



# *Memorandum*

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** January 25, 2022

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**COUNCIL DISTRICT: 8**

**SUBJECT: FILE NO. GP21-009 & C21-008: GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE/TRANSPORTATION DIAGRAM LAND USE DESIGNATION FROM HEAVY INDUSTRIAL TO LIGHT INDUSTRIAL AND A REZONING FROM THE HI HEAVY INDUSTRIAL ZONING DISTRICT TO THE LI LIGHT INDUSTRIAL ZONING DISTRICT ON AN APPROXIMATELY 0.68-GROSS ACRE SITE LOCATED AT 1500 BERGER DRIVE (ASSESSOR PARCEL NUMBERS: 237-04-024, 237-04-025)**

## **RECOMMENDATION**

The Planning Commission voted unanimously 10-0-1 (Cantrell absent) to recommend that the City Council take the following actions:

1. Consider the exemption pursuant to CEQA Guidelines Section 15301 for Existing Facilities in accordance with CEQA; and
2. Adopt a resolution approving the General Plan Amendment to change the Land Use/Transportation Diagram land use designation from Heavy Industrial to Light Industrial.
3. Approve an ordinance approving the Conforming Rezoning from the Heavy Industrial Zoning District to the Light Industrial Zoning District.

## **BACKGROUND**

The Planning Commission held a public hearing on January 12, 2022, to consider the proposed General Plan Amendments and Rezoning. Planning staff recommended approval to amend the Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation from Heavy Industrial to Light Industrial and to change the Zoning District from HI Heavy Industrial to LI Light Industrial on an approximately 0.68-gross acre site. The Planning Commission made a recommendation to the City Council to consider the exemption in accordance with CEQA and adopt a resolution and an ordinance to approve the applicant's proposed General Plan Amendment and Rezoning.

### **Staff Presentation**

Staff presented a summary of the applicant's General Plan Amendment and Rezoning including a description of the proposed project and details of the public engagement process and analysis, which is explained in detail in the attached report to the Planning Commission.

### **Public Testimony**

The applicant's representative, Todd Walter, an architect for applicant Loaves and Fishes, gave a brief presentation about the proposed project. He gave a description of current operations and food distribution and said that the Light Industrial land use designation would facilitate the commercial kitchen use at this site. Mr. Walter clarified that Loaves and Fishes would not submit for any exterior modifications of the site but would modify the interior in the future. Mr. Walter said that Loaves and Fishes desire to move its food preparation facilities from Morgan Hill to a more centralized location in San José.

No members of the public spoke on the proposed project.

Commissioner Torrens asked the applicant to clarify the operations of the site. The applicant responded saying operations in San José have mostly been office, while the commercial kitchen is located in Morgan Hill. Their vehicles have been picking up meals in Morgan Hill to distribute in San José. Commissioner Torrens spoke in favor of the organization and stated that the organization has a great reputation as an organization that serves the community.

### **Planning Commission Discussion**

The Planning Commission unanimously voted 10-0-1 (Cantrell absent) to recommend to the City Council to consider the exemption pursuant to CEQA Guidelines Section 15301 for Existing Facilities in accordance with CEQA, adopt a resolution approving the applicant's General Plan Amendment to amend the Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation from Heavy Industrial to Light Industrial and approve an ordinance rezoning certain real property located on the east side of Berger Drive, approximately 400 feet north of Gish Road, (1500 Berger Drive) from the HI Heavy Industrial Zoning District to LI Light Industrial Zoning District on an approximately 0.68-gross acre site.

## **OUTCOME**

If the City Council adopts a resolution approving the General Plan Amendment, the Envision San José 2040 General Plan Land Use/Transportation Diagram would be amended to reflect the land use designation changes from Heavy Industrial to Light Industrial and would be rezoned from HI Heavy Industrial to LI Light Industrial Zoning District.

## **ANALYSIS**

For a complete analysis, please see the Planning Commission staff report (attached).

## **CONCLUSION**

The Planning Commission unanimously voted to recommend that the City Council approve the staff's recommendations.

## **EVALUATION AND FOLLOW UP**

If the application for a General Plan Amendment is approved as recommended by the Planning Commission, the Envision San José 2040 General Plan Land Use/Transportation Diagram would be amended to reflect the land use designation change from Heavy Industrial to Light Industrial, and the Zoning District would be changed from HI Heavy Industrial to LI Light Industrial on an approximately 0.68-gross acre site located at 1500 Berger Drive. Commercial Kitchens are permitted under the LI Light Industrial Zoning District and would not require further Planning entitlements.

## **CLIMATE SMART SAN JOSÉ**

The proposed General Plan Amendment and Rezoning align with Climate Smart San José's overall goals by facilitating new industrial uses within existing industrial spaces that will be subject to San José's Reach code that will promote energy efficiency and encourage building electrification.

## **PUBLIC OUTREACH/INTEREST**

Staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 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. A community meeting was held on September 2, 2021, and no community members attended.

## **COORDINATION**

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

## **CEQA**

An exemption CEQA Guidelines Section 15301 for Existing Facilities was prepared by the Director of Planning, Building, and Code Enforcement for the subject General Plan Amendment and Conforming Rezoning. This exemption consists of the operation, repair, maintenance, permitting, leasing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. Examples include but are not limited to interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances. The key consideration for Class 1 exemptions is whether the project involves negligible or no expansion of use.

The project includes a General Plan Amendment and a Conforming Rezoning. The project would include interior modifications to the existing 11,283 square foot industrial building and modification of 5,620 square feet of the building for a commercial kitchen. The work would mostly be interior modification and the operation of the commercial kitchen. Minor exterior improvements are proposed, including the construction of a new doorway on the eastern building façade, relocating existing storage containers, trenching for utilities (requiring five to six feet of excavation), and installing a grease interceptor (requiring eight to ten feet of excavation). No other improvements or changes are proposed to the project site. Because the project would result in only minor exterior modification of an existing building with the use going from office to commercial without major expansion of the use or physical buildings, the project is considered negligible or no expansion of use and qualifies for a Categorical Exemption under Class 1.

/s/

Christopher Burton, Secretary  
Planning Commission

For questions please contact Michael Brilliot, Deputy Director, at 408-535-7831.

Attachment: Planning Commission Staff Report



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Chris Burton

**SUBJECT:** GP21-009, C21-008

**DATE:** January 12, 2022

**COUNCIL DISTRICT: 8**

<b>Type of Permit</b>	<b>General Plan Amendment (GP21-009) Conforming Rezoning (C21-008)</b>
<b>Project Planner</b>	Robert Rivera
<b>CEQA Clearance</b>	Exempt pursuant to CEQA Guidelines Section 15301 for Existing Facilities
<b>CEQA Planner</b>	Shannon Hill

## RECOMMENDATION

Staff recommends that the Planning Commission recommend to the City Council that it takes all of the following actions:

1. Consider the exemption in accordance with CEQA; and
2. Adopt a resolution approving the General Plan Amendment to change the Land Use/Transportation Diagram land use designation from Heavy Industrial to Light Industrial (Exhibit B).
3. Adopt an ordinance approving the Conforming Rezoning from the Heavy Industrial Zoning District to the Light Industrial Zoning District (Exhibit C).

## PROPERTY INFORMATION

<b>Location</b>	East side of Berger Drive, approximately 400 feet from East Gish Road (1500 Berger Drive)
<b>Assessor Parcel Nos.</b>	237-04-025 and 237-04-024
<b>Existing General Plan Land Use Designation</b>	Heavy Industrial
<b>Proposed General Plan Land Use Designation</b>	Light Industrial
<b>Existing Zoning District</b>	Heavy Industrial
<b>Proposed Zoning District</b>	Light Industrial
<b>Growth Area</b>	n/a
<b>Demolition</b>	n/a
<b>Historic Resource</b>	n/a
<b>Annexation Date</b>	2/26/1960 (Orchard No_24-A)
<b>Council District</b>	3

<b>Acreage</b>	0.68 acres
<b>Floor Area Ratio</b>	n/a
<b>Proposed Density</b>	n/a

## PROJECT SETTING AND BACKGROUND

On March 10, 2021 the applicant submitted the following applications related to the approximately 0.68-gross acre subject site located on the east side of Berger Drive, approximately 400 feet from East Gish Road:

- General Plan Amendment request to change the General Plan Land Use/Transportation Diagram land use designation from Heavy Industrial to Light Industrial; and
- Conforming Rezoning from the Heavy Industrial Zoning District to the Light Industrial Zoning District.

Changing the General Plan land use designation to Light Industrial and the Zoning District to Light Industrial would allow a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects.

As shown on the attached [aerial map](#) (Exhibit A), the site is located east side of Berger Drive, approximately 400 feet from East Gish Road (Figure 1). The site is currently developed with a small office building with parking in the rear of the site.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
<b>North</b>	Heavy Industrial	Heavy Industrial	Manufacturing
<b>South</b>	Heavy Industrial	Heavy Industrial	Small warehouses
<b>East</b>	Combined Industrial Commercial	(CIC)PD Zoning District	Charter school
<b>West</b>	Heavy Industrial	Heavy Industrial	Small warehouses

## ANALYSIS

The proposed General Plan Amendment and Conforming Rezoning are analyzed with respect to conformance with:

1. Envision San José 2040 General Plan
2. Zoning District Consistency with the Proposed General Plan Amendment (SB1333)
3. Municipal Code
4. Senate Bill 330
5. City Council Policies

## 6. California Environmental Quality Act (CEQA)

### Envision San José 2040 General Plan Conformance

#### *Existing Land Use Designation*

As shown in the attached **General Plan Map** (Exhibit B), the project site, which is comprised of two parcels, has Envision San José 2040 General Plan designations of:

#### **Heavy Industrial**

This category is intended for industrial users with nuisance or hazardous characteristics which for reasons of health, safety, environmental effects, or welfare are best segregated from other uses. Extractive and primary processing industries are typical of this category. Office and research and development uses are discouraged under this designation in order to reserve development sites for traditional industrial activities, such as heavy and light manufacturing and warehousing. The Heavy Industrial designation is also the appropriate category for solid waste transfer and processing stations, if those sites meet other Envision General Plan policies. Very limited scale retail sales and service establishments serving nearby businesses and their employees may be considered appropriate where such establishments do not restrict or preclude the ability of surrounding Heavy Industrial land from being used to its fullest extent and are not of a scale or design that depend on customers from beyond normal walking distances. Any such uses should be clearly incidental to the industrial users on the property and integrated within an industrial building.

The Heavy Industrial designation is applied only to areas where heavy industrial uses presently predominate. Because of the limited supply of land available for heavy industrial uses, the Land Use Policies in the Envision General Plan restrict land use changes in areas reserved exclusively for industrial uses. This designation allows for up to a 1.5 floor area ratio (FAR).

#### *Proposed General Plan Land Use Designation:*

#### **Light Industrial** (Figure 3)

This designation is intended for a wide variety of industrial uses and excludes uses with unmitigated hazardous or nuisance effects. Warehousing, wholesaling, and light manufacturing are examples of typical uses in this designation. Light Industrial designated properties may also contain service establishments that serve only employees of businesses located in the immediate industrial area. Office and higher-end industrial uses, such as research and development, are discouraged in order to preserve the scarce, lower cost land resources that are available for companies with limited operating history (startup companies) or lower cost industrial operations.

Because of the limited supply of land available for industrial suppliers/services firms in the city, Land Use Policies in the Envision General Plan restrict land use changes on sites designated Light Industrial. Design controls for this category of use are not as stringent as for the “Industrial Park” uses. This designation allows for up to a 1.5 floor area ratio (FAR).

### General Plan Goals and Policies

The proposed General Plan Amendment and Conforming Rezoning are **consistent** with the following General Plan goals and policies:

1. Land Use Policy LU-6.1: Prohibit conversion of lands designated for light and heavy industrial uses to non-industrial uses.

2. Land Use Policy LU-6.4: Encourage the development of new industrial areas and the redevelopment of existing older or marginal industrial areas with new industrial uses, particularly in locations which facilitate efficient commute patterns.
3. Land Use Policy LU-6.5: Maintain and create Light Industrial and Heavy Industrial designated sites that are at least one acre in size in order to facilitate viable industrial uses.

*Analysis: The proposed General Plan Amendment to Light Industrial on approximately 0.68-gross acres site would facilitate new industrial uses that may be more viable and suitable to the smaller size and urban location of the site. The proposed General Plan Amendment does not propose to change the Heavy Industrial land use designation to a non-industrial land use designation and would maintain all allowable Light Industrial uses. Further, the Light Industrial land use designation would not allow any incompatible uses that would adversely affect the surrounding Heavy Industrial sites. Therefore, the proposed General Plan Amendment is consistent with the overall Major Strategies, goals and policies of the General Plan because it maintains the viability of industrial uses on the block, does not convert industrial designated lands to non-industrial uses and provides an opportunity to for new industrial uses within older industrial areas.*

The proposed conforming rezoning is consistent with the following General Plan policies:

1. Implementation Policy IP-1.7: Ensure that proposals to rezone and prezone properties conform to the Land Use/Transportation Diagram, and advance Envision General Plan vision, goals, and policies.
2. Implementation Policy IP-8.2: Use the City's conventional zoning districts, contained in its Zoning Ordinance, to implement the Envision General Plan Land Use/Transportation Diagram. These districts include a range of allowed land uses, development intensities, and standards within major land use categories (residential, commercial and industrial) together with zoning districts for other land uses such as mixed-use and open space. The various ranges of allowed use and development intensity correspond generally to the respective Envision General Plan land use designations, while providing greater detail as to the appropriate land uses and form of development.
3. Implementation Policy IP-8.3 – Zoning: For the review of privately or publicly initiated rezoning applications, consider the appropriateness of the proposed zoning district in terms of how it will further the Envision General Plan goals and policies as follows:
  - a. Align with the Envision General Plan Land Use/Transportation Diagram.
  - b. Retain or expand existing employment capacity.
  - c. Preserve existing retail activity.
  - d. Avoid adverse land use incompatibilities.
  - e. Implement the Envision General Plan goals and policies including those for Urban Design.
  - f. Support higher density land uses consistent with the City's transition to a more urban environment.
  - g. Facilitate the intensification of Villages and other growth areas consistent with the goal of creating walkable, mixed-use communities
  - h. Address height limits, setbacks, land use interfaces and other design standards so as to provide for the intensification of land uses adjacent to already developed areas.

*Analysis: The existing Heavy Industrial General Plan land use designation is consistent with the existing HI Heavy Industrial Zoning District. The project includes rezoning the property from the Heavy Industrial Zoning District to the Light Industrial Zoning District to remain consistent with State Law SB 1333 which requires the City of San Jose to rezone properties consistent with their General Plan land use*



*designation. The proposed General Plan land use designation is Light Industrial, and the LI Light Industrial Zoning District conforms to the General Plan land use designation. The proposed Light Industrial Zoning District retains employment capacity because the site will allow a variety of new light industrial use*

For the reasons outlined above, staff recommends approval of the proposed General Plan Amendment request and the proposed Conforming Rezoning. The conversion of a heavy industrial land use designation to a light industrial designation would retain the industrial nature of the site and facilitate new industrial uses that may be more viable and suitable to the smaller size and urban location of the site. Also, any new industrial uses would not adversely affect the surrounding Heavy Industrial sites and would be compatible with the surrounding land use designations.

### **Zoning Ordinance Conformance**

The proposed project is located in the Heavy Industrial Zoning District, [see attached Zoning District Map](#) (Exhibit D). The proposed rezoning from Heavy Industrial Zoning District to Light Industrial Zoning District (Exhibit E) conforms with Table 20-270, [Section 20.120.110](#) of the San José Municipal Code, which identifies the Light Industrial Zoning District as a conforming district to the Light Industrial General Plan land use designation.

The proposed rezoning would allow the properties to be used and developed in accordance with the allowable uses in Table 20-90, [Section 20.50.100](#), and consistent with the proposed Light Industrial General Plan land use designation if that redesignation from Heavy Industrial is also approved by the Council.

### **Senate Bill 330 Compliance**

The Housing Crisis Act of 2019 (SB 330) limits the manner in which local governments may reduce the capacity for residential units that can be built on properties that allow housing.

Because the approval of File No. GP21-003 and C21-036 would result in no change of residential capacity because neither existing or proposed land use designation nor the existing or proposed Zoning Districts allow residential. Approval of this General Plan Amendment and rezoning would result in no net loss of residential capacity, consistent with SB 330

### **City Council Policy Conformance**

#### *City Council Policy 6-30: Public Outreach Policy for Pending Land Use Development Proposals*

Following City Council Policy 6-30, the applicant has posted the on-site sign to inform the neighborhood of the proposed project. A community meeting was held in coordination with the Council District 3 office to discuss the project on September 2, 2021. Comments received during the community meeting and project review are further discussed later in this report, in the Public Outreach section.

Staff contact information have also been available on the community meeting notices and project site. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

An exemption CEQA Guidelines Section 15301 for Existing Facilities was prepared by the Director of Planning, Building and Code Enforcement for the subject General Plan Amendment and Conforming Rezoning. This exemption consists of the operation, repair, maintenance, permitting, leasing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The types of "existing facilities"

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## PUBLIC OUTREACH

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**Project Manager:** Robert Rivera

**Approved by:** /s/ Michael Brilliot, Deputy Director for Chris Burton, Planning Director

### ATTACHMENTS:

Exhibit A: Vicinity Map

Exhibit B: General Plan Map

Exhibit C: Existing General Plan Map

Exhibit D: Proposed General Plan Map

Exhibit E: Existing Zoning Map

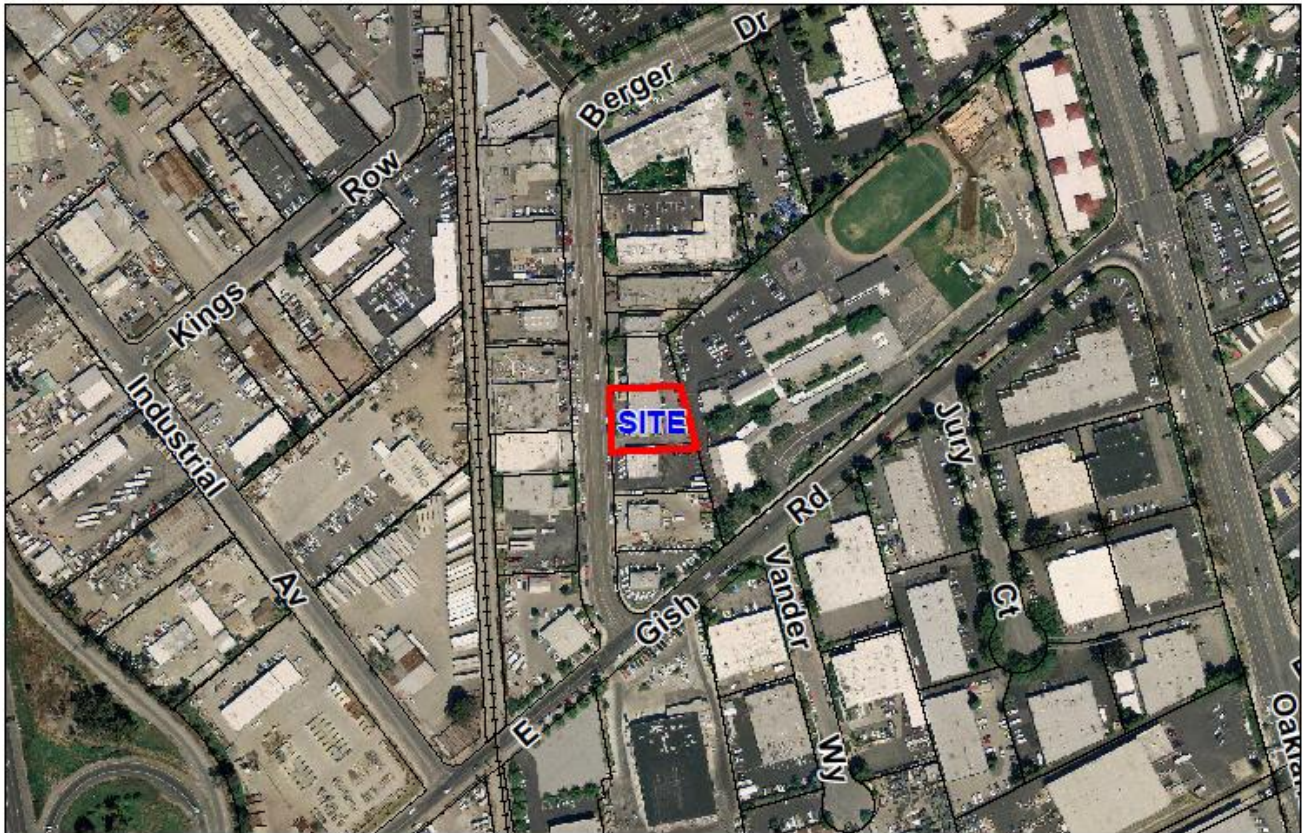
Exhibit F: General Plan Resolution

Exhibit G: Rezoning Ordinance

Exhibit H: Environmental Documents

Owner:	Applicant:
Loaves & Fishes Family Kitchen 1500 Berger Drive San Jose, CA 95112	Gisela Bushey Leaves and Fishes Family Kitchen 1500 Berger Drive San Jose, CA 95112

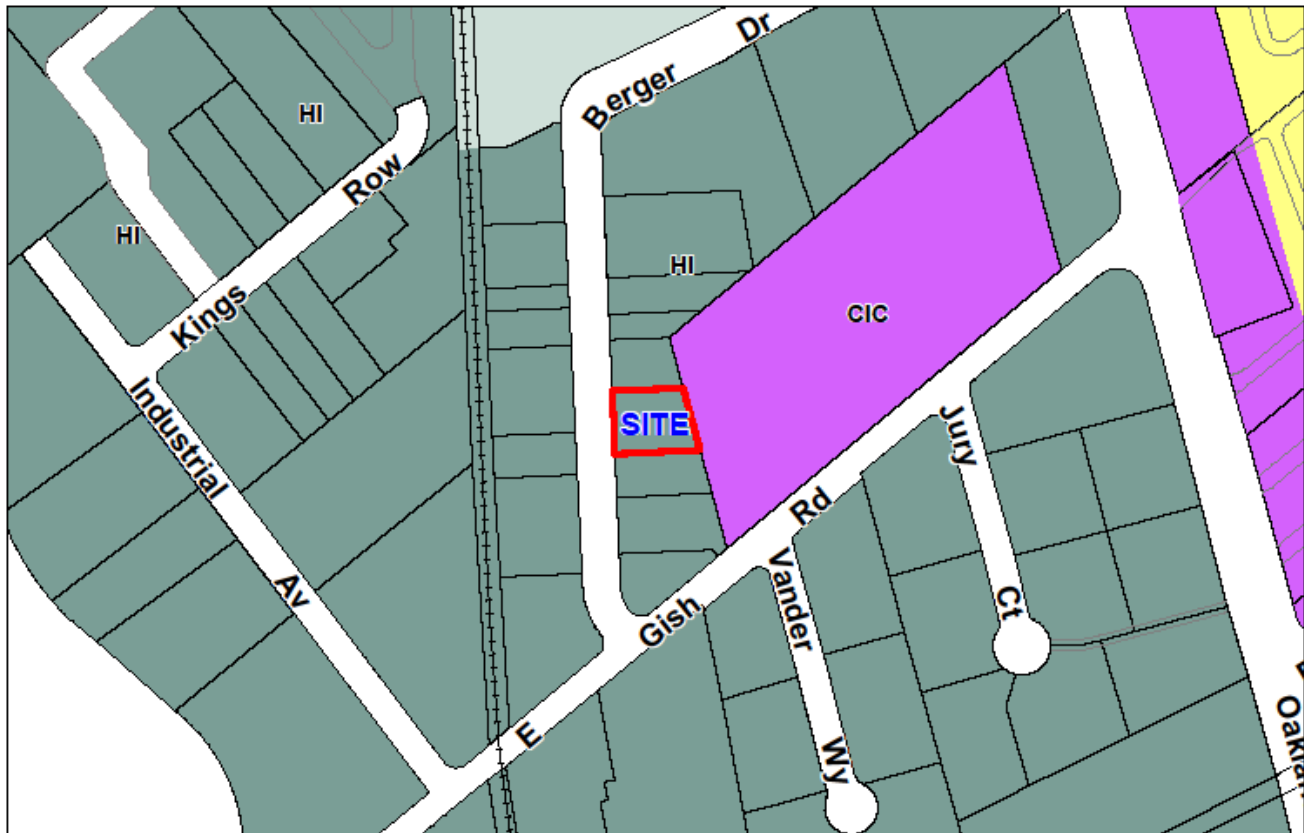
Exhibit A: Aerial of Site



File No: GP21-009  
District: 3

Aerial

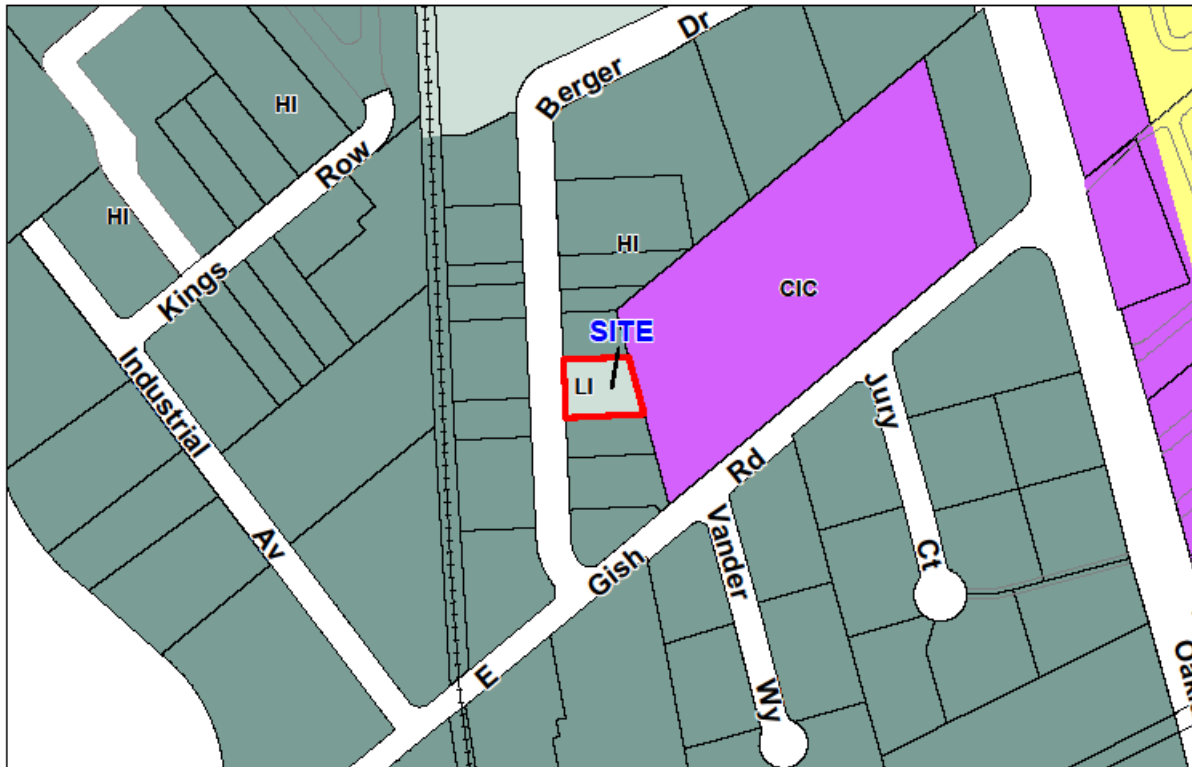
Exhibit B: Existing General Plan



File No: GP21-009  
District: 3

General Plan

Exhibit C: Proposed General Plan



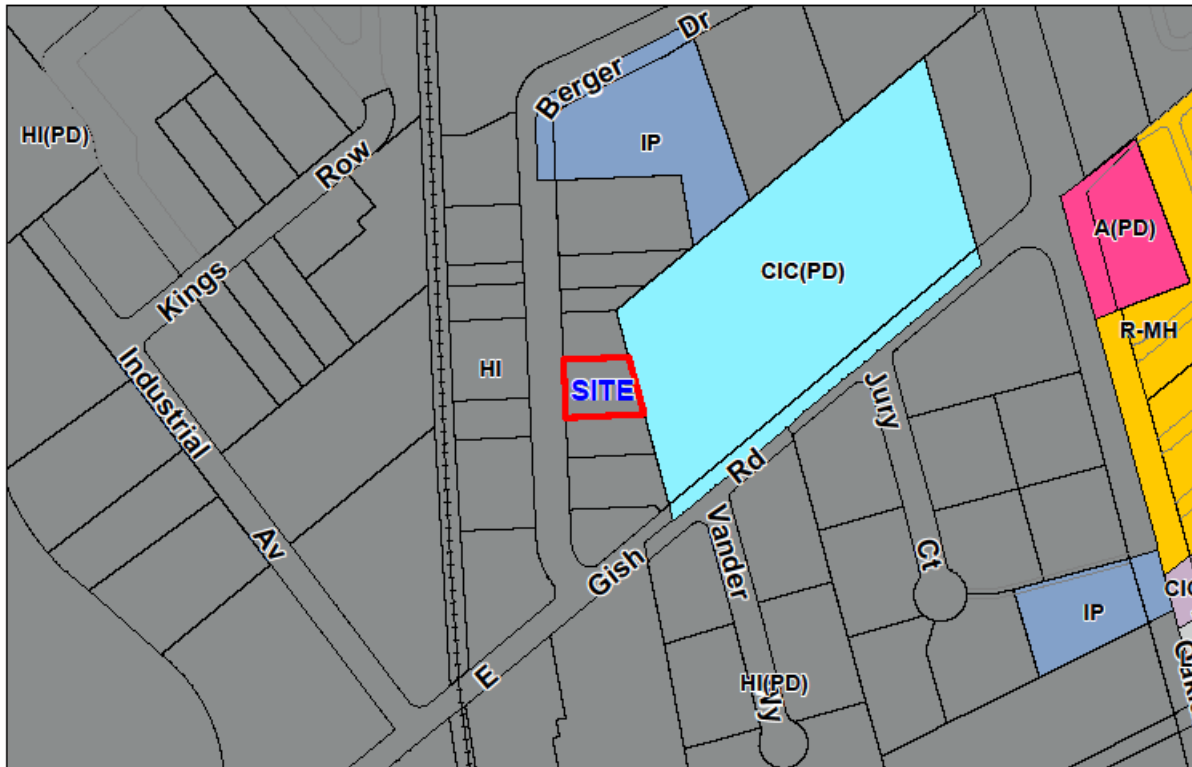
File No: GP21-009

District: 3

Proposed General Plan



Exhibit D: Existing Zoning Map

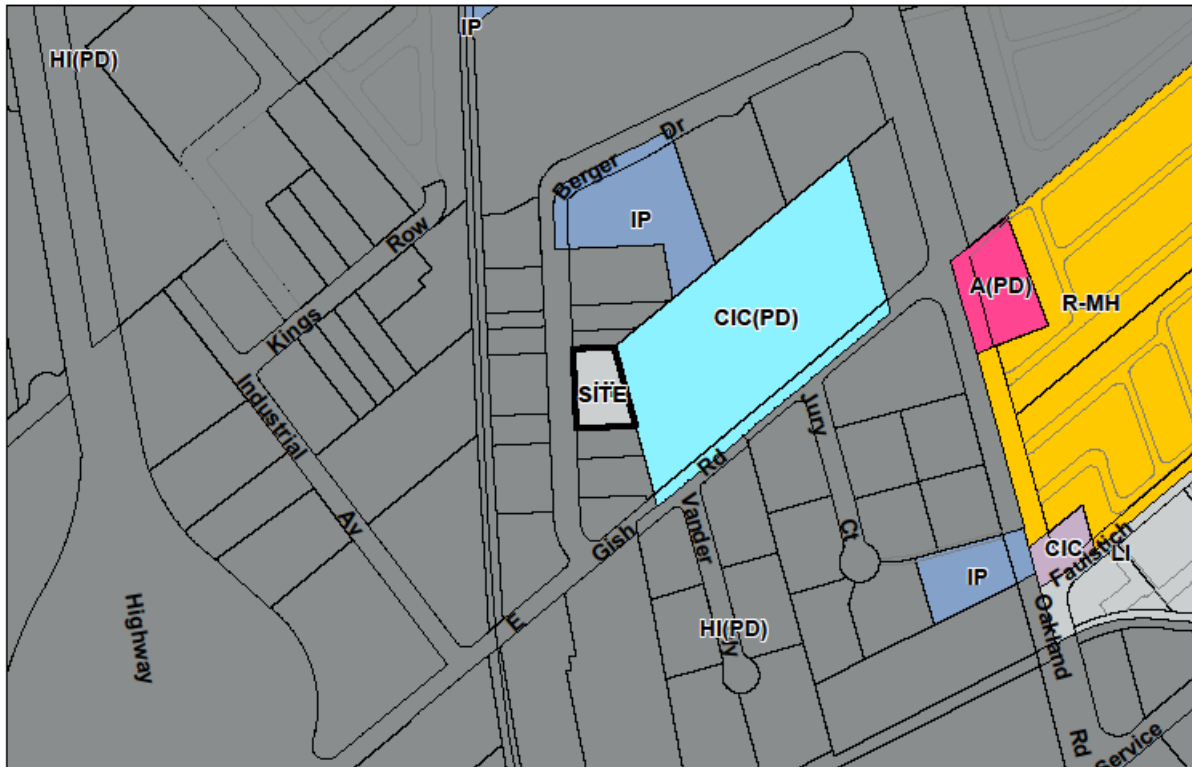


File No: GP21-009

District: 3

Aerial

Exhibit E: Proposed Zoning District



File No: C21-008

District: 3

Proposed Zoning

# **GP21-009 & C21-008**

## **Links to Attachments E-H**

Click on the title to view document

<a href="#">Exhibit F: General Plan Resolution</a>
<a href="#">Exhibit G: Rezoning Ordinance</a>
<a href="#">Exhibit H: Environmental Documents</a>