



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Christopher Burton

SUBJECT: SEE BELOW

DATE: January 24, 2024

Approved

Date

2/14/24

COUNCIL DISTRICT: 5

SUBJECT: MCKEE NO. 139 - ANNEXATION TO THE CITY OF SAN JOSE OF A PORTION OF SANTA CLARA COUNTY TERRITORY CONSISTING OF ONE LOT LOCATED ON THE SOUTH SIDE OF KIRK AVENUE EAST OF MADELINE DRIVE

RECOMMENDATION

Adopt a resolution ordering the annexation of territory designated as McKee No. 139, which involves the annexation to the City of San José of approximately 1.49 gross acres of land located on the south side of Kirk Avenue approximately 160 feet east of Madeline Drive (APN 601-07-066) and the detachment of the same from the appropriate special districts.

SUMMARY AND OUTCOME

On December 15, 2021, the applicant, Hestia Real Estate, Inc., on behalf of Kirk Ave LLC, filed four Planning applications including the annexation (File No. McKee 139) consisting of one unincorporated parcel from the County of Santa Clara into the City of San José, pre-zoning (File No. PDC22-006) of the 1.49 gross acre site to the R-1(PD) Planned Development Zoning District, a Planned Development Permit (File No. PD22-013) and a Vesting Tentative Map (File No. T21-045) for the construction of 18 attached single-family residences on 18 lots and one common area. The Planned Development Permit and the Vesting Tentative Map will be heard separately at a Planning Director hearing after the resolution ordering annexation has been adopted.

The subject 1.49 gross acre site is within San José's Urban Growth Boundary and Urban Service Area and the annexation is consistent with Envision San José 2040 General Plan vision, goals, and policies and the Zoning Code. The project under State Density Bonus Law (California Government Code Section 69515) qualifies for a 50% density bonus by providing at least two deed restricted units (17% of the units) as affordable to very low-income households (30% Area Median Income (AMI)), which yields a total of 18 units, as proposed. The annexation includes detachment from special districts, including the Santa Clara County Central Fire Protection

District, Santa Clara County Lighting Service Area, West Valley Sanitation District, and Santa Clara County Library District.

Upon completion of the annexation proceedings, the territory designated as McKee 139 will be annexed into the City of San José and eligible to receive City services. Until such time, the subject property will remain under the control and jurisdiction of the County of Santa Clara.

BACKGROUND

On January 23, 2024, the City Council adopted the Initial Study/Mitigated Negative Declaration (IS/MND) for the 125 Kirk Avenue Subdivision Project, approved Ordinance No. 31007 for pre-zoning (File No. PDC22-006) to the R-1(PD) Planned Development Zoning District for the subject property, and scheduled the date of February 27, 2024, to consider a resolution ordering the annexation of McKee 139. The pre-zoning designation is a required process prior to the approval of annexation, and the zoning becomes effective upon the annexation of the property into the City.

The City Council voted unanimously 11-0-0 on January 23, 2024, to adopt Resolution No. 2024-11 to initiate the annexation, including detachment from the Santa Clara County Central Fire Protection District, Santa Clara County Lighting Service Area, West Valley Sanitation District, and Santa Clara County Library District. In accordance with Section 5.20.070 of the Santa Clara County Zoning Ordinance, properties are subject to annexation when they are (1) located within the Urban Service Area of a city, (2) contiguous to property within the city, and (3) the proposed development of said property requires a development permit. These criteria of the Santa Clara County Zoning Ordinance align with Santa Clara Local Area Formation Commission's ("LAFCO") goals to focus development in urban areas and ensure the logical and reasonable development of local agencies, pursuant to California Government Code Section 56301.

Site and Surrounding Land Uses

The annexation area is located on the south side of Kirk Avenue approximately 160 feet east of Madeline Drive, consisting of one parcel (APN 601-07-066). This approximately 1.49 gross acre site is developed with one single-family house and is accessed from Kirk Avenue. The project site is surrounded by single-family residences on all sides. Multifamily residences are located northwest of the project site on the corner of Kirk Avenue and Madeline Drive.

ANALYSIS

The annexation area is within the Urban Service Area of the City of San José. The map below shows the annexation and pre-zoning boundary of the site. This parcel is currently developed with one single-family residence and is separated from the city by the width of a Kirk Avenue, a public street. The annexation boundary has been certified by Santa Clara County Surveyor (Attachment 1 – County Certified McKee 139 Annexation Boundary).



A Planned Development Permit, File No. PD22-013, and a Vesting Tentative Map, File No. T21-045, are currently on file. These two applications will be heard separately by the Planning Director after the resolution ordering the annexation has been adopted. The City of San José reserves the right to seek LAFCO's certification and record the resolution ordering annexation upon issuance of a building permit for construction or at any time prior to the issuance of such permit. Upon obtainment of LAFCO's certification of the proposed annexation and recordation of the resolution ordering annexation with the Office of the County Clerk-Recorder for the County of Santa Clara, the approximately 1.49 gross acre area of unincorporated Santa Clara County designated as McKee 139 will be within the incorporated area of the City of San José and eligible to receive City services.

The Planned Development Permit and Vesting Tentative Map applications are for the demolition of all existing structures on site and the development of 18 attached single-family residences on 18 lots on the site.

The annexation proceedings are being conducted under provisions of the California Government Code Section 56757, which grants the City Council authority as the decision-making body on the annexation and allows the completion of the reorganization in Santa Clara County without LAFCO review. Pursuant to Section 56757, the City Council is required to make certain findings as listed below. Staff's analysis follows each finding.

1. The unincorporated territory is within the City's Urban Service Area as adopted by LAFCO.

The territory is located within the City's Urban Service Area as shown on the Envision San José 2040 General Plan Land Use/Transportation Diagram.

2. The County Surveyor has determined the boundaries of the proposal to be definite and certain and in compliance with LAFCO Annexation Policies.

The County Surveyor certified the boundaries of the annexation as definite and certain on July 14, 2022, as shown in Attachment 1 – (County Certified McKee 139 Annexation Boundary).

3. The proposal does not split lines of assessment or ownership.

The annexation will not split lines of assessment or ownership.

4. The proposal does not create islands or areas in which it would be difficult to provide municipal services.

The annexation area is separated from the city by the width of Kirk Avenue, a public street. The annexation would not result in islands in which it would be difficult to provide municipal services. The annexation would expand the existing City boundary to the south in a contiguous manner and help incrementally reduce the size of a larger existing County territory island in which it is currently located.

5. The proposal is consistent with the City's adopted General Plan.

The annexation is consistent with the Envision San José 2040 General Plan goals and policies in that it directs urban development to areas within the Urban Service Area and within city boundaries and the subject site is within the Urban Service Area and Urban Growth Boundary.

The annexation site is located within the Residential Neighborhood land use designation within the 2040 General Plan Land Use/Transportation Diagram, which allows residential development. The proposed project is an attached single-family development and therefore consistent with the Residential Neighborhood land use designation.

6. The territory is contiguous to existing City limits.

The area proposed for annexation is contiguous to existing City limits as the subject property is within the required 300 feet of the City of San José boundary, approximately 60 feet from the annexed property across Kirk Avenue to the north (McKee No. 40), and approximately 272 feet from the annexed property to the west (McKee No. 117) along the same side of Kirk Avenue.

7. The City has complied with all conditions imposed by the Commission for the inclusion of the territory in the City's Urban Service Area as follows:

On February 16, 2022, the City of San José informed LAFCO of its intent to annex the subject territory. The City has received no further conditions of approval from LAFCO

with respect to the subject annexation. Furthermore, on February 16, 2023, the City advised the following applicable special districts, from which the territory would be detached, of its intent to annex the subject property: The Central Fire Protection District, the County Sanitary District, the Santa Clara County Lighting Service Area, and the Santa Clara County Library District. The City received no objections from the specific districts.

EVALUATION AND FOLLOW-UP

Upon obtainment of LAFCO's certification of the proposed annexation and recordation of the resolution ordering annexation with the Office of the County Clerk-Recorder for the County of Santa Clara, the approximately 1.49 gross acre area of unincorporated Santa Clara County designated as McKee No. 139 will be within the incorporated area of the City of San José and eligible to receive City services. The City of San José reserves the right to seek LAFCO's certification and record the resolution ordering annexation upon issuance of a building permit for construction or at any time prior to issuance of such permit.

COST IMPLICATIONS

There are no associated City costs or service obligations until the subject property is annexed, and a development proposal approved with a building permit.

The annexation would become effective on the date that the Certification of Completion is recorded by LAFCO and upon issuance of a building permit, at the discretion of the Director of Planning, Building and Code Enforcement. If the subject site is annexed to the City, the site would be detached from the appropriate districts including the West Valley Sanitation District, the Central Fire Protection District, the Santa Clara County Lighting Service Area, and the Santa Clara County Library Services. Once the annexation is approved, and the permittee proceeds with construction of the project, the permittee will be required to construct public improvements, at their own cost, associated with the Public Works conditions included in the Planned Development Permit (File No. PD22-013) and Vesting Tentative Map (File No. T21-045). Public improvements associated with the proposed project include the construction of a 10-foot wide City standard sidewalk with a five-foot wide park strip along Kirk Avenue project frontage, the construction of a 26-foot wide City standard driveway along Kirk Avenue, a \$20,000 monetary contribution for the installation of flashing beacons at the Kirk Avenue/Hyland Avenue/Gordon Avenue intersections, and the dedication and improvement of the public streets to the satisfaction of the Director of Public Works.

The City does not intend to annex the subject site until the issuance of a building permit. If a building permit is issued and the subject site is annexed but the permittee does not proceed with constructing the project, the City will likely be responsible for the maintenance of infrastructure and replacement of any infrastructure in disrepair, including but not limited to storm, sewer, and drainage, street lighting, asphalt repairs, and Americans with Disabilities Act compliance. The sidewalk, curb, and gutter would be the responsibility of the property owner. The money that is

bonded for as part of the required public improvements associated with the project would be used to fund the necessary public improvements for the property. In addition to any public improvements, the City would be responsible for providing emergency services including Police and Fire Department services upon the annexation of the property into the City. Library services would also be provided by the City.

COORDINATION

This project was coordinated with Santa Clara County LAFCO, and the City Attorney's Office and the City Manager's Budget Office, Environmental Services Department, Public Works Department, and Department of Transportation.

PUBLIC OUTREACH

This item is being conducted in accordance with Sections 56662 and 56757 of the California Government Code for annexations that have the consent of all landowners and for which no public hearing or notice is required. However, in accordance with the City Council Public Outreach Policy 6-30, a notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the subject property, published in the San Jose Post Record, and posted on the City website. One on-site sign has been posted on the subject site since June 26, 2022. A virtual community meeting was held via video/teleconference by the applicant and owners on September 13, 2023, to inform the surrounding community of the proposed project. Staff has been available to respond to questions from the public.

COMMISSION RECOMMENDATION AND INPUT

The Planning Commission's discussion and recommendation are included in the January 3, 2024 City Council memorandum from the Planning Commission (Attachment 2).

CEQA

Initial Study/Mitigated Negative Declaration (IS/MND) for 125 Kirk Avenue Subdivision Project, adopted by City Council on January 23, 2024 (Resolution No. 2024-10).

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

HONORABLE MAYOR AND CITY COUNCIL

January 23, 2024

**Subject: McKee No. 139 – Annexation to the City of San José of a Portion of Santa Clara County Territory
Consisting of One Lot Located on the South Side of Kirk Avenue East of Madeline Drive**

Page [7](#)

/s/

Christopher Burton

Planning, Building and Code Enforcement

For questions, please contact Robert Manford, Deputy Director, at 408-535-7900.

Attachments: Attachment 1 – McKee 139 County Surveyor Certified Annexation Boundary
Attachment 2 – January 3, 2024, City Council Memorandum from the Planning
Commission

County of Santa Clara

Planning and Development

Office of the County Surveyor

County Government Center

70 West Hedding Street, E. Wing, 7th Floor

San Jose, California 95110

(408) 299-5730



July 14, 2022

Rina Shah

City Planner

City of San Jose

200 E. Santa Clara St., 3rd Floor

San Jose, CA 95113

SUBJECT: **McKee No. 139**

Dear Mrs. Shah,

The attached revised description and map dated July 7, 2022 of territory proposed for annexation to the City of San Jose entitled **McKee No. 139** is in accordance with Government Code Section 56757 (c) (2). The boundaries of said territory are definite and certain. The proposal is in compliance with the Local Agency Formation Commission's road annexation policies.

Sincerely,

August Hanks, PLS

County Surveyor

Date: 7/14/2022



Attachments: legal description, plat, GIS exhibit

cc: LAFCO Executive Officer (w/attachment)

County Assessor's Office (w/attachment)

Exhibit 'A'
Geographic Description
McKee No. 139

Annexation to the City of San Jose

Real property located in the unincorporated area of the County of Santa Clara, State of California Section 26, Township 6 South, Range 1 East, Mount Diablo Principal Meridian described as follows:

Beginning at the point of intersection of the center line of Madeline Avenue with the south easterly prolongation of the north easterly line of Tract No. 279, Purdy Homesites, a map of which is recorded in the Office of the Recorder of the County of Santa Clara, California, in Book 8 of Maps, at page 45 said point also being the most southerly corner of the city limits line of the City of San Jose as established by said City's Annexation McKee No. 7 officially annexed November 14, 1957; thence along said city limits line of the City of San Jose along the centerline of Madeline Avenue along the following courses:

- (1) Thence North $38^{\circ}11'00''$ East 514.12 feet to the northeasterly corner of said City's Annexation McKee No. 7, said point also being the southwesterly corner of City's Annexation McKee No. 40 officially annexed October 5, 1964;
- (2) Thence along a tangent curve to the right having a radius of 627.09 feet through a central angle of $12^{\circ}33'30''$ for an arc length of 137.45 feet;
- (3) Thence along a reverse curve to the left having a radius of 627.09 feet through a central angle of $12^{\circ}33'30''$ for an arc length of 137.45 feet;
- (4) Thence North $38^{\circ}11'00''$ East 198.08 feet to the intersection of the centerline of Madeline Avenue with the centerline of Kirk Avenue;

(5) Thence along the centerline of Kirk Avenue, said line also being on the city limits line of the City of San Jose as established by said City's Annexation McKee No. 40 South $63^{\circ}40'00''$ East 480.24 feet to the intersection of the centerline of Kirk Avenue with the centerline of Gordon Avenue as shown on the Record of Survey recorded in the Office of the Recorder of the County of Santa Clara, California, in Book 194 of Maps, at page 47;

(6) Thence leaving said city limits line along the projection of Gordon Avenue South $26^{\circ}20'00''$ West 40.00 feet to the southerly right of way line of Kirk Avenue;

(7) Thence along said southerly right of way line of Kirk Avenue North $63^{\circ}40'00''$ West 214.74 feet to the northeasterly corner of the parcel as described in Document Number 25065937 recorded in the Office of the Recorder of the County of Santa Clara, California;

Thence along the following courses:

- (8) Thence leaving the southerly right of way line of Kirk Avenue South $26^{\circ}20'00''$ West 420.66 feet;
- (9) Thence North $63^{\circ}40'00''$ West 189.82 feet;
- (10) Thence North $26^{\circ}20'00''$ East 260.66 feet;
- (11) Thence South $63^{\circ}40'00''$ East 94.91 feet;

(12) Thence North 26°20'00" East 160.00 feet to a point on the southerly right of way line of Kirk Avenue.

(13) Thence along the southerly right of way line of Kirk Avenue North 63°40'00" West 132.09 feet;

(14) Thence continuing along said southerly right of way line of Kirk Avenue a tangent curve to the left to the easterly right of way line of Madeine Drive having a radius of 20.00 feet through a central angle of 78°09'00" for an arc length of 27.28 feet.

Thence continuing along the easterly right of way line of Madeline Drive along the following courses:

(15) Thence South 38°11'00" West 147.27 feet;

(16) Thence along a tangent curve to the right having a radius of 657.09 feet through a central angle of 12°33'30" for an arc length of 144.02 feet;

(17) Thence along a reverse curve to the left having a radius of 597.09 feet through a central angle of 12°33'29" for an arc length of 130.87 feet;

(18) Thence South 38°11'00" West 520.20 feet

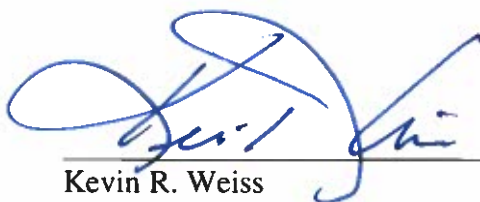
(19) Thence leaving the easterly right of way line of Madeline Drive North 40°22'00" West 30.61 feet to the **Point of Beginning**.

Said annexation containing an area of 112,665 square feet (2.586 acres), more or less.

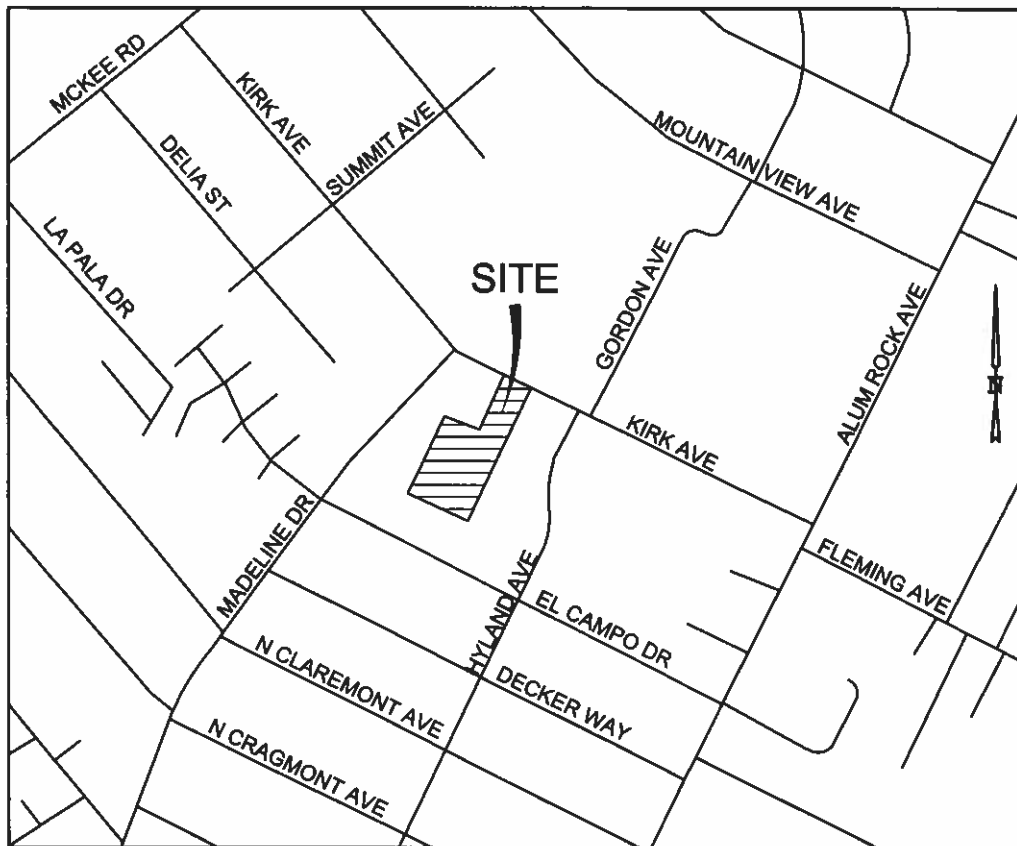
For assessment purposes only. This description of land is not a legal property description as defined in the Subdivision Map Act and may not be used as the basis for an offer for sale of the land described.

Attached hereto is a plat labeled "Exhibit 'B': Plat to Accompany Geographic Description McKee No. 139" and by this reference is made a part hereof.




Kevin R. Weiss

07-07-2022
Date



VICINITY MAP

NTS

BASIS OF BEARINGS:

THE BEARING S63°40'00"E ON THE MONUMENT LINE ON KIRK AVENUE AS SHOWN ON THE RECORD OF SURVEY FILED IN BOOK 77 OF MAPS, PAGE 8 SANTA CLARA COUNTY RECORDS WAS USED FOR THE BASIS OF BEARINGS SHOWN HEREON.

PROPERTY OWNER:

KIRKAVE LLC
97 BOSTON AVENUE
SAN JOSE, CA 95127

DISCLAIMER:

"FOR ASSESSMENT PURPOSES ONLY. THIS DESCRIPTION OF LAND IS NOT A LEGAL PROPERTY DESCRIPTION AS DEFINED IN THE SUBDIVISION MAP ACT AND MAY NOT BE USED AS THE BASIS FOR AN OFFER SALE OF THE LAND DESCRIBED."



[Signature]
KEVIN R. WEISS, LS 7139

07-07-2022
DATE

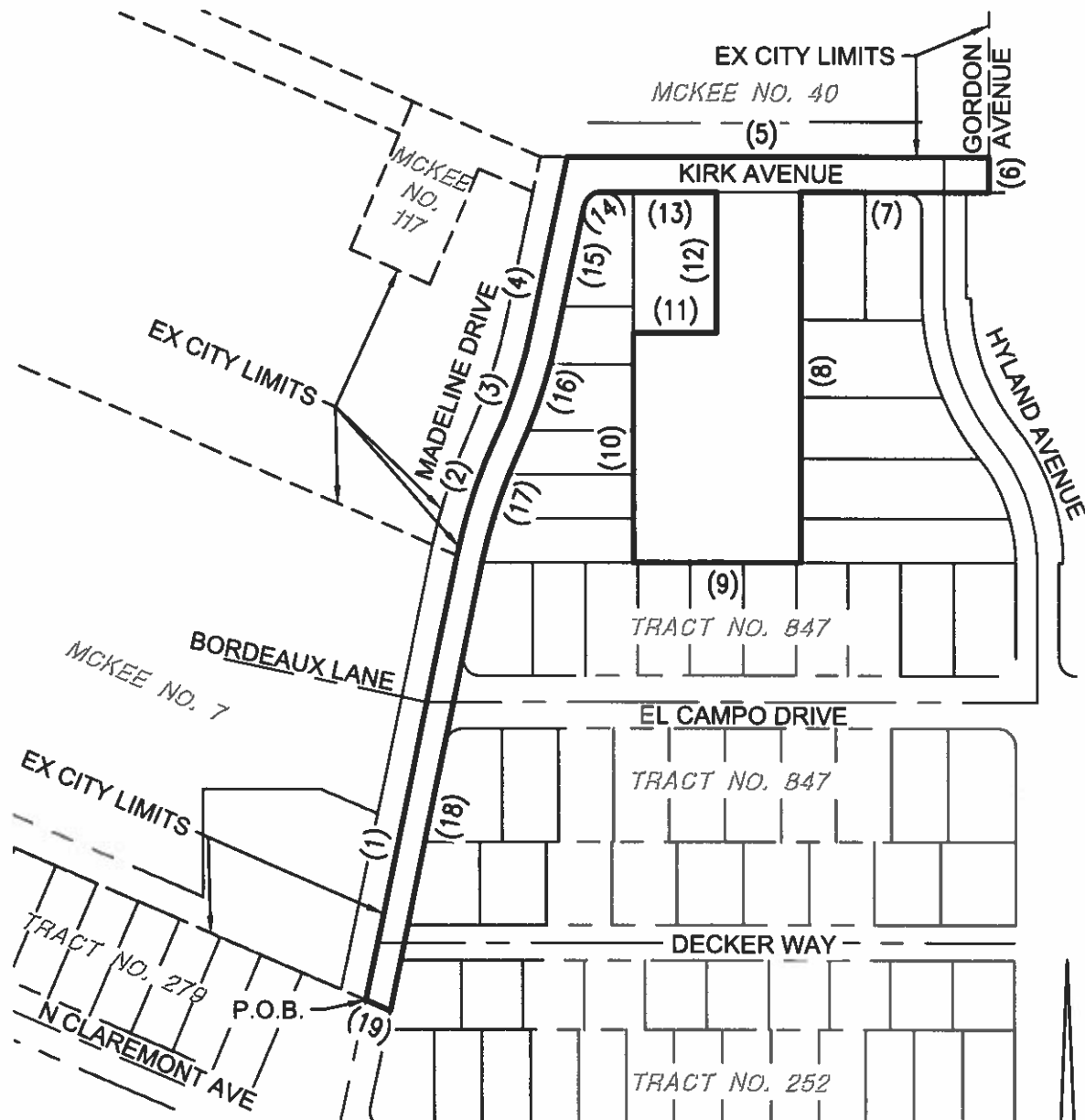
EXHIBIT 'B'
PLAT TO ACCOMPANY GEOGRAPHIC DESCRIPTION
MCKEE NO. 139

SCALE: AS SHOWN | DATE: 7/5/2022 | BY: AL

SHEET 3 OF 5 | JOB NO. 5237

J M H
weiss
Real Estate Development Consultants
Planning and Engineering

1731 Technology Dr, Ste #880
San Jose, CA 95110
Phone: (408) 286-4555
www.jmhweiss.com



LEGEND & ABBREVIATIONS

	NEW ANNEXATION
	EXISTING CITY LIMITS
	PROPERTY LINE - ADJACENT PARCEL
	MONUMENT LINE
275 M 33	BOOK AND PAGE OF MAPS
P.O.B.	POINT OF BEGINNING

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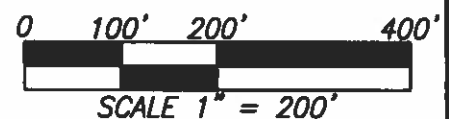


EXHIBIT 'B'
PLAT TO ACCOMPANY GEOGRAPHIC DESCRIPTION
MCKEE NO. 139

SCALE: AS SHOWN | DATE: 7/5/2022 | BY: AL

SHEET 4 OF 5

JOB NO. 5237

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San Jose, CA 95110
Phone: (408) 286-4555
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COURSES					
Course #	Length	Radius	Delta	(Chord) Direction	Chord Length
(1)	514.12'			N 38°11'00" E	
(2)	137.45'	627.09'	12°33'30"	(N 44°27'45" E)	137.17'
(3)	137.45'	627.09'	12°33'30"	(N 44°27'45" E)	137.17'
(4)	198.08'			N 38°11'00" E	
(5)	480.24'			S 63°40'00" E	
(6)	40.00'			S 26°20'00" W	
(7)	214.74'			N 63°40'00" W	
(8)	420.66'			S 26°20'00" W	
(9)	189.82'			N 63°40'00" W	
(10)	260.66'			N 26°20'00" E	
(11)	94.91'			S 63°40'00" E	
(12)	160.00'			N 26°20'00" E	
(13)	132.09'			N 63°40'00" W	
(14)	27.28'	20.00'	78°09'00"	(S 77°15'30" W)	25.21'
(15)	147.27'			S 38°11'00" W	
(16)	144.02'	657.09'	12°33'30"	(S 44°27'45" W)	143.74'
(17)	130.87'	597.09'	12°33'29"	(S 44°27'45" W)	130.61'
(18)	520.20'			S 38°11'00" W	
(19)	30.61'			N 40°22'00" W	

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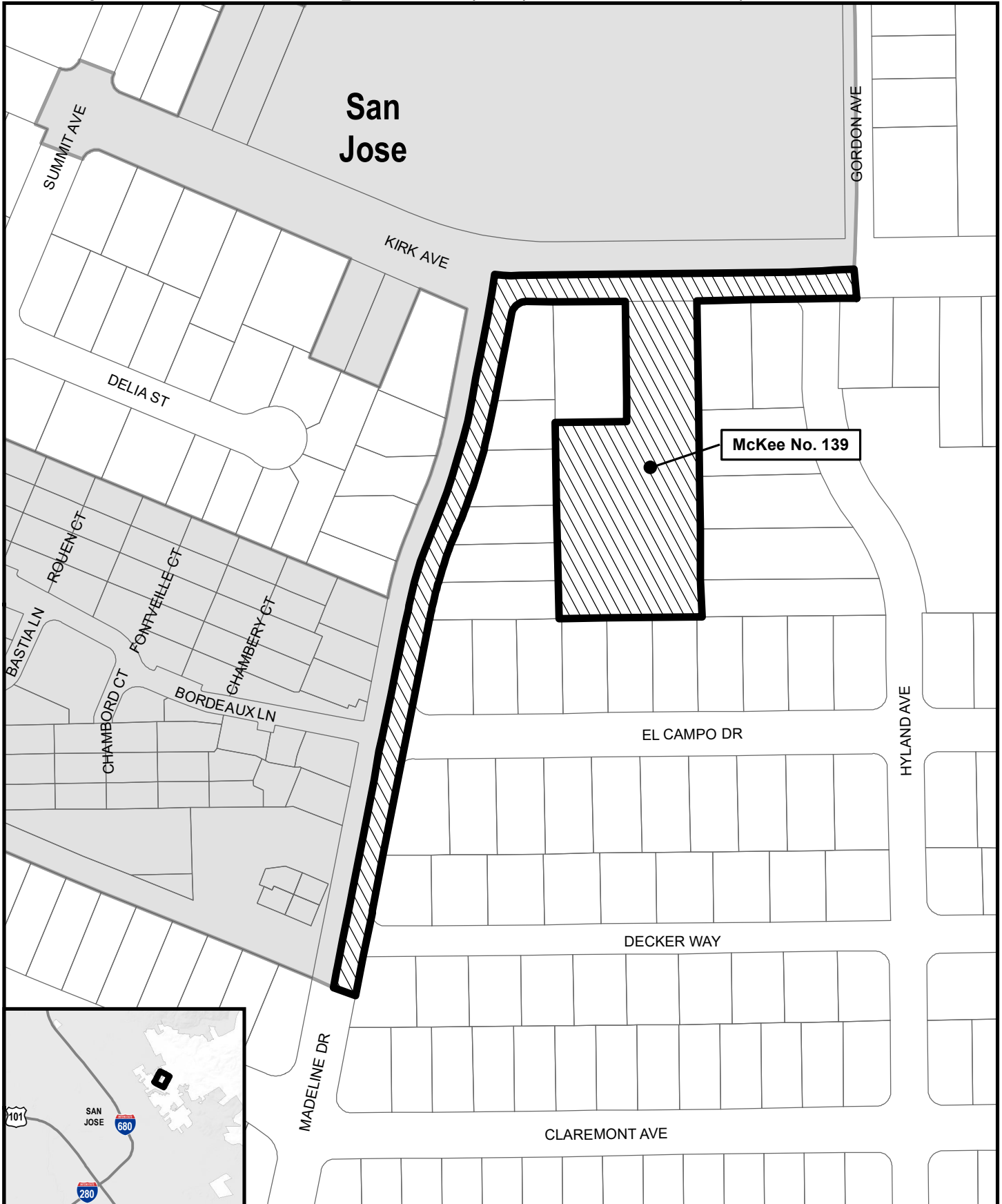
EXHIBIT 'B'
PLAT TO ACCOMPANY GEOGRAPHIC DESCRIPTION
MCKEE NO. 139

SCALE: AS SHOWN | DATE: 7/5/2022 | BY: AL

SHEET 5 OF 5 | JOB NO. 5237

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County of Santa Clara
 Department of Planning and Development
 County Government Center, East Wing
 70 West Hedding St., 7th Floor
 San Jose, California 95110

EXHIBIT A
McKee No. 139
2.56 acres +/-

Prepared for the Office of the County Surveyor
 July 14, 2022
 August Hanks, County Surveyor



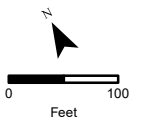
Area of Annexation



Incorporated Lands



Unincorporated Lands





Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: January 3, 2024

COUNCIL DISTRICT: 5

**SUBJECT: FILE NOS. MCKEE 139 & PDC22-006 - ANNEXATION AND PREZONING
FOR CERTAIN REAL PROPERTY LOCATED AT 125 KIRK AVENUE ON
THE SOUTH SIDE OF KIRK AVENUE**

RECOMMENDATION

The Planning Commission voted 8-0-3 (Commissioners Ornelas-Wise, Barocio, and Garcia absent) to recommend that the City Council take all of the following actions:

- (a) Adopt a resolution adopting the Initial Study/Mitigated Negative Declaration for the 125 Kirk Avenue Subdivision Project (McKee 139/PDC22-006/ PD22-013/T21-045) and a related Mitigation Monitoring and Reporting Plan, per the California Environmental Quality Act.
- (b) Approve an ordinance prezoning an approximately 1.49-gross acre site in County of Santa Clara unincorporated territory designated as McKee No. 139 to the R-1(PD) Planned Development Zoning District.
- (c) Adopt a resolution initiating proceedings and scheduling February 27, 2024, for City Council consideration of the reorganization of territory designated as McKee 139, which involves the annexation into the City of San José of approximately 1.49 gross acres of land from County of Santa Clara unincorporated territory and the detachment of the same from the appropriate special districts.

SUMMARY AND OUTCOME

If the City Council approves all the actions listed above as recommended by the Planning Commission, the City will be able to continue the process to annex one unincorporated 1.49-acre parcel (125 Kirk Avenue) from the County of Santa Clara into the City of San José and the subject site will be prezoned to R-1(PD) Planned Development Zoning District to allow the development of 18 single-family attached homes on 18 lots. The zoning of the site will not take effect until certification of the annexation by the Local Agency Formation Commission (LAFCO).

BACKGROUND

On December 13, 2023, the Planning Commission held a Public Hearing to consider the Initial Study and Mitigated Negative Declaration (IS/MND), Annexation, and Rezoning. The Planning Commission recommended that the City Council adopt the resolution adopting the IS/MND for the 125 Kirk Avenue Project, adopt a related Mitigation, Monitoring and Reporting Plan, and approve the subject Annexation and Rezoning.

Staff Presentation

Planning, Building, and Code Enforcement staff provided a brief oral presentation of the proposed project, including the intent of the Annexation and Rezoning, the annexation process, and the project's conformance with the General Plan, the San José Municipal Code, and City Council Policy 6-30: Public Outreach, the environmental review process, and project compliance with the California Environmental Quality Act (CEQA).

Applicant Presentation

The project applicant, Melanie Griswold, provided a brief presentation and stated that the purpose of the annexation and the rezoning was to facilitate the development of 18 attached single-family affordable homes for middle-class working families, utilizing the State Density Bonus, accessed from a driveway from Kirk Avenue. The development was designed with special attention to the Kirk Avenue streetscape, matching the roof slope, height, and materials of the surrounding buildings. In the development, each unit had four bedrooms, with the two affordable below-market-rate units with one-car attached garages, whereas the market rate units had two-car attached garages, plus 11 open guest parking spaces were provided on-site within the development. The project includes the removal of 20 ordinance-size trees, of which 13 are native trees, and replacement with 49 new 24-inch box trees. The project will include the construction of a masonry wall along the driveway for noise reduction to adjacent residential neighborhood yards. Additionally, the developers would be paying a \$200,000 in-lieu Park fee and would be contributing \$20,000 towards the installation of flashing beacons at the Kirk Avenue and Highland Avenue/Gordon Avenue intersections.

Public Hearing

Chair Lardinois opened the public comment portion of the agenda.

One public member complimented the presentation of the project, the uniqueness of architecture and the design of the proposed development on the uniquely shaped lot, emphasizing that it would be a good affordable housing development.

Commissioner Discussion

Commissioner Bickford asked two questions. Her first question was about whether any native trees would be removed and whether the new trees would be native as well. She acknowledged that Parks, Recreation, and Neighborhood Services' requirement for the project would be satisfied with payment of the in-lieu fee given the relatively small site size. She observed that there was no on-site common open space, and asked if there would be walkways and open spaces for families.

The applicant responded to the first question that they would be removing 12 native ordinance-size trees and replacing them with native trees per the City's replacement ratios and the City's water-efficient tree planting guidelines. She responded to the second question that the project included private rear yard open space for each unit, including for below-market-rate units, and there would be common sidewalks and streets within the development. The development did not have a central open space as there was inadequate on-site space for common open space and design, but each single-family unit would have its own private open space.

There were no more Commissioner questions and Chair Lardinois requested a motion.

Commissioner Tordillos made a motion to approve the staff recommendation. Commissioner Oliverio seconded the motion.

The motion to recommend City Council approval of the project was approved (8-0-3, Commissioners Ornelas-Wise, Barocio, and Garcia absent).

ANALYSIS

The **attached** staff report contains an analysis of the proposed CEQA clearance, Annexation, and Rezoning, including conformance with the General Plan, Zoning Ordinance, and City Council Policies.

Climate Smart San José Analysis

The recommendation in this memorandum aligns with one or more Climate Smart San José mobility goals. The purpose of the annexation and rezoning is to facilitate an 18-unit attached single-family residential development that would be consistent with the General Plan and the Development Standards of the R-1(PD) Zoning District. The development would increase the population density and facilitate economic growth.

EVALUATION AND FOLLOW-UP

Should the City Council adopt the resolution and approve the Rezoning of the subject site to R-1(PD) Planned Development Zoning District, and adopt a resolution initiating the annexation of the subject site, then the project would be heard at the February 27, 2024 City Council meeting where the annexation would be ordered and the City will be able to continue the process of annexing one unincorporated 1.49-acre parcel (125 Kirk Avenue) from the County of Santa Clara into the City of San José and the subject site will be rezoned to R-1(PD) Planned Development Zoning District to allow the development of 18 single-family attached homes on 18 lots. After the City Council orders the annexation, the associated applications for a Planned Development Permit and Vesting Tentative Map would be heard at a Planning Director's Hearing. The zoning of the site will not take effect until certification of the annexation by LAFCO.

COST IMPLICATIONS

If the annexation is initiated by the City Council, staff will prepare a follow-up recommendation for the City Council to order the annexation. The ordering resolution will include a provision to allow the City the right to seek LAFCO's certification of the annexation only upon issuance of a building permit or at any time prior to such issuance. Further, the design of public improvements must be approved and bonded. Upon issuance of a building permit, City staff would submit the required documentation to LAFCO for the certification of the annexation. LAFCO would finalize and record a Certification of Completion. The annexation would become effective on the date that the Certification of Completion is recorded by LAFCO. If the subject site is annexed to the City, the site would be detached from the appropriate districts including the West Valley Sanitation District, the Central Fire Protection District, the Santa Clara County Lighting Service Area, and the Santa Clara County Library Services.

If the annexation is approved, and the permittee proceeds with constructing the project, the permittee will be required to construct public improvements, at their own cost, associated with the aforementioned Planned Development Permit (File No. PD22-013) and Vesting Tentative Map (File No. T21-045). Public improvements associated with the proposed project include the construction of a 10-foot wide City standard detached sidewalk with a five-foot wide park strip along Kirk Avenue project frontage, the construction of one 26-foot wide City standard driveway along Kirk Avenue, a \$20,000 monetary contribution for the installation of flashing beacons at the Kirk Avenue/Hyland Avenue/Gordon Avenue intersections, and the dedication and improvement of the public streets to the satisfaction of the Director of Public Works.

The City does not intend to annex the subject site until the issuance of a building permit. If a building permit is issued and the subject site is annexed but the permittee does not proceed with constructing the project, the City will likely be responsible for the maintenance of infrastructure and replacement of any infrastructure in disrepair, including but not limited to storm, sewer, and drainage, street lighting, asphalt repairs, and Americans with Disabilities Act compliance. The sidewalk, curb, and gutter would be the responsibility of the property owner. The money that is bonded for as part of the required public improvements associated with the project would be used to fund the necessary public improvements for the property. In addition to any public improvements, the City would be responsible for providing emergency services including Police and Fire Department services upon the annexation of the property into the City. Library services would also be provided by the City.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office..

PUBLIC OUTREACH

Following City Council Policy 6-30, an on-site sign describing the project has been posted on the site since June 26, 2022. The City staff, the applicant, and the owners held a virtual community meeting on September 13, 2023. Approximately 10 community members were in attendance. The concerns expressed were primarily regarding traffic and the construction timeline for the new development. Other concerns included visual and noise impacts on adjacent neighbors, questions on planting new trees, and construction of the six-foot high fence along the driveway of the development. The applicant and staff were able to respond to the public concerns.

Public notices of the community meeting and public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

COMMISSION RECOMMENDATION AND INPUT

The Planning Commission reviewed this request and recommended the City Council take the actions stated in the recommendations section of this report.

CEQA

The City of San José, as the lead agency for the project, prepared an Initial Study/Mitigated Negative Declaration (IS/MND) (State Clearinghouse No. 2023100113) for the subject project in compliance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The potential environmental impacts of the subject project were assessed in the IS/MND. The document was circulated for public comment between October 3, 2023, to October 23, 2023. The IS/MND identified potential impacts on Air Quality, Biological Resources, Hazards and Hazardous Materials, Noise, and Tribal Cultural Resources. The project includes a Mitigation Monitoring and Reporting Program (MMRP) and incorporates standard conditions and best management practices for construction activities. The IS/MND concluded that the proposed project would not result in a significant and unavoidable impact with the implementation of mitigation measures, and so an MND is the appropriate level of CEQA clearance for the project.

One comment letter was received during the public review period from Valley Water that provided clarifying information on flood zones and wells in the project's vicinity.

The comments received did not result in any substantial changes to the project description, analyses, and/or impacts that were previously disclosed in the IS/MND. While not required under the CEQA Guidelines for an IS/MND, these environmental comments were addressed by staff in a formal Response to Comments document available on the project website and emailed to the commenting party.

The entire IS/MND and other related environmental documents are available on the Planning, Building, and Code Enforcement website at <https://www.sanjoseca.gov/?navid=8153>

HONORABLE MAYOR AND CITY COUNCIL

January 3, 2024

Subject: McKee 139 & PDC22-006 – Annexation and Rezoning for Certain Real Property Located at 125 Kirk Avenue

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PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

CHRISTOPHER BURTON

Secretary, Planning Commission

For questions, please contact Robert Manford, Deputy Director- Planning, at (408) 535-7900.

Attachment: Planning Commission Staff Report