



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** September 13, 2010

Approved		Date	9/15/10
----------	--	------	---------

**COUNCIL DISTRICTS:** 4&5  
**SNI AREA:** East Valley/680

**SUBJECT: INITIATE PROCEEDINGS AND SET PUBLIC HEARINGS FOR THE REORGANIZATION/ANNEXATION TO THE CITY OF SAN JOSE OF THE FOLLOWING COUNTY ISLANDS:**

**PENITENCIA NO. 77: AN APPROXIMATELY 119 GROSS ACRE COUNTY ISLAND GENERALLY BOUNDED BY BOTH SIDES OF GOLF DRIVE, THE WEST SIDE OF TOYON AVENUE, BOTH SIDES OF PENITENCIA CREEK ROAD AND BOTH SIDES OF GRIDLEY STREET;**

**MCKEE NO. 136: AN APPROXIMATELY 31 GROSS ACRE COUNTY ISLAND GENERALLY BOUNDED BY PATT AVENUE TO THE NORTH, MCKEE ROAD TO THE SOUTH, AND NORTH WHITE ROAD TO THE EAST;**

**MCKEE NO. 135: AN APPROXIMATELY 64 GROSS ACRE COUNTY ISLAND GENERALLY BOUNDED BY GAY AVENUE TO THE NORTH, NORTH CAPITOL AVENUE TO THE WEST, ALUM ROCK AVENUE TO THE SOUTH, AND A LINE APPROXIMATELY 950 FEET SOUTHWESTERLY OF NORTH WHITE ROAD TO THE EAST; AND**

**CAPITOL NO. 57: AN APPROXIMATELY 127 GROSS ACRE COUNTY ISLAND GENERALLY BOUNDED BY FLORENCE AVENUE TO THE NORTH, SOUTH WHITE ROAD TO THE EAST, STORY ROAD AND LOWER SILVER CREEK TO THE SOUTH, AND SOUTH CAPITOL AVENUE TO THE WEST.**

### **RECOMMENDATION**

It is recommended that the City Council adopt resolutions initiating proceedings and setting November 9, 2010 at 7:00 p.m. for public hearings on the reorganizations of the following territories:

**Penitencia No. 77:** An 119 gross acre County island generally bounded by both sides of Golf Drive, the west side of Toyon Avenue, both sides of Penitencia Creek Road and both sides of Gridley Street and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation, and Area No. 01 (Library Services) County Service.

**McKee No. 136:** An approximately 31 gross acre County island generally bounded by Patt Avenue to the north, McKee Road to the south, North White Road to the east, and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation, and Area No. 01 (Library Services) County Service.

**McKee No. 135:** An approximately 64 gross acre County island generally bounded by Gay Avenue to the north, North Capitol Avenue to the west, Alum Rock Avenue to the south, and a line approximately 950 feet southwesterly of North White Road to the east and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation, and Area No. 01 (Library Services) County Service.

**Capitol No. 57:** An approximately 127 gross acre County island generally bounded by Florence Avenue to the north, South White Road to the east, Story Road and Lower Silver Creek to the south, and South Capitol Avenue to the west and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation, and Area No. 01 (Library Services) County Service.

### **OUTCOME**

If approved by the City Council, the Council would conduct public hearings on the annexation/reorganization of these four County Islands on November 9, 2010. If approved on November 9th, these areas would be served by City of San Jose facilities and services.

### **BACKGROUND**

In November of 2006, the City and County entered into a Settlement Agreement to resolve disputes related to development of the County Fairgrounds site and development under the City's North San Jose Area Development Policy. As a part of that Settlement Agreement, the City agreed to review and consider the annexation of pockets of County territory that are 150 acres or less.

Unincorporated islands are governed by and receive services from the County even though they are completely or substantially surrounded by the City of San Jose. While not agreeing to any particular outcome or decision on any specific annexation proposal, the City did agree to make good faith efforts to process those annexations for City Council consideration by April 15, 2011. These proposed annexations have been reviewed and processed pursuant to the agreements reached by the City and County in that Settlement Agreement.

September 13, 2010

**Subject: Penitencia No. 77, McKee No. 136, McKee No. 135, and Capitol No. 57**

Page 3

On April 26, 2006, the City Council voted to proceed with a County Island Annexation Program that involves the annexation of all unincorporated County pockets less than 150 acres in size. The program has resulted in the annexation of 42 County islands comprising approximately 900 acres and 9,000 residents thus far. The annexation of the subject areas comprise 4 of the 5 County pockets proposed for annexation in 2010 in the program's third and final phase that includes approximately 445 acres and 7,500 residents. The fifth pocket for consideration is Cambrian No. 36, which is analyzed in a separate Memorandum to the Council. Approximately 1,400 acres will be annexed including 17,000 residents if all the proposed annexations within the County Island Annexation Program are approved.

The City Council is scheduled to consider the corresponding Planning Director-initiated rezoning (Files # C10-012, C10-013, C10-014, and C10-015) to each of the Alum Rock pockets in separate actions on this same Council Agenda (see separate reports). The purpose of the Rezoning is to assign City of San José zoning districts to the area prior to annexation, consistent with the City of San Jose General Plan, existing uses, and other factors.

## ANALYSIS

### **County Pocket Descriptions**

Attached to this memorandum is a map depicting the close proximity of all four pockets. Individual descriptions and aerial views are presented below.

**Penitencia No. 77:** The 119-acre County pocket consists of approximately 630 individual parcels which are primarily developed with single-family residences. Other uses in the pocket include the



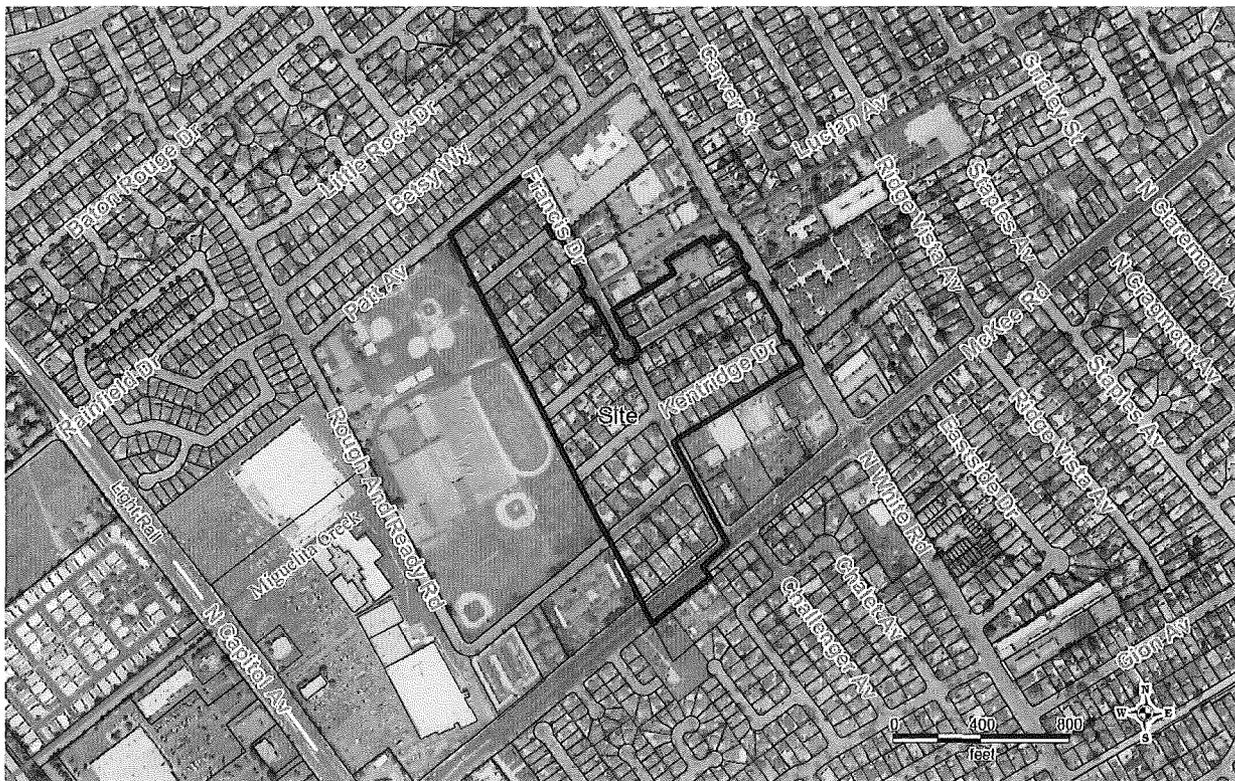
September 13, 2010

Subject: Penitencia No. 77, McKee No. 136, McKee No. 135, and Capitol No. 57

Page 4

Penitencia Creek Trail and Santa Clara Valley Water District property north of Penitencia Creek Road. The site is adjacent to the Toyon Elementary School to the north, single-family residences in the County to the east, south and west. The area east of the subject pocket is part of a larger unincorporated area and San Jose surrounds the remaining portion of the pocket. The Prezoning that corresponds to Penitencia No. 77 is file number C10-012.

**McKee No. 136:** The approximately 31-acre County pocket consists of approximately 115 individual parcels which are primarily developed with single-family residences. Other uses in the pocket consist of multi-family residences on both sides of Alviene Drive, between Francis Drive and N. White Road, including four four-plexes on the south side and two apartment complexes on the north side of the street. The pocket is surrounded primarily with single-family residences to the north; single and multi-family residences and commercial uses to the east; single-family residences to the south; and Sheppard Middle School to the west. The territory is completely surrounded by the City of San Jose. The Prezoning that corresponds to McKee No. 136 is file number C10-013.



**McKee No. 135:** The approximately 64-acre County pocket consists of approximately 260 individual parcels which are primarily developed with single-family residences. The subject area is surrounded by 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 James Lick High School to the east. This territory is completely surrounded by the City of San Jose. The Rezoning that corresponds to McKee No. 135 is file number C10-014.



**Capitol No. 57:** The approximately 127-acre County pocket consists of approximately 630 individual parcels which are primarily developed with single-family residences. There is an existing commercial use (pond supply) on the west side of White Road. The pocket is adjacent to residential uses and the Alum Rock Light Rail line to the west on South Capitol Avenue, commercial uses on the south side of Alum Rock Avenue, a mixture of commercial and residential uses to the east on White Road and commercial uses to the south of the pocket on Story Road. This

territory is completely surrounded by the City of San Jose. The corresponding Prezoning for this pocket is file number C10-015.



### Annexation Considerations

Annexation to San Jose of these and other islands of less than 150 acres as part of the County Island Annexation Program fulfills the long-standing policy of the City, County and Local Agency Formation Commission (LAFCO) that existing and future urban development should be located within cities. In addition, the County Island Annexation Program implements the Urban Service Area policies of the San Jose 2020 General Plan that encourage cooperative efforts to seek the annexation of urbanized County pockets within San Jose's Urban Service Area.

Annexation of County pockets would ultimately result in a more efficient delivery of urban services throughout San Jose by creating logical city boundaries, removing existing gaps in infrastructure and eliminating any duplication of services with the County of Santa Clara. These pockets will be "detached" from the special districts currently providing and/or funding service in the area including Central Fire Protection, County Lighting, County Sanitation, and Area No. 01 (Library Services).

While County policy and standard development practices would likely result in the eventual annexation of the island areas, the County Island Annexation Program reduces the administrative cost of these annexations for the City by taking advantage of the County's current commitment to facilitate annexations and the State's temporary streamlining of the annexation process.

General information applicable to most annexations in the County Island Annexation Program

- **Taxes.** There will be no change to the assessed valuation of property or tax rate as a result of annexation to the City of San Jose. Some assessments change or will be eliminated (e.g., libraries, sewer, and street lighting), with the amount of special assessments comparable to what was paid in the County. Newly annexed residents will be subject to the City's transfer tax (\$3.30/1000) and utility user's tax (5%).
- **Streamlined Annexation Process.** The State has waived formal protest proceedings for unincorporated areas surrounded or substantially surrounded by cities, that are already developed and within their Urban Service Area, and are less than 150 acres in size. Staff has received comments of concern from residents and property owners regarding the limits placed on their ability to protest annexations as a result of the streamlined process.
- **County/City Permit Processes.** Under State law, no changes in zoning or general plan designations can be approved for two years after the annexation unless findings can be made that a substantial change has occurred. The County typically stops accepting new development permits about six weeks prior to the annexation initiation hearing. Those with valid building permits in the County can continue construction, and inspections will be conducted by the County. New development permits can be obtained from the City once the annexation is effective.
- **Zoning Regulations.** Staff has provided information to residents regarding development standards under the new zoning districts, as well as other policies and programs such as regulations for legal nonconforming uses and the secondary unit program.
- **Boundaries (school district, zip code, and real estate)** Annexation does not affect school district boundaries. Address and real estate listing boundaries are not determined by the City. There will be no change to the Zip Code since that is assigned independent of City boundaries. Staff cannot speak to the possibility of future changes in these boundaries by outside agencies or organizations.
- **Public Safety and Code Enforcement.** City of San Jose Police, Fire, and Code Enforcement will provide service to these areas once the annexation is effective.
- **Sidewalks, Sewers, and Lighting.** Upon annexation, residents should not expect the City to construct sidewalks or require construction of sidewalks until new development takes place or improvements are made within the public street right-of-way. The City also constructs sidewalks as part of street improvement projects funded through the City's Capital Improvement Program. San José does not have an assessment for street lights but will take over responsibility for maintaining existing street lights and taking care of outages, malfunctions, and damages.
- **Streets.** County Roads and Airports has recently completed maintenance work for roads that are contained in the subject County pockets. This maintenance work is expected to last ten years. The City of San Jose will be responsible for future maintenance if the areas are annexed.

- **Collection of Garbage and Recyclables** Annexation into San José will result in an eventual change to one of the companies under contract with the City for garbage and recyclable collection services. The change will not occur immediately upon annexation. Customers will be notified in advance regarding the time at which their garbage collection services will change to the new company.

Information regarding these and other issues are addressed in the Annexation Answer Book which was made available to all residents and property owners, well in advance of the proposed annexation to the City of San Jose.

### **EVALUATION AND FOLLOW-UP**

City staff provides status updates on the County Island Annexation Program on the website dedicated to the program and in periodic updates to the City Manager's Office.

### **POLICY ALTERNATIVE**

*Alternative: Decide to not initiate annexation of one or more of the subject County islands.*

Pros: The City would not take on the financial and administrative responsibility of providing urban services to the area.

Cons: The area(s) would remain unincorporated, within the jurisdiction of the County of Santa Clara. Existing gaps in infrastructure and inefficiencies in the delivery of urban services inherent to unincorporated pockets would remain for the foreseeable future. The City of San José would not receive tax revenue from property in the unincorporated pockets whose residents utilize City facilities such as roads, libraries, parks, and community centers. There will continue to be an inequitable distribution of costs amongst all residents who benefit from City services and facilities.

Recommendation: Staff recommends the initiation of all four annexations described in this memorandum.

### **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)**

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. As annexations primarily affect the residents and property owners within the pocket, 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.

Public outreach and noticing was conducted in accordance with Council Policy 6-30: Public Outreach Policy. Staff held two community meetings on April 29, 2010 and May 6, 2010 with residents, property owners, and business owners of the subject County pockets. There were approximately 30 people in attendance at each meeting. Staff from the Police Department, Environmental Services Department, and Planning Department participated in the community meetings. In summary, the questions and concerns expressed in opposition to the annexation were in regards to the following issues:

- The inability of residents to protest or vote to stop the annexation under the streamlined process.
- Uncertainty as to the benefits of becoming a San Jose resident.
- The City's limited financial ability to annex additional pockets.
- A preference for the service provided by the Santa Clara County Sheriff over the San Jose Police Department.
- The mess created by on-street pickup of yard waste as allowed in the City.
- Concerns regarding the potential need to install sidewalks upon annexation.

Staff responded to these concerns by providing specific explanations that are consistent with the information contained in this memorandum.

### **COORDINATION**

This effort was coordinated with the Department of Public Works, Department of Transportation, Fire Department, Police Department, Building Division, Environmental Services Department and the City Attorney. Staff from the relevant Departments meets on a regular basis regarding issues related to the County Island Annexation Program. The City provides regular updates to the County of Santa Clara on the status of the program.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with the City Council's direction to initiate annexation of unincorporated islands of less than 150 acres.

### **COST SUMMARY/IMPLICATIONS**

The annexation of this and other islands would remove existing gaps in infrastructure and inefficiencies in the delivery of urban services such as police and fire protection. Upon annexation,

HONORABLE MAYOR AND CITY COUNCIL

September 13, 2010

**Subject: Penitencia No. 77, McKee No. 136, McKee No. 135, and Capitol No. 57**

Page 10

the City of San José receives tax revenue from property in these unincorporated pockets whose residents utilize City facilities such as roads, libraries, parks, and community centers. Incorporation of these islands results in a more equitable distribution of costs amongst all residents who benefit from City services and facilities.

The City will incur operational costs to provide direct services to the area such as emergency services provided by the Police and Fire Departments, demands by residents and businesses for street maintenance, code enforcement, recreational and library services. The larger County islands were intentionally included as part of the third and last phase of the County Island Annexation Program (initiated in 4/2006) to allow sufficient time for City service providers to prepare to take responsibility for providing services in these areas. Planning staff has closely coordinated with staff from other departments to assist in their preparation to provide services to the area.

### **BUDGET REFERENCE**

Not applicable.

### **CEQA**

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.

/s/

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Richard Buikema, Senior Planner, at 408-535-7835.

### **Attachments:**

Files # C10-012, C10-013, C10-014, and C10-015

Map