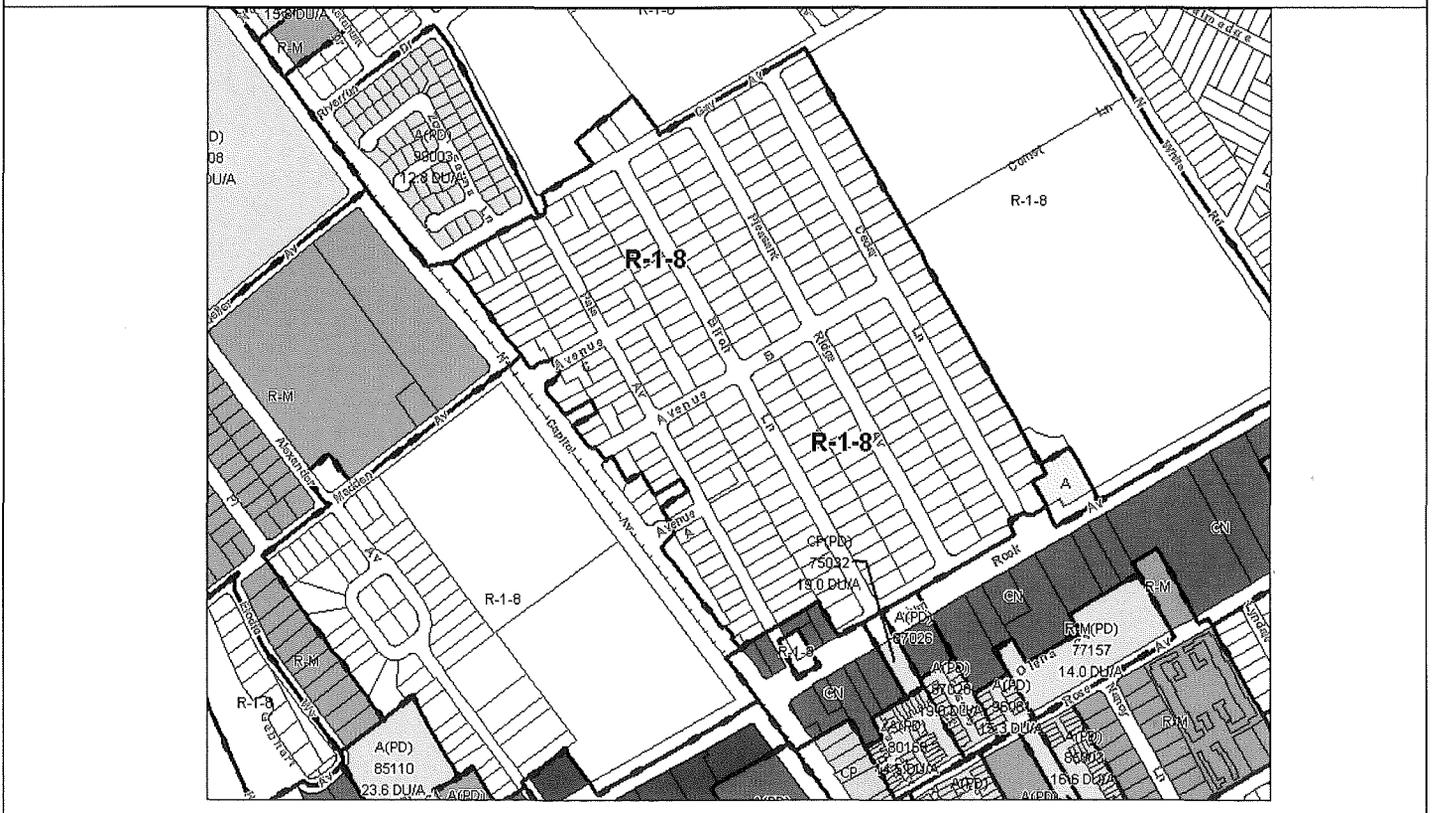
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### GENERAL PLAN



### ZONING (Existing and Proposed)



## **RECOMMENDATION**

Planning staff recommends approval of the proposed Director-initiated rezoning on the subject properties from unincorporated County of Santa Clara to the R-1-8 Single-Family Residence Zoning District for the following reasons:

1. The proposed rezoning is in conformance with the San José 2020 General Plan Goals and Policies and Land Use/Transportation Diagram designation.
2. The proposed rezoning will provide development standards that are consistent with the existing uses and facilitate any future development to be consistent with surrounding uses.
3. The proposed rezoning will facilitate the elimination of a County island as directed by the City Council's initiation of the County Island Annexation Program.

## **BACKGROUND**

### **County Island Annexation Program**

This Planning Director-initiated rezoning is proposed in conjunction with the annexation of the McKee No. 135 County island generally bounded by Gay Avenue, North Capitol Avenue, Alum Rock Avenue, and North White Road. The initiation of the annexation of this island is scheduled to be considered by the City Council on October 5, 2010 (see separate report).

The subject 64-acre area is one of the five remaining unincorporated County islands or "pockets" planned to be annexed as part of the County Island Annexation program, which was initiated by the City Council in April 2006. The program provides for the annexation of all unincorporated County islands within the City's Urban Service Area that are less than 150 acres in area. Unincorporated islands are governed by and receive services from the County even though they are completely or substantially surrounded by incorporated, or City, lands. The City of San José is initiating the annexation of the subject area as the final portion of Phase 3 of this program, which includes a total of approximately 445 acres and 7,500 residents. The program has resulted in the annexation of 42 County islands comprising approximately 900 acres and 9,000 residents thus far. Approximately 1,400 acres will be annexed including 17,000 residents if all the proposed annexations within the County Island Annexation Program are approved.

### **Rezoning**

This Planning Director Initiated Rezoning is proposed in conjunction with the pending annexation of a County Pocket known as McKee No. 135. In accordance with State law, the assignment of zoning designations is separate from the decision regarding whether or not the City should annex the subject County Island. All properties are required to have an appropriate City of San José zoning district designation in advance of being considered for annexation. The zoning and general plan designations that exist on a property at the time an annexation is approved cannot be changed for two years unless the City Council finds at a public hearing that a change is necessary as a result of a substantial shift in circumstances in accordance with State law.

The recommendation for the proposed zoning districts is based upon consideration of the existing City of San José General Plan designations; the existing Santa Clara County zoning districts; and the existing, legally-established uses on the sites and in the surrounding area. As with the other unincorporated islands in this program, the subject island is within the City of San José's Sphere of Influence, and thus currently has San José General Plan Land Use/Transportation Diagram designations.

### **Site and Surrounding Uses**

The approximately 64-acre area consists of 268 individual parcels which are primarily developed with single-family residences. The subject area is surrounded with single-family residences and a school to the north; a cemetery and multi-family residences across N. Capitol Avenue to the west; commercial uses to the south; and a high school to the east.

### **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.

### **ANALYSIS**

The proposed zoning districts are based on a consideration of a site's San José General Plan designation, the existing, legally-established uses of the site and surrounding area, as well as the existing Santa Clara County zoning districts.

### **General Plan Land Use Designations**

In most cases, properties within the County island are proposed to be zoned in the City of San José in accordance with how the property is designated on the San José 2020 General Plan Land Use/Transportation Diagram. Below is an excerpt from Table 20-270 from the San José Zoning Ordinance. This table demonstrates the zoning district R-1-8 Single-Family Residence District conforms to the existing General Plan land use designation of Medium Low Density Residential (8 DU/AC).

<b>Table 20-270</b>	
<b>San José 2020 General Plan Designation</b>	<b>Conforming District</b>
Medium Low Density Residential (8 du/ac)	R-1-8 Single-Family Residence District

### **Existing Zoning and General Character**

In certain instances, the proposed zoning reflects the existing zoning in the County of Santa Clara if the uses allowed by that zoning are reflective of the general character of an area and adjacent to existing uses consistent with that zoning district. Zoning districts proposed for parcels of two acres or less that are determined to have existing uses consistent with the general character of the area can be considered in conformance with the San José 2020 General Plan. Three adjacent single-family lots have a General Plan Land Use/Transportation Diagram designation of Public/Quasi-Public. The total acreage of the three parcels is less than one acre; therefore, the R-1-8 Single-Family Residence District, which is reflective of the existing single-family uses on these parcels, is considered in conformance with the General Plan.

The County of Santa Clara zoning designation for this particular County island is R1, which is essentially the same as the proposed City of San José zoning of R-1-8 Residence District. There is one parcel designated CN but is developed with a single-family residence.



**Creation of Nonconforming Uses**

No changes are proposed to the existing uses on the properties. Uses that were legally established in the County prior to annexation that do not conform with the City of San José Zoning Ordinance after annexation, shall become legal nonconforming (with the exception of adult uses, which are subject to amortization pursuant to Section 20.80.040 of the San José Municipal Code). Any future changes to the legal nonconforming aspects of any of the properties would be subject to the provision of Chapter 20.150, Nonconforming Uses of the San José Municipal Code.

Home Occupation standards are similar in the County and in the City except that the County has an Expanded Home Occupation use that requires a permit in the County, but would not be permitted in the City. If such a use existed in this pocket, it would become a legal non-conforming use following annexation.

### **CONCLUSION**

Staff recommends that the approximately 64 acre pocket be rezoned R-1-8 Single-Family Residence District to conform to the Medium Low Density Residential (8 DU/AC) San José 2020 General Plan Land Use/Transportation Diagram designation and reflect the general single-family residential character of the area.

This rezoning is not associated with any proposals for specific development. Any future development requiring planning permits will require conformance with the San José General Plan, Municipal Code, and other policies.

Rezoning the properties within this County island 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. A recommendation on appropriate zoning districts for this rezoning proposal is a separate process from and does not speak to the merits of annexation of this County island.

### **PUBLIC OUTREACH/INTEREST**

Staff held two community meetings on April 29, 2010 and May 6, 2010 with residents, property owners, and business owners of this county pocket (McKee No. 135), as well as of the pockets referred to as Capitol No. 57, McKee No. 136 and Penitencia No. 77. There were approximately 30 people in attendance at each meeting. While there were many concerns expressed regarding the potential annexation of the pockets by San Jose (service changes, participation by residents in the process, and increased costs) no specific comments were raised about the proposed zoning designations.

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 Division's website describing 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 José. The County Island Annexation Answer Book was sent to all residents and property owners within the areas scheduled be annexed in 2010 as a part of Phase 3 of the program. Staff has also been available to discuss the proposal with members of the public.

**Project Manager:** Lori Moniz **Approved by:** \_\_\_\_\_/s/ \_\_\_\_\_ **Date:** 09/13/10