



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: January 28, 2022

COUNCIL DISTRICT: 7

SUBJECT: FILE NO. GP21-007 & C21-029: GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE/TRANSPORTATION DIAGRAM LAND USE DESIGNATION FROM NEIGHBORHOOD/COMMUNITY COMMERCIAL TO MIXED USE COMMERCIAL AND A CONFORMING REZONING FROM THE CN COMMERCIAL NEIGHBORHOOD AND CP COMMERCIAL PEDESTRIAN ZONING DISTRICT TO THE MUC MIXED USE COMMERCIAL ZONING DISTRICT ON AN APPROXIMATELY 1.09-GROSS ACRE SITE LOCATED AT 2905 AND 2911 SENTER ROAD (ASSESSOR PARCEL NUMBERS: 497-22-110, 497-22-111)

STAFF RECOMMENDATION

1. Adopt a resolution adopting the 2905 and 2911 Senter Road General Plan Amendment Negative Declaration for which an Initial Study was prepared, in accordance with the CEQA, as amended; and
2. Adopt a resolution denying the application for amendment of the Envision San José 2040 General Plan Land Use/Transportation Diagram designation from Neighborhood/Community Commercial to Mixed Use Commercial and conforming rezoning from the CN Commercial Neighborhood and CP Commercial Pedestrian to the MUC Mixed Use Commercial Zoning District on a 1.09-gross acre site at 2905 and 2911 Senter Road. (Exhibit A)

PLANNING COMMISSION RECOMMENDATION:

Commissioner Bonilla made a motion to approve and recommend that the City Council take the following actions:

1. Adopt a resolution adopting the 2905 and 2911 Senter Road General Plan Amendment Negative Declaration for which an Initial Study was prepared, in accordance with the CEQA (Exhibit D), as amended;
2. Adopt a resolution approving the General Plan Amendment to change the Land Use/Transportation Diagram land use designation from Neighborhood/Community Commercial to Mixed Use Commercial (Exhibit B); and
3. Approve an ordinance approving the Conforming Rezoning from the CN Commercial Neighborhood Zoning District and the CP Commercial Pedestrian Zoning District to the MUC Mixed Use Commercial Zoning District (Exhibit C)

Commissioner Ornelas-Wise seconded the motion. The Planning Commission voted 8-2-1 (Oliverio and Young opposed; Cantrell absent)

BACKGROUND

The Planning Commission held a public hearing on January 12, 2022, to consider the proposed General Plan Amendments and Rezoning. Planning staff recommends that Council adopt a resolution denying the application to amend the Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation from Neighborhood/Community Commercial to Mixed Use Commercial and denying the rezoning of Zoning District from the CN Commercial Neighborhood and CP Commercial Pedestrian zoning districts to the MUC Mixed Use Commercial zoning district on the approximately 1.09-gross acre site. Instead, the Planning Commission made a recommendation to the City Council to adopt a resolution approving the Negative Declaration in accordance with CEQA and adopt a resolution to approve the applicant's proposed General Plan amendment and approve an ordinance to rezone the property.

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 representative, Erik Schoennauer, gave a brief presentation about the proposed project and stated that the intent of the applicant is to develop a mixed-use project on an underutilized parcel. The Mixed Use Commercial land use designation would facilitate a mixed-use project that requires a 0.5 commercial floor area ratio (FAR) on this site. He stated that the site was suitable for commercial and high-density residential and would provide both jobs and housing. Also, he stated that the site was within a half mile of public transit and would reduce VMT and greenhouse gases. He also responded to the staff report, stating that a 100 percent affordable housing project could be built on the site currently under General Plan Policy H-2.9 (i.e, the 1.5-acre rule) without the proposed General Plan change to Mixed-Use Commercial and that such a project could use density bonus law both under the existing and proposed General Plan land use designation to receive a concession from the requirements of building a mixed-use project with commercial space. He also stated that the City already allows housing on employment lands within urban villages and in what circumstances should other employment sites be allowed to convert to residential.

Two members of the public expressed their concerns about the project. The first person expressed their concern for the potential development of the site stating the area would have more traffic and a large development would be out of place in the area. The second person shared the same concern for traffic and congestion and stated a high-cost residential project would not fit in the area because residents of the area do not have high incomes.

The applicant representative responded to public comments stating that a mixed-use project on the site would be better than the existing empty lot and would provide a community hub in the area for residents to gather. He emphasized that a future project would provide jobs and housing and noted that any future development would go through the entitlement and public process to ensure compatibility with the surrounding neighborhood.

Planning Commission Discussion

Commissioner Young asked Planning staff to respond to the applicant representative's statement about conversion of employment lands to allow for residential. Michael Brilliot, Deputy Director, responded saying the City of San José is largely built out and the Envision San José 2040 General Plan focuses growth in certain areas by allowing residential and commercial at a higher capacity on commercial lands. He noted that the General Plan's Urban Villages policy framework requires a rigorous planning process to determine where the housing and commercial growth will occur. In addition, he noted that housing could be allowed prior to Council approval of an Urban Village plan through the Signature Project policy for market rate housing and Policy IP-5.12 for affordable housing. He stated that Mr. Schoennauer is correct that the General Plan Urban Village strategy is a framework to convert commercial land to residential uses, but that the General Plan supports a more thoughtful and mindful approach as to when and where commercial land can be converted. He stated that the General Plan makes a real distinction between sites within designated growth areas and sites outside of growth areas.

The applicant representative responded that Policy H-2.9 does allow for conversion of commercial properties outside of growth areas for projects that are 100% affordable.

Commissioner Lardinois asked the applicant representative why their proposal did not include a project and only included a Rezoning and General Plan Amendment. Mr. Schoennauer responded that the project did not include a development proposal because they would not meet the General Plan Amendment deadline for the 2021 Annual Review cycle if a development was included. Commissioner Lardinois then asked Vera Todorov, the City Attorney, her legal opinion regarding the possibility of a future project using state density bonus to waive commercial requirements and Mr. Schoennauer's response that an affordable project could develop on the existing site. She stated that under State density bonus law, the City is required to give concessions and waivers to make the density of a project feasible which can only be denied based on health and safety reasons. Michael Brilliot added that the site was not analyzed under the H-2.9 affordable housing policy because it is not proposed as a 100 percent affordable project and may or may not qualify as an affordable housing project. He stated that density bonus is applied to affordable housing projects which comply with the minimum percentages of units and level of affordability required under state law to qualify for a density bonus. Ms. Todorov provided examples of projects that qualify for a density bonus and affordability percentage requirements including student housing and senior residential care facilities. Commissioner Lardinois asked for clarification if density bonus could be used on the site under its current General Plan land use designation and Zoning. Staff responded that because the site currently does not allow for residential development it does not qualify for a density bonus.

Mr. Schoennauer shared the policy text for Affordable Housing Policy H-2.9 and stated he believed the site was qualified under the policy and stated the site could develop a 100% affordable residential project today.

Commissioner Ornelas-Wise stated she would support the project because she believes the site is underutilized and could better serve the community. She stated the site was in a prime location and has access to a large commercial corridor with adequate public transit.

Commissioner Oliverio asked Planning staff how they envisioned the development of the site in the future if the site remained as Neighborhood/Community Commercial. Planning staff stated that the project could be developed with commercial uses, similar to the neighborhood commercial shopping center across the street.

Commissioner Young stated he would trust Planning staff on interpretation of policy instead of the project applicant and noted that a mixed-use residential project on the site would most likely not be affordable. He emphasized that a mixed-use housing project on the site would not be located within a growth area and would lack the services and resources to serve a high-density project. He stated that the site would be more appropriate for a commercial shopping center because of the vibrant businesses that are adjacent to the site. He also stated that he believed the proposed General Plan Amendment to be in direct conflict with the General Plan and spoke to the role of the Planning Commission to follow the spirit of the General Plan and to allow City Council to use their subjective authority.

Commissioner Bonilla echoed Commissioner Ornelas-Wise's support and stated that from his conversations with the community, the question about when their district will receive market rate opportunities is common. He believes there's value in bringing all types of socioeconomic backgrounds into the community and believes the east side feels disconnected from those opportunities. He stated that the site has been underutilized for a very long time and believes that this project has the perfect combination of residential and commercial. He stated that if the Planning Commission agrees with City staff's position, then the area would continue to need an economic boost. He stated it was important for Planning Commission to send a very clear piece of advice to the Council in terms of what needs to happen. He stated they fought for an eleven-member Planning Commission for these moments to add to local knowledge and to give a three-dimensional view beyond colors on the map. He asked the Planning staff project manager if they visited the site and the Planning staff project manager responded no.

Commissioner Bonilla made a motion to deny staff recommendation and Commissioner Ornelas-Wise seconded the motion.

The Planning Commission voted (8-2-1) (Young and Oliverio Opposed; Cantrell Absent) to recommend to the City Council to adopt a resolution adopting the Negative Declaration in accordance with the 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 Neighborhood/Community Commercial to Mixed Use Commercial, and approve an ordinance rezoning certain real property located at the southwest corner of Senter Road and Lewis Road (2905 and 2911 Senter Road) from the CN Commercial Neighborhood and CP Commercial Pedestrian Zoning District to MUC Mixed Use Commercial Zoning District on an approximately 1.09-gross acre site.

OUTCOME

If the City Council adopts a resolution denying the General Plan Amendment, the Envision San José 2040 General Plan Land Use/Transportation Diagram and Zoning District would not be changed. The land use designation would remain as Neighborhood/Community Commercial, and the Zoning District would remain as CN Commercial Neighborhood and CP Commercial Pedestrian. Future development would need to comply with the existing general plan designation and zoning.

Alternatively, 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 Neighborhood/Community Commercial to Mixed Use Commercial and the Council could also adopt an ordinance rezoning the site from the CN Commercial Neighborhood and CP Commercial Pedestrian Zoning Districts to the MUC Mixed Use Commercial Zoning District. Future development under this scenario would be required to comply with the amended general plan designation and zoning.

ANALYSIS

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

CONCLUSION

The Planning Commission voted to recommend that the City Council deny the staff's recommendations approve the proposed General Plan Amendment and Rezoning. Staff continues to recommend denial of the proposed General Plan Amendment and Rezoning.

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 Neighborhood/Community Commercial to Mixed Use Commercial and the Zoning District would be changed from CN Commercial Neighborhood and CP Commercial Pedestrian to MUC Mixed Use Commercial on an approximately 1.09-gross acre site located at 2905 and 2911 Senter Road. A subsequent permit would need to be submitted and approved for the project to obtain a Building and Public Works permit to begin construction.

CLIMATE SMART SAN JOSÉ

The proposed General Plan Amendment and Rezoning does not align with Climate Smart San José's overall goals because it could remove commercial uses near existing residential land uses and could increase vehicle miles traveled by incentivizing driving. Although the Mixed Use Commercial land use designation does allow for a high density residential and includes a requirement of 0.5 commercial FAR, commercial space is not guaranteed. Under density bonus law, market rate housing projects that include affordable housing units, or 100% affordable housing projects can eliminate commercial space requirements as a concession from development standards. Alignment to Climate Smart San Jose depends on the balance of residential and commercial submitted in the future. Conversion of commercial land to wholly residential would not align with Climate Smart San Jose.

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 20, 2021, and three community members attended. Community members were

interested in the timeline for development and staff explained that the proposed project would need additional entitlements for any proposed development. The proposed project would change the General Plan land use designation and Zoning District and would require a Site Development permit for further review. Community members asked about traffic congestion and the impacts related to parking. Staff responded that a cumulative traffic analysis was required for the proposed General Plan amendment and zoning under CEQA.

When a specific development project is proposed, a site-specific traffic analysis would be required. Lastly, a community member felt the site was not suited for high-density residential and felt that the current designation was more appropriate given the surrounding neighborhood.

COORDINATION

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

CEQA

An Initial Study (IS) and Negative Declaration (ND) were prepared by the Director of Planning, Building, and Code Enforcement for the subject General Plan Amendment and Conforming Rezoning. The documents were circulated for public review between November 12, 2021, and December 10, 2021. The ND states that the proposed General Plan Amendment and Conforming Rezoning will have a less than significant effect on the environment. No impacts were identified; therefore, no mitigation is required. Two comments were received regarding the standard PG&E disclosure and Santa Clara Valley Water recommended edits. The comments did not raise any concerns regarding the adequacy of the CEQA documents. The entire ND and Initial Study, public comments, and responses to those comments are available for review on the Planning website at: <https://www.sanjoseca.gov/NegativeDeclarations> under file nos. GP21-007 and C21-029.

/s/

Christopher Burton, Secretary
Planning Commission

For questions please contact Michael Brilliot, Deputy Director, at Michael.Brilliot@sanjoseca.gov or 408-896-0136.

Attachment: Planning Commission Staff Report

Exhibit A: A resolution denying the application for amendment of the Envision San José 2040 General Plan Land Use/Transportation Diagram and denying the rezoning

HONORABLE MAYOR AND CITY COUNCIL

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Exhibit B: A resolution approving the application for amendment of the Envision San José 2040 General Plan Land Use/Transportation Diagram from Neighborhood/Community Commercial to Mixed Use Commercial

Exhibit C: An ordinance approving the Conforming Rezoning from the CN Commercial Neighborhood and CP Commercial Pedestrian Zoning District to the MUC Mixed Use Commercial Zoning District

Exhibit D: CEQA Resolution



Memorandum

TO: PLANNING COMMISSION

FROM: Chris Burton

SUBJECT: GP21-007, C21-029

DATE: January 12, 2022

COUNCIL DISTRICT: 7

Type of Permit	General Plan Amendment (GP21-009) Conforming Rezoning (C21-008)
Project Planner	Robert Rivera
CEQA Clearance	Initial Study/Negative Declaration for 2905 and 2911 Senter Road General Plan Amendment
CEQA Planner	Maira Blanco

RECOMMENDATION

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

1. Adopt a resolution adopting the Initial Study/Negative Declaration for 2905 and 2911 Senter Road General Plan Amendment (Exhibit C), for which an Initial Study was prepared, all in accordance with CEQA, as amended;
2. Deny a resolution to change the Land Use/Transportation Diagram land use designation from Neighborhood/Community Commercial to Mixed Use Commercial on a 1.09-gross acre site (Exhibit A); and
3. Deny an ordinance rezoning certain real property located southwestern corner of the intersection of Senter Road and Lewis Road from the CN Commercial Neighborhood and CP Commercial Pedestrian Zoning District to the MUC Mixed Use Commercial Zoning District on approximately 1.09-gross acre site (Exhibit B).

PROPERTY INFORMATION

Location	Southwest corner of the intersection of Senter Road and Lewis Road, (2905 and 2911 Senter Road)
Assessor Parcel Nos.	497-22-110 and 497-22-111
Existing General Plan Land Use Designation	Neighborhood Community/Commercial
Proposed General Plan Land Use Designation	Mixed Use Commercial
Existing Zoning District	CN Commercial Neighborhood and CP Commercial Pedestrian
Proposed Zoning District	MUC Mixed Use Commercial

Growth Area	n/a
Demolition	n/a
Historic Resource	n/a
Annexation Date	8/28/1959 (Franklin No_6)
Council District	7
Acreage	1.09 acres
Floor Area Ratio	n/a
Proposed Density	n/a

PROJECT SETTING AND BACKGROUND

On March 10, 2021, the applicant submitted the following applications related to the approximately 1.09-gross acre subject site located on the southwest corner of the intersection of Senter Road and Lewis Road (2905 and 2911 Senter Road):

- General Plan Amendment request to change the General Plan Land Use/Transportation Diagram land use designation from Neighborhood/Community Commercial to Mixed Use Commercial; and
- Conforming Rezoning from the CN Commercial Neighborhood and CP Commercial Pedestrian Zoning District to the MUC Mixed Use Commercial Zoning District.

As shown on the attached aerial map ([Figure 1.](#)), the project site is 1.09-gross acres and is developed with one, approximately 6,550 square foot, commercial building.

Single-family and commercial uses surround the subject site. To the northwest across Lewis Road is a large commercial retail plaza, north and northeast across Senter Road are single-family homes, directly south and southwest of the subject site are single-family homes and southwest is a restaurant and café.

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	Mixed Use Neighborhood	R-1-8 Single Family Residence & CG Commercial General	Single-family home and grocery store
South	Residential Neighborhood	R-1-8 Single Family Residence	Single-family home
East	Residential Neighborhood	CP Commercial and R-1-8 Single Family Residence	Single-family home and restaurant and café
West	Neighborhood/Community Commercial	RM Residential Multiple and CG Commercial General	Single-family home and grocery store

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 (Senate Bill 1333)
3. Senate Bill 330
4. City Council Policies
5. California Environmental Quality Act (CEQA)

Envision San José 2040 General Plan Conformance

Existing Land Use Designation

As shown in the attached Existing General Plan Map ([Figure 2](#)), the project site, which is comprised of two parcels, has an Envision San José 2040 General Plan designation of:

Neighborhood/Community Commercial

Density: None, FAR Up to 3.5 (1 to 5 stories)

This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail and services and commercial/professional office development. Neighborhood / Community Commercial uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction. General office uses, hospitals and private community gathering facilities are also allowed in this designation. This designation also supports one hundred percent (100%) deed restricted affordable housing developments that are consistent with General Plan Policy H-2.9 and Policy IP-5.12.

Proposed General Plan Land Use Designation

As shown in the attached Proposed General Plan Map ([Figure 3](#)), the proposed land use designation is:

Mixed Use Commercial

Density: Up to 50 DU/AC; Residential/Commercial Mixed-Use FAR 0.5 to 4.5 (1 to 6 stories); Commercial FAR 0.25 to 4.5 (1 to 6 stories)

This designation is intended to accommodate a mix of commercial and residential uses with an emphasis on commercial activity. New development of a property with this designation should accordingly include commercial space equivalent to at least a 0.5 FAR for residential/commercial mixed-use projects and 0.25 FAR for commercial projects with a typically appropriate overall FAR of up to 4.5, allowing for a medium intensity of development. This designation therefore is more commercially focused than the Mixed Use Neighborhood designation and allows for a greater intensity of use. Appropriate commercial uses include neighborhood retail, mid-rise office, medium scale hospitals or other health care facilities, and medium scale private community gathering facilities. Low impact industrial uses are appropriate if they are compatible and do not pose a hazard to other nearby uses.

General Plan Goals and Policies

The project is **inconsistent** with the following Envision San José 2040 General Plan policy.

1. **Major Strategy #3: Focused Growth:** The Focused Growth Major Strategy plans for new residential and commercial growth capacity in specifically identified “Growth Areas” (Urban Villages, Specific Plan

areas, Employment Areas, Downtown) while the majority of the City is not planned for additional growth or intensification. The strategy focuses new growth into areas of San José that will enable the achievement of economic growth, fiscal sustainability, and environmental stewardship goals, while supporting the development of new, attractive urban neighborhoods. While the Focused Growth strategy directs and promotes growth within identified Growth Areas, it also strictly limits new residential development through neighborhood infill outside of these Growth Areas to preserve and enhance the quality of established neighborhoods, to reduce environmental and fiscal impacts, and to strengthen the City's Urban Growth Boundary.

2. **Growth Areas Policy LU-2.3:** To support the intensification of identified Growth Areas, and to achieve various goals related to their development throughout the City, restrict new development on properties in non-Growth Areas.
3. **High Quality Living Environments Policy LU-9.17:** Limit residential development in established neighborhoods that are not identified growth areas to projects that conform to the site's Land Use / Transportation Diagram designation and meet Urban Design policies in this Plan.
4. **Goal LU-10 – Efficient Use of Residential and Mixed-Use Lands:** Meet the housing needs of existing and future residents by fully and efficiently utilizing lands planned for residential and mixed-use and by maximizing housing opportunities in locations within a half mile of transit, with good access to employment areas, neighborhood services, and public facilities.

Analysis: The project site is not located within an identified Growth Area and proposes to convert an approximately 1.09-gross acre site from a wholly commercial land use designation to a mixed-use land use designation. The site is not located within an identified Growth Area, the site is not within a half mile of transit, therefore intensification of this site may result in the production of more greenhouse gas emissions than a site within an identified growth area. The proposed project would intensify the amount of commercial and residential on the subject site, however intensification of commercial could be achieved with the existing land use designation and the development of residential and commercial outside of growth areas is discouraged by the general plan policies above. Further, if the proposed General Plan Amendment is approved, affordable housing could move forward and use State Density Bonus to eliminate any commercial use on the site, resulting in a 100% residential project. Staff recommends denial of the proposed project because the existing Neighborhood/Community Commercial land use designation is appropriate for the existing development and for any future development on site. The Neighborhood/Community Commercial land use designation guarantees future commercial development where the Mixed Use Commercial land use designation does not. Although the proposed Mixed Use Commercial land use designation includes a minimum commercial FAR, developers can use density bonus to greatly minimize or eliminate the amount of commercial space included in a future development if the future development include affordable housing. Therefore, the Mixed Use Commercial land use designation could result in zero commercial space in the City resulting in the further loss of jobs and a larger fiscal imbalance. Further, the Mixed Use Commercial land use designation allows greater floor area and height than the Neighborhood/Community Commercial land use designation, which is contrary to Major Strategy # 3 and Policy LU-2.3, referenced above.

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

1. **Goal LU-4 – Commercial:** Establish commercial uses that maximize revenue to the City and provide employment for its residents to achieve fiscal sustainability and our desired jobs per employed resident ratio.

2. **Neighborhood Serving Commercial Policy LU-5.3** Encourage new and intensification of existing commercial development, including stand-alone, vertical mixed-use, or integrated horizontal mixed-use projects, consistent with the Land Use / Transportation Diagram

Analysis: The proposed project would require more commercial square footage than the existing commercial building on site. The site is currently developed with a 6,550 square-foot building and the Mixed Use Commercial land use designations requires a minimum commercial FAR of 0.50 for mixed-use residential development or approximately 22,869 square-feet or a minimum commercial FAR of 0.25 or 11,435 square feet for stand -alone commercial development. This would provide additional employment for the City, however intensification of the site for employment uses could be achieved through the existing Neighborhood/Community Commercial land use designation. As noted above, State Density Bonus could be used on qualifying affordable- housing projects to minimize or eliminate the commercial requirement of the Mixed Use Commercial land use designation, therefore, this change of designation could result in a 100% residential project where the existing Neighborhood/Community Commercial designation would guarantee future development would be commercial.

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 Zoning District is consistent with the existing General Plan land use designation and complies with State Law SB1333 which mandates that zoning be consistent with the general plan designation. The project includes rezoning the property from the CN Commercial Neighborhood and CP Commercial Pedestrian Zoning District to the MUC Mixed Use Commercial Zoning District to be consistent with State Law SB 1333 should the proposed General Plan Amendment be approved.

Zoning Ordinance Conformance

The proposed project is located in the CN Commercial Neighborhood and CP Commercial Pedestrian Zoning District, as shown on the attached Existing Zoning District Map ([Figure 4](#)). The proposed rezoning from CN Commercial Neighborhood and CP Commercial Pedestrian Zoning District to MUC Mixed Use Commercial Zoning District conforms with Table 20-270, [Section 20.120.110](#) of the San José Municipal Code, which identifies the Mixed Use Commercial Zoning District as a conforming district to the Mixed Use Commercial General Plan land use designation.

If the proposed General Plan amendment were approved, the proposed rezoning ([Figure 5](#)) would allow the properties to be used and developed in accordance with the allowable uses in Table 20-90, [Section 20.55.200](#), and consistent with the Mixed Use Commercial General Plan land use designation which allows a variety of commercial and residential uses like general retail, entertainment, and multifamily. The proposed rezoning would be consistent with Senate Bill 1333 mandate that zoning be consistent with the general plan designation, should the proposed General Plan Amendment be approved.

The rezoning cannot be approved absent approval of the related General Plan amendment. For the reasons stated above, staff recommends denial of both the General Plan amendment and rezoning.

Senate Bill 330 Compliance

The Housing Crisis Act of 2019 (SB 330) limits the way local governments may reduce the capacity for residential units that can be built on properties that allow housing, including actions such as down-zoning, changing general or specific plan land use designations to a less intensive use, reductions in height, density or floor area ratio, or other types of increased requirements. An exception to this is that a property may be allowed to reduce intensity of residential uses if changes in land use designations or zoning elsewhere ensure “no net loss” (down-zoning) in residential capacity within the jurisdiction. Additionally, SB 940 authorizes the City of San José to proactively change a zoning to a more intensive use (up-zoning) and to use the added capacity to subsequently change the zoning to a less intensive use.

SB 330 calculations are separated into two calculations, the General Plan residential capacity and Zoning District residential capacity. Any increase of residential capacity on the General Plan level could be used to offset any General Plan amendment that may decrease residential capacity if they are concurrently approved. Any increase in residential capacity in the Zoning District can be pooled and used to offset rezonings that may decrease residential capacity in the future. Also, zoning residential calculations are based on theoretical and average residential densities in the City for zoning districts where no residential density limit is specified while General Plan residential calculations are based on allowable densities in the General Plan.

If the application is denied as recommended by staff, compliance with SB 330 is not an issue because the site is not designated or zoned for residential uses and there are no existing residential uses on the site.

Approval of this proposed General Plan Amendment (File No. G21-007) would result in an increase of residential capacity by 54 units because the Neighborhood/Community Commercial land use designation does not allow for residential and the Mixed Use Commercial land use designation allows 50 dwelling units per acre. Therefore, this project would result in an increase of residential capacity in the City at the General Plan level and may be used to offset decreases in residential capacity from other General Plan Amendments.

Approval of the proposed conforming rezoning (C21-036) would result in a decrease of residential capacity by 66 units because the CP Commercial Pedestrian and the CN Commercial Neighborhood zoning districts would allow residential at up to 111 dwelling units per acre where the MUC Mixed Use Commercial Zoning District permits 50 dwelling units per acre. The residential capacity in the CP Commercial Pedestrian and CN Commercial Neighborhood designations is due to the fact that these zoning districts allow mixed use development in situations where these districts overlay a General Plan designation that allows such development or where mixed use development is allowed through a specific General Plan policy, such as Policy IP 5.12 that allows affordable residential developments on certain commercially designated properties within Urban Village areas. Under SB 330, the city must count the residential capacity within these zoning districts regardless of the underlying General Plan designation on the site.

The City has, however, 15,008 residential units of capacity created through the approval of other rezonings in 2020 (File Nos. PDC19-039, C20-002, C20-014, C21-003, C21-013, C21-015, C21-016, and C21-021). Therefore, consistent with the provisions of SB940, there would be no net loss of residential capacity in the city resulting from this proposed rezoning action. The 15,008 units of increased capacity is more than enough capacity to cover the loss of 66 units, satisfying the no net loss of residential capacity requirements of Senate Bill 330.

City Council Policy Conformance

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

Under City Council Policy 6-30, the project is considered a significant community interest proposal. 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 7 office to discuss the project on September 20, 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 Initial Study (IS) and Negative Declaration (ND) were prepared by the Director of Planning, Building and Code Enforcement for the subject General Plan Amendment and Conforming Rezoning. The documents were circulated for public review between November 12, 2021, and December 10, 2021. The ND states that the proposed General Plan Amendment and Conforming Rezoning will have a less than significant effect on the environment. No impacts were identified; therefore, no mitigation is required. Two comments were received regarding standard PG&E disclosure and Santa Clara Valley Water recommended edits. The comments did not raise any concerns regarding the adequacy of the CEQA documents. The entire ND and Initial Study, public comments and responses to those comments are available for review on the Planning website at: <https://www.sanjoseca.gov/NegativeDeclarations> under file nos. GP21-007 and C21-029.

PUBLIC OUTREACH

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 20th, 2021, and 3 community members attended. Community members were interested in the timeline for development and staff

explained that the proposed project would need additional entitlements for any proposed development. The proposed project would change the General Plan land use designation and Zoning District and would require a Site Development permit for further review. Community members asked about traffic congestion and impacts related to parking. Staff responded that a cumulative traffic analysis was required for the proposed General Plan amendment and zoning under CEQA. When a specific development project is proposed, a site-specific traffic analysis would be required. Lastly, a community member felt the site was not suited for high density residential and felt that current designation was more appropriate given the surrounding neighborhood.

Project Manager: Robert Rivera

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

ATTACHMENTS:
Figures 1 through 5 Figure 1 – Vicinity Map Figure 2 – Existing General Plan Land Use Designation Figure 3 – Proposed General Plan Land Use Designation Figure 4 – Existing Zoning District Figure 5 – Proposed Zoning District
Exhibit A: Draft Resolution and Draft Ordinance
Exhibit B: CEQA Resolution
Exhibit C: Initial Study/Negative Declaration

Owner:	Applicant Representative:
Hien Chung Nguyen	Anthony Ho LPMD Architects 1288 Kifer Road, Ste. 206 Sunnyvale, CA 94086

Figure 1: Aerial of Site

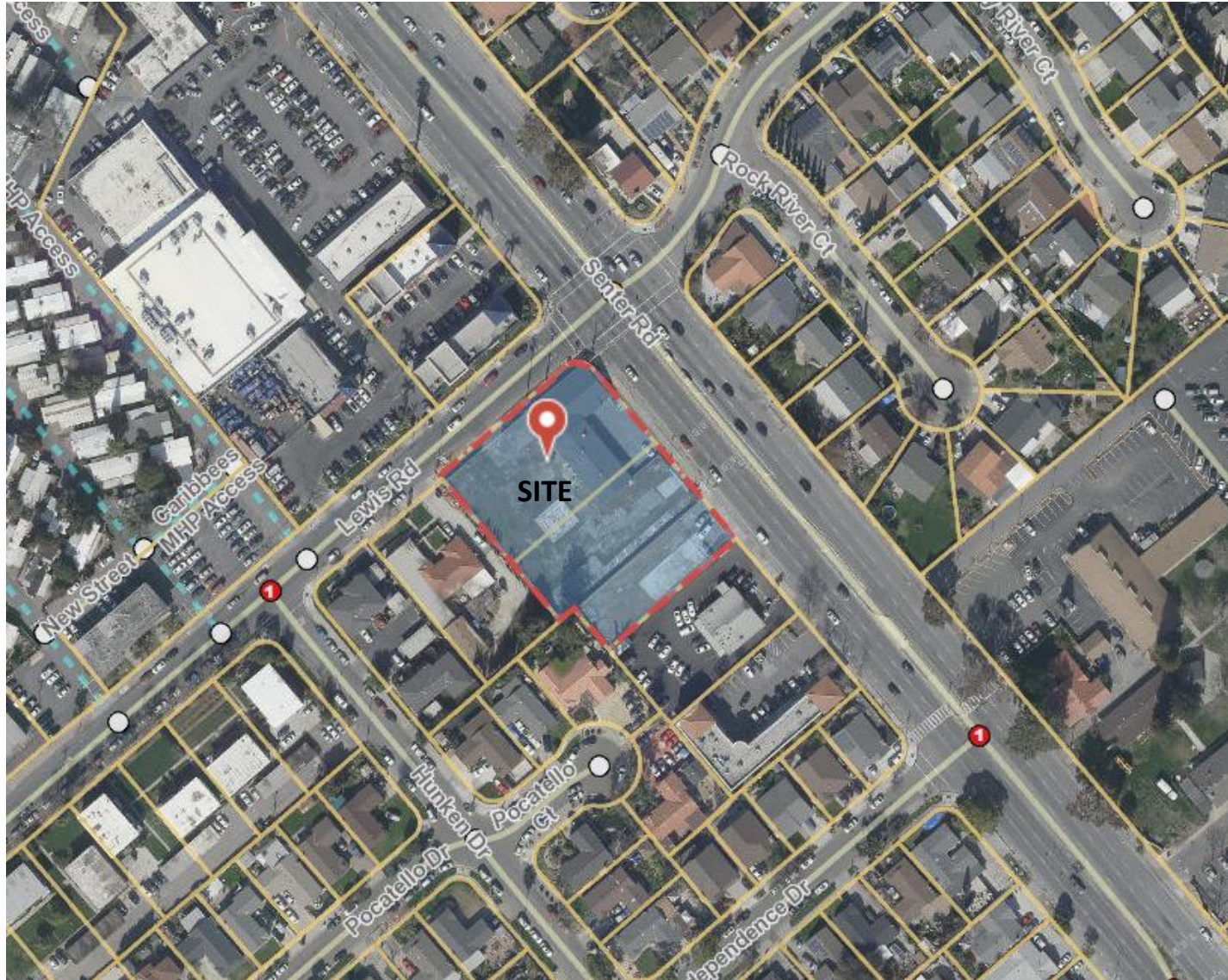


Figure 2: Existing General Plan

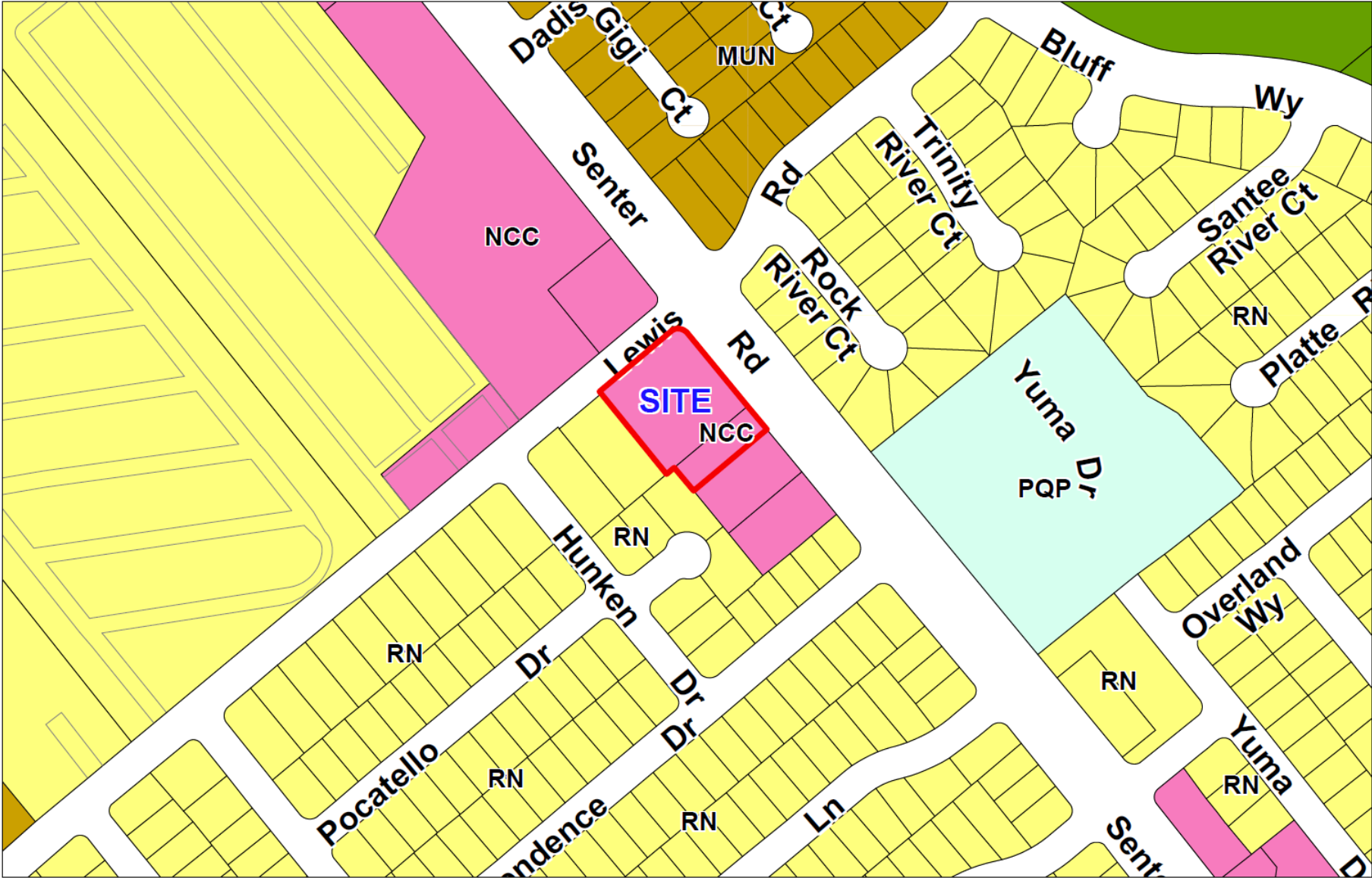


Figure 3: Proposed General Plan

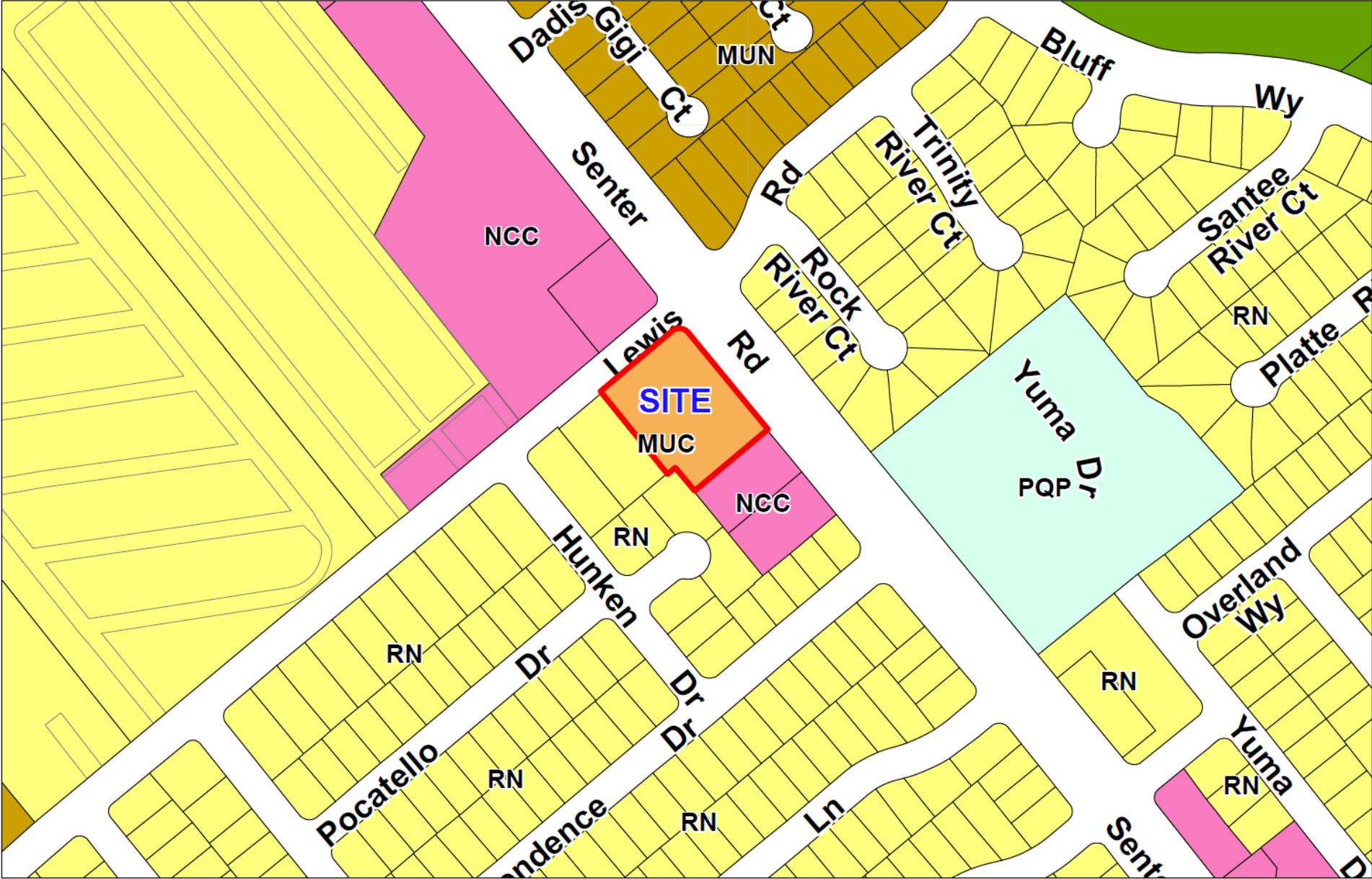


Figure 4: Existing Zoning Map

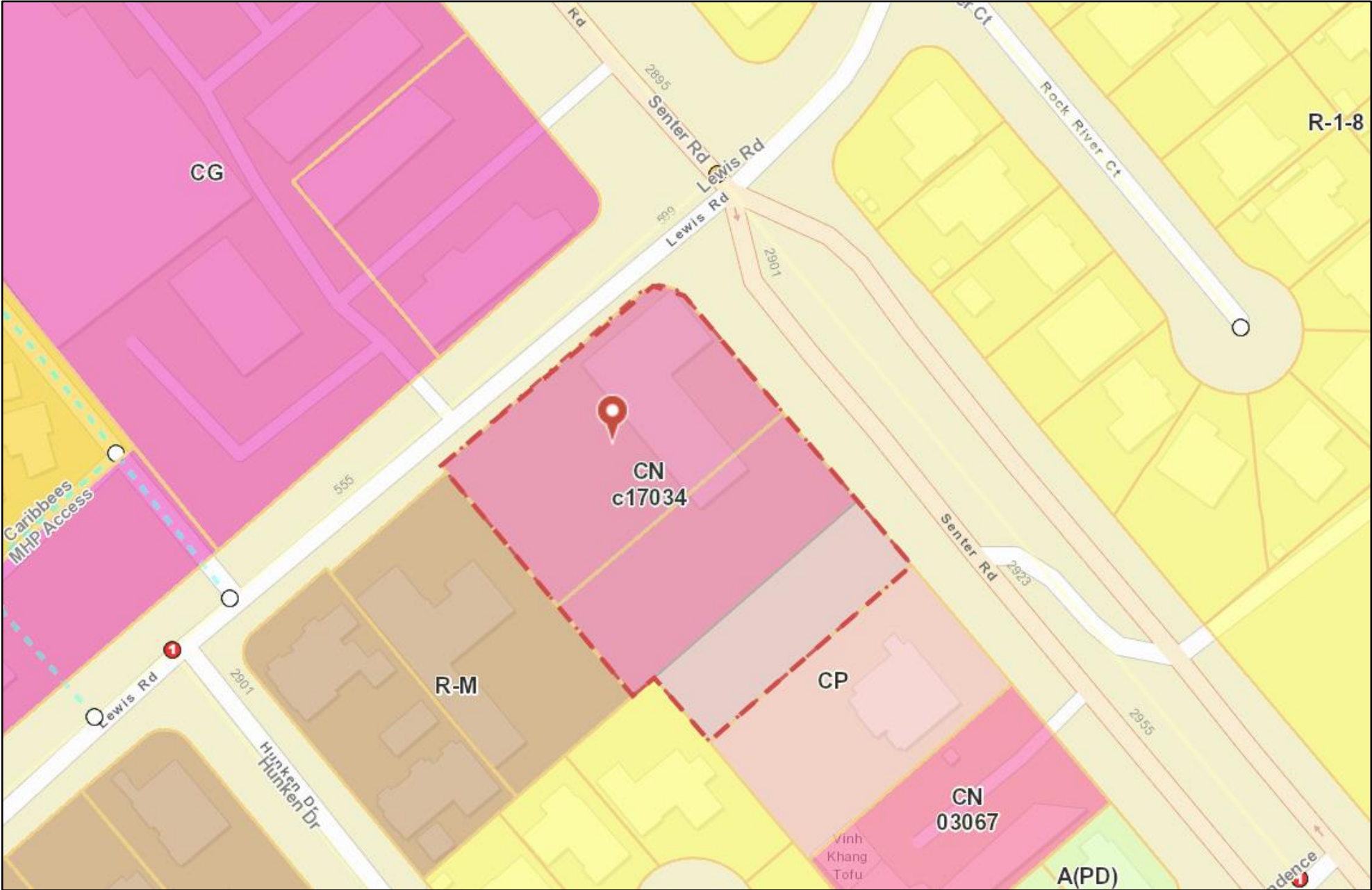
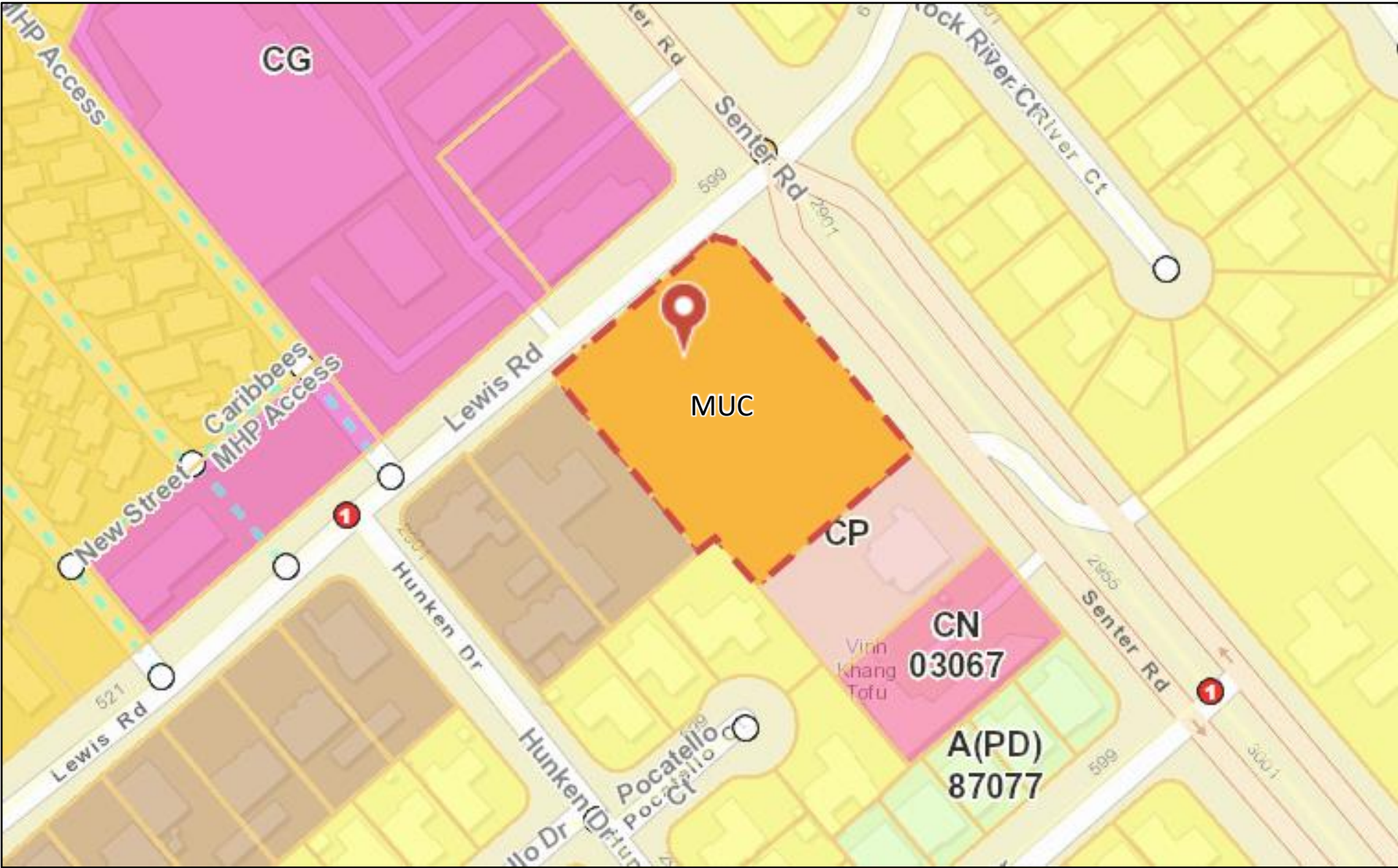


Figure 5: Proposed Zoning District



GP21-007 & C21-029

Links to Attachments A-D

Click on the title to view document

Exhibit A: Draft Resolution and Ordinance
Exhibit B: CEQA Resolution
Exhibit C: Initial Study/Negative Declaration

Correspondence received after January 5, 2022

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE DENYING THE APPLICATION TO AMEND THE THE ENVISION SAN JOSE 2040 GENERAL PLAN LAND USE/ TRANSPORTATION DIAGRAM LAND USE DESIGNATION FROM NCC NEIGHBORHOOD COMMUNITY/COMMERCIAL TO MUC MIXED USE COMMERCIAL AND THE APPLICATION FOR A CONFORMING REZONING FROM THE CN COMMERCIAL NEIGHBORHOOD AND CP COMMERCIAL PEDESTRIAN ZONING DISTRICTS TO THE MUC MIXED USE COMMERCIAL ZONING DISTRICT ON AN APPROXIMATELY 1.09 GROSS ACRE SITE LOCATED AT 2905 AND 2911 SENTER ROAD (ASSESSOR PARCEL NUMBERS: 497-27-110, 497-27-111)

**2022 General Plan Amendment Cycle 1
FILE NOS. GP21-007 AND C21-029**

WHEREAS, the City Council is authorized by Title 18 of the San José Municipal Code and state law to adopt and, from time to time, amend the General Plan governing the physical development of the City of San José; and

WHEREAS, on November 1, 2011, the City Council adopted the General Plan entitled, "Envision San José 2040 General Plan, San José, California" by Resolution No. 76042, which General Plan has been amended from time to time (hereinafter the "General Plan"); and

WHEREAS, in accordance with San José City Charter section 1000 and Titles 18 and 20 of the San José Municipal Code, all general and specific plan amendment proposals and rezoning are referred to the Planning Commission of the City of San José for review and recommendation prior to City Council consideration of the amendments; and

WHEREAS, on January 12, 2022, the Planning Commission held a virtual public hearing to consider the proposed amendment to the General Plan (File No. GP21-007) (“General Plan Amendment”) and rezoning (C21-009) (“Rezoning”) at which hearing interested persons were given the opportunity to appear virtually and present their views with respect to said proposed amendments; and

WHEREAS, at the conclusion of the virtual public hearing, the Planning Commission transmitted its recommendations to the City Council on the proposed General Plan Amendment and Rezoning; and

WHEREAS, on February 8, 2022, the Council held a duly noticed public hearing; and

WHEREAS, a copy of the proposed General Plan Amendment and Rezoning is on file with the office of the Director of Planning, Building and Code Enforcement of the City, and available electronically on the Department of Planning, Building and Code Enforcement webpage, with copies submitted to the City Council for its consideration; and

WHEREAS, pursuant to Titles 18 and 20 of the San José Municipal Code, public notice was given that on February 8, 2022 at 6:00 p.m. the Council would hold a public hearing where interested persons could appear, be heard, and present their views with respect to the proposed General Plan Amendment and Rezoning; and

WHEREAS, prior to making its determination on the General Plan Amendment and Rezoning, the Council reviewed and adopted the Initial Study/Negative Declaration for 2905 and 2911 Senter Road General Plan Amendment for File No. GP21-007 (Resolution No. _____) in accordance with the California Environmental Quality Act; and

WHEREAS, the Council of the City of San José is the decision-making body for the proposed General Plan Amendments; and

WHEREAS, absent approval of the General Plan Amendment, the Rezoning cannot be approved because it would be inconsistent with the General Plan in violation of state law; and

WHEREAS, the proposed General Plan Amendment and rezoning are inconsistent with the following General Plan Policies that encourage the retention of employment lands and residential growth in designated Growth Areas:

Major Strategy #3;
Growth Areas Policy LU-2.3;
Commercial Policy LU-4.1;
Efficient Use of Residential and Mixed Use Lands Policy LU-10.3;
Housing – Environmental Sustainability Policy H-4.2; and
Air Pollutant and Emissions Policy MS-10.6

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

SECTION 1. The Council hereby denies the application for amendment of the General Plan File No. GP21-007 and the application for Rezoning File No. C21-029 for the reasons specified above.

SECTION 2. This resolution shall take effect immediately upon adoption.

ADOPTED this _____ day of _____, 20___, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

DRAFT

Dated: _____

TONI J. TABER, CMC
City Clerk

DRAFT

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE ENVISION SAN JOSE 2040 GENERAL PLAN PURSUANT TO TITLE 18 OF THE SAN JOSE MUNICIPAL CODE TO MODIFY THE LAND USE/ TRANSPORTATION DIAGRAM LAND USE DESIGNATION FROM NEIGHBORHOOD COMMUNITY/COMMERCIAL TO MIXED USE COMMERCIAL ON AN APPROXIMATELY 1.09 GROSS ACRE SITE LOCATED AT 2905 AND 2911 SENTER ROAD (ASSESSOR PARCEL NUMBERS: 497-27-110, 497-27-111)

2022 General Plan Amendment Cycle 1

FILE NO. GP21-007

WHEREAS, the City Council is authorized by Title 18 of the San José Municipal Code and state law to adopt and, from time to time, amend the General Plan governing the physical development of the City of San José; and

WHEREAS, on November 1, 2011, the City Council adopted the General Plan entitled, "Envision San José 2040 General Plan, San José, California" by Resolution No. 76042, which General Plan has been amended from time to time (hereinafter the "General Plan"); and

WHEREAS, in accordance with San José City Charter section 1000 and Title 18 of the San José Municipal Code, all general and specific plan amendment proposals are referred to the Planning Commission of the City of San José for review and recommendation prior to City Council consideration of the amendments; and

WHEREAS, on January 12, 2022 the Planning Commission held a virtual public hearing to consider the proposed amendment to the General Plan, File No. GP21-007 specified in Exhibit "A" hereto ("General Plan Amendment"), at which hearing interested persons

were given the opportunity to appear virtually and present their views with respect to said proposed amendments; and

WHEREAS, at the conclusion of the virtual public hearing, the Planning Commission transmitted its recommendations to the City Council on the proposed General Plan Amendment; and

WHEREAS, on January 12, 2022, the Council held a duly noticed public hearing; and

WHEREAS, a copy of the proposed General Plan Amendment is on file with the office of the Director of Planning, Building and Code Enforcement of the City, and available electronically on the Department of Planning, Building and Code Enforcement webpage, with copies submitted to the City Council for its consideration; and

WHEREAS, pursuant to Title 18 of the San José Municipal Code, public notice was given that on February 8, 2022 at 6:00 p.m. the Council would hold a public hearing where interested persons could appear, be heard, and present their views with respect to the proposed General Plan Amendment (Exhibit "A"); and

WHEREAS, prior to making its determination on the General Plan Amendment, the Council reviewed and adopted the Initial Study/Negative Declaration for 2905 and 2911 Senter Road General Plan Amendment for File No. GP21-007 (Resolution No. _____) in accordance with the California Environmental Quality Act; and

WHEREAS, the Council of the City of San José is the decision-making body for the proposed General Plan Amendments; and

WHEREAS, the General Plan Amendment will not result in inconsistent zoning because the site is being concurrently rezoned to the Urban Residential Zoning District (File No. C21-029) and will not take effect until the associated rezoning ordinance takes effect; and

WHEREAS, pursuant to California Senate Bill (SB) 330, a city is prohibited from enacting a development policy, standard, or condition, as defined, that would have the effect of changing the land use designation or zoning of a parcel or parcels of property to a less intensive residential use or reducing the residential intensity of land use within an existing zoning district below what was allowed under the general plan or specific plan land use designation and zoning ordinances of the county or city as in effect on January 1, 2018; and

WHEREAS, California Government Code Section 66300(b)(1) allows a city to change a land use designation or zoning ordinance to a less intensive residential use if the city concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity; and

WHEREAS, no net loss of residential capacity will result from this General Plan amendment because the City is amending the General Plan land use designation of the property at 2905 and 2911 Senter Road (APN: 497-27-110, 497-27-111) from Neighborhood Community/Commercial to Mixed Use Commercial, in which the proposed project provides an additional 54 housing units and therefore there is no net loss in residential capacity with the change in land use designation set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

SECTION 1. The Council’s determination regarding General Plan Amendment File No. GP21-009 is hereby specified and set forth in Exhibit “A,” attached hereto and incorporated herein by reference.

SECTION 2. The General Plan Land Use Amendment specified in GP21-007, as set forth in Exhibit A of this Resolution, shall take effect upon the effective date of the associated rezoning ordinance for File No C21-029.

ADOPTED this _____ day of _____, 20____, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA CLARA)

I hereby certify that the amendments to the San José General Plan specified in the attached Exhibit A were adopted by the City Council of the City of San José on _____, as stated in its Resolution No. _____.

Dated: _____

TONI J. TABER, CMC
City Clerk

Exhibit A-1: Existing Land Use Designation

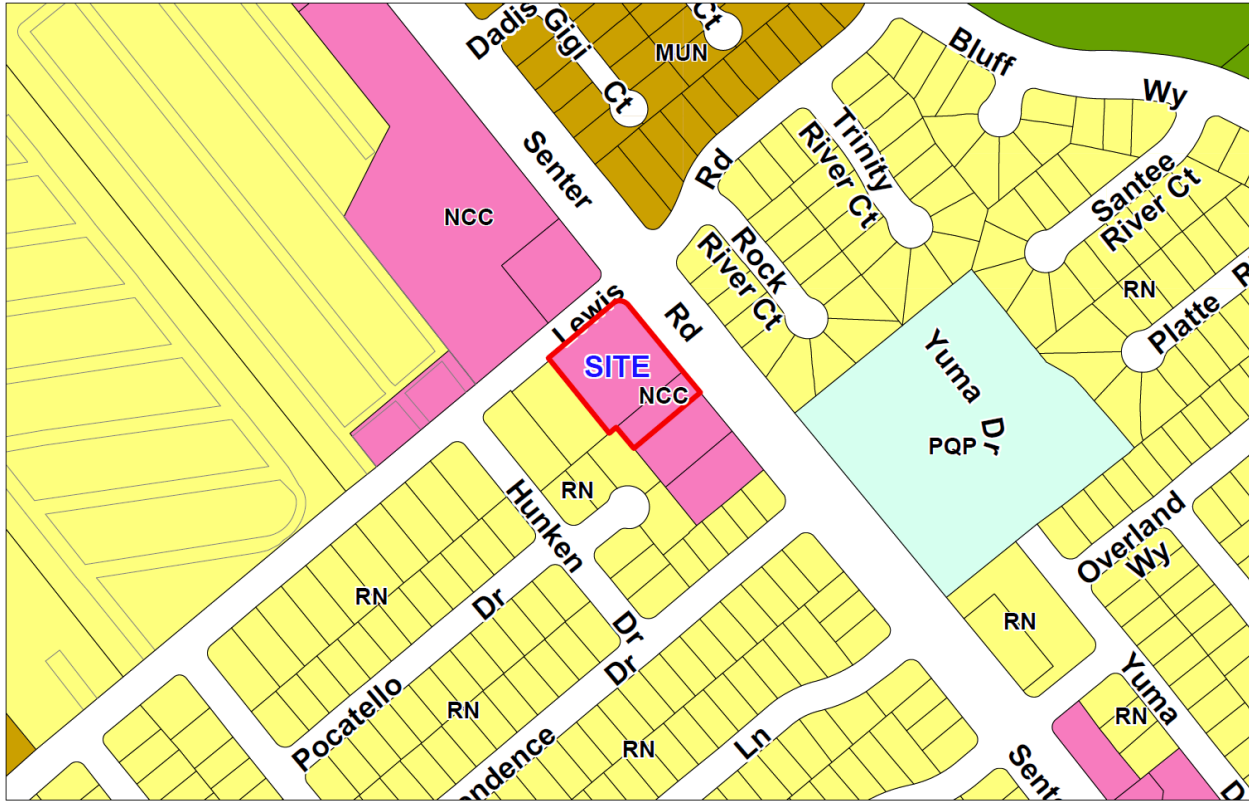
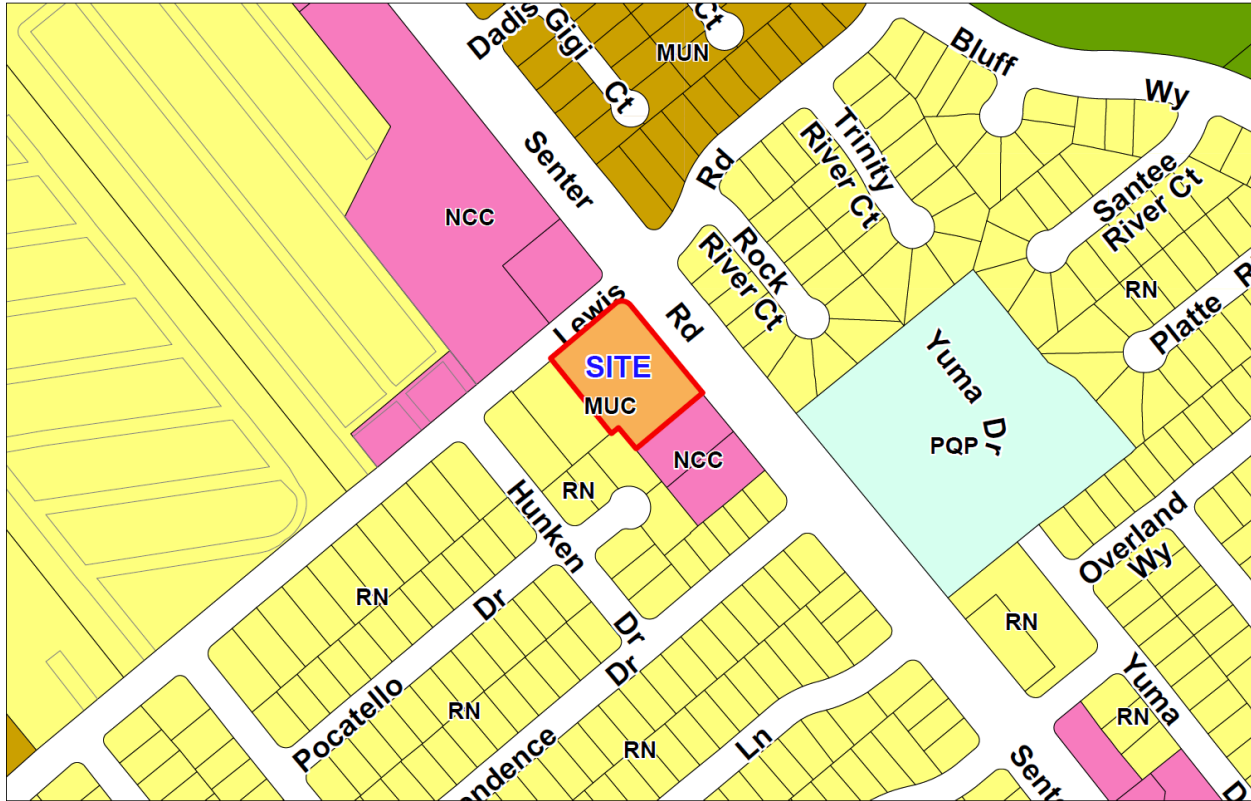


Exhibit A-2: Revised Land Use Designation



DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE REZONING CERTAIN REAL PROPERTY OF APPROXIMATELY 1.09-GROSS ACRES, LOCATED AT THE SOUTHWEST CORNER OF SENTER ROAD AND LEWIS ROAD (2905 AND 2911 SENTER ROAD) (ASSESSOR PARCEL NUMBERS: 497-22-110, 497-27-111) FROM THE CN COMMERCIAL NEIGHBORHOOD and CP COMMERCIAL PEDESTRIAN ZONING DISTRICT TO THE MUC MIXED USE COMMERCIAL ZONING DISTRICT.

WHEREAS, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

WHEREAS, an Initial Study/Negative Declaration was prepared in conformance with the California Environmental Quality Act of 1970 (CEQA), as amended, for the subject rezoning to the MUC Mixed Use Commercial Zoning District under File Number GP21-007 and C21-029 (the "IS/ND"); and

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to the MUC Mixed Use Commercial Zoning District; and

WHEREAS, this Council of the City of San José has considered and approves the IS/ND as the appropriate environmental clearance for the proposed project prior to acting upon or approving the subject rezoning; and

WHEREAS, the proposed rezoning is consistent with the designation of the site in the applicable General Plan; and

WHEREAS, Senate Bill 330 (2019) requires that rezoning actions by local agencies result in no net loss of residential capacity, which residential capacity can be pooled and accumulated by the City of San José in accordance with Senate Bill 940 (2020), **so even though the proposed rezoning (File No. C21-029) reduces the intensity of residential uses and residential capacity by 66 residential units**, the City approximately has 15,008 residential units that were previously rezoned to increase residential capacity (File Nos. PDC19-039, C20-002, C20-014, C21-003, C21-013, C21-015, C21-016, and C21-021) so there is no net loss of residential capacity in San José resulting from the present rezoning action. Therefore, there remains a surplus of residential units available satisfying the no net loss of residential capacity requirements of Senate Bill 330 and Senate Bill 940.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
SAN JOSE:

SECTION 1. The recitals above are incorporated herein.

SECTION 2. All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned to the to the MUC Mixed Use Commercial Zoning District.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, depicted in Exhibit "A" attached hereto and incorporated herein by this reference.

SECTION 3. The district map of the City is hereby amended accordingly.

SECTION 4. Any land development approval that is the subject of City File No. C21-029 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The issuance of a building permit to implement such land development approval

may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed by the California Regional Water Quality Control Board for the San Francisco Bay Region.

PASSED FOR PUBLICATION of title this ____ day of _____, 2021 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT "A"

A-1: EXISTING ZONING

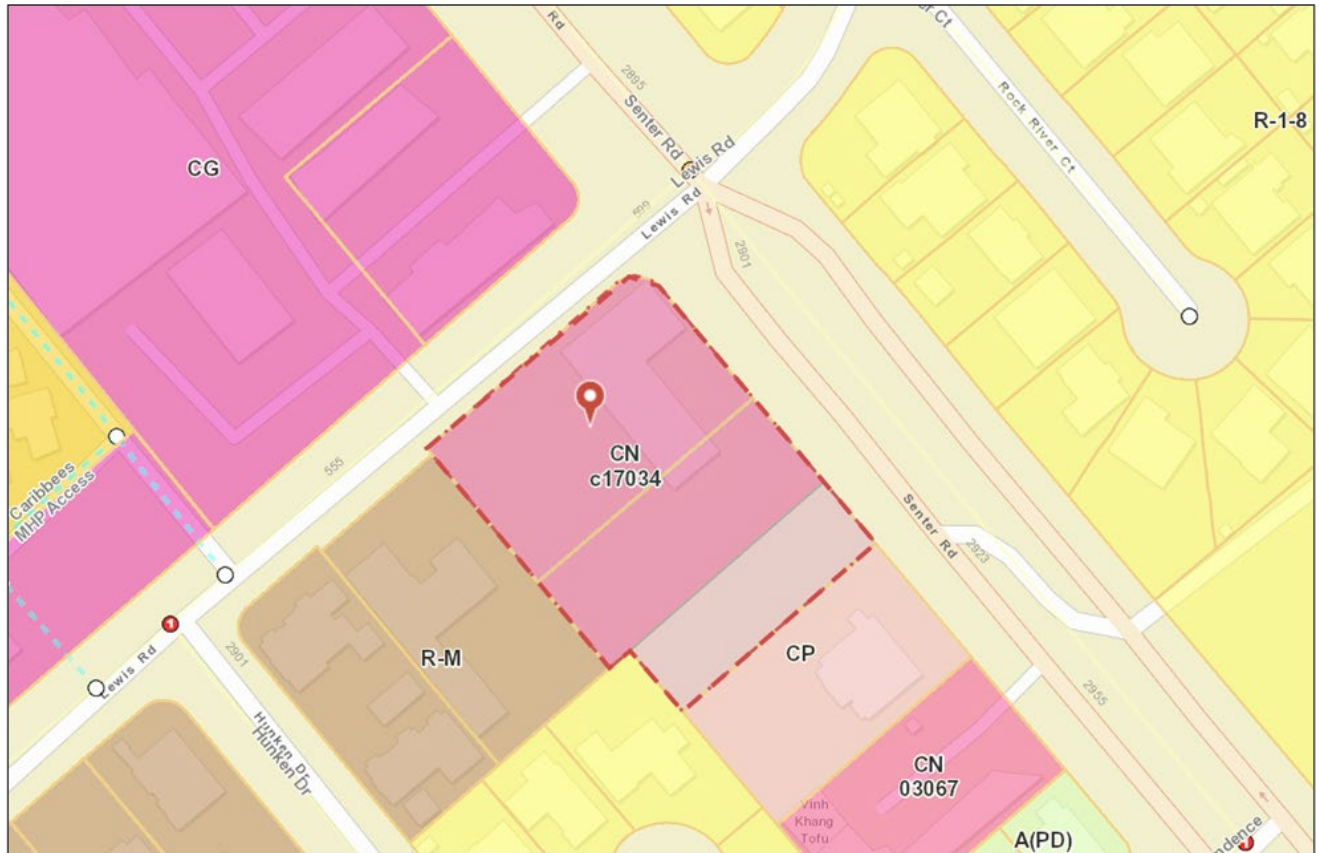


EXHIBIT A-2: REVISED ZONING DISTRICT

