

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: April 3, 2023

COUNCIL DISTRICT: 4

SUBJECT: GP22-001, C22-014 & ER22-150. PRIVATELY INITIATED GENERAL PLAN AMENDMENT AND A CONFORMING CONVENTIONAL REZONING CERTAIN REAL PROPERTY LOCATED AT THE WEST SIDE OF INTERSTATE 680 AND EAST SIDE OF PECTEN COURT (0 PECTEN CT.)

PLANNING COMMISSION RECOMMENDATION

1. Adopt a resolution adopting the Initial Study/Negative Declaration for the Pecten Industrial Project located at 0 Pecten Ct. General Plan Amendment and Conforming Rezoning for which an Initial Study was prepared, all in accordance with CEQA, as amended.
2. Adopt a resolution approving the privately-initiated General Plan Amendment to amend the Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation from Public/Quasi-Public to Heavy Industrial.
3. Approve an ordinance approving a conventional Conforming Rezoning from the R-1-8 Single Family Residence Zoning District to the HI Heavy Industrial Zoning District on an approximately 3.62-gross-acre site.

SUMMARY AND OUTCOME

If the City Council adopts the resolution and the ordinance approving the General Plan Amendment and the Conforming Rezoning, the Envision San José 2040 General Plan Land Use/Transportation Diagram would be amended to reflect the land use designation changes from Public/Quasi-Public to Heavy Industrial and the zoning of the subject property would change from R-1-8 Single Family Residence Zoning District to HI Heavy Industrial Zoning District. These changes will take effect on the effective date of the rezoning ordinance.

BACKGROUND

On February 28, 2022, the applicant VOP Pecten, LLC, submitted the following applications related to the approximately 3.62-gross-acre site located on the west side of Interstate 680 and east side of Pecten Ct. (0 Pecten Ct.):

1. General Plan Amendment request to change the General Plan Land Use/Transportation Diagram land use designation from Public/Quasi Public to Heavy Industrial; and
2. Conforming conventional Rezoning from the Public/Quasi Public to Heavy Industrial Zoning District.

The site was previously used by San Jose Water Works as a corporation yard and is currently vacant. The site is accessed by Pecten Ct. located within the jurisdiction of the City of Milpitas. The surrounding area on both sides of Pecten Ct. and to the north and west of the site comprises industrial uses such as machining and tooling businesses, mechanical engineering firms, an electrical supply company, a roofing business, a construction firm, and a self-storage facility. All of these uses are located in the City of Milpitas. A creek, approximately 90 feet wide is located along the southern boundary of the site, and residential uses are located to the south of the creek.

The project is consistent with all relevant policies in the General Plan. Planning staff recommended approval of the amendment of the Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation from Public/Quasi-Public to Heavy Industrial, and the Conforming Rezoning from the R-1-8 Single Family Residence Zoning District to the HI Heavy Industrial Zoning District.

ANALYSIS

For a complete analysis of the proposed General Plan Amendment and Conforming Rezoning, please see the Planning Commission staff report attached (Exhibit A).

EVALUATION AND FOLLOW UP

If the proposed General Plan Amendment and Conforming Rezoning are approved by the City Council, they shall take effect upon the effective date of the Conforming Rezoning ordinance.

A subsequent Planning entitlement would need to be submitted and approved for any development project on the site. Building and Public Works permits will be needed to begin construction.

COORDINATION

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

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the April 11, 2023, City Council meeting.

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 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. A notice was published in the San Jose Post-Record newspaper. The staff report was posted on the City's website. Staff has been available to respond to questions from the public. A community meeting was held on September 19, 2022, for the subject file numbers. One member of the public attended the meeting. No comments were received during the community meeting.

Following the distribution of the public hearing notices, Planning staff received a comment letter via email from a property owner of a single-family residence located approximately 90 feet south of the subject site across a creek. The property owner expressed concern about the potential noise and health hazards from future heavy industrial uses and reduced property values if the General Plan Amendment and Rezoning are approved. The letter is attached to this memorandum (Exhibit B).

In addition, a letter was received from the City of Milpitas before the Planning Commission hearing. Concerns are expressed in this letter regarding the incompatibility of the proposed heavy industrial uses on this site with the future land use plan for the surrounding area to the north and west of the site that is located within the jurisdiction of the City of Milpitas. The letter also contends that the development interests of both cities could best be served by engaging in negotiations towards the annexation of the property into the City of Milpitas pursuant to City Council Policy 6-15 – City Boundary Changes in Existing Urbanized Areas. The letter is attached to this memorandum (Exhibit C).

Hearing notices for the City Council hearing were redistributed to the owners and tenants of all properties located within 1,000 feet of the project site indicating the change in the hearing time from 6:00 PM to 1:30 PM, and the updated notice was also re-published in San Jose Post-Record newspaper.

COMMISSION RECOMMENDATION AND INPUT

On March 22, 2023, the Planning Commission held a public hearing to consider the proposed General Plan Amendment and Conforming Rezoning.

Staff Presentation

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

Public Hearing

One member of the public, Ned Thomas, Planning Director for the City of Milpitas, representing the City of Milpitas, spoke on the project. He stated that since the access to the site is via roads located in the City of Milpitas and utilities and public service facilities from the City of San José are uncertain, the future development of the site will only occur if the two cities can negotiate a mutually beneficial agreement under City Council Policy 6-15 and that the interests of both cities are best served through good faith negotiations consistent with this policy. He requested that his comment letter on the proposed amendment and rezoning to the Planning Commission Chair be added to the record and for the recommendation to the City Council. He also requested the Planning Commission to recommend to the City Council to direct Planning staff to continue the discussion with the City of Milpitas.

Planning Commission Discussion

Deputy Director Michael Brilliot stated that the City of San José and the City of Milpitas went through several conversations regarding land swaps but could not come to a solution. He also mentioned that the landowner wants to remain in the City of San José, and the applicant is exploring ways to get stormwater and sewer to the site. Staff also stated that the City of San José is always trying to increase employment land (heavy and light industrial) use in San José.

Planning staff clarified that the letter from the City of Milpitas, along with the response to comments, was posted on the City's environmental review website on March 15, 2023.

Commissioner Lardinois asked for clarification on whether good faith negotiations as mentioned during the public testimony were ongoing between the City of San José and the City of Milpitas.

Planning staff clarified that the discussions between the two cities regarding this property were discontinued.

Commissioner Ornelas-Wise asked whether the parcel is within the urban service area of the City and requested clarification on land access. Staff clarified that the property is located within the urban service area and that there is no direct access to the site from the City of San José.

Commissioner Ornelas-Wise asked for the setback between the grass area and the residential properties located to the south of the subject site. Commissioner Oliverio offered further clarification to the question by adding that because there is no project, the project manager does not have the setback. Commissioner Ornelas-Wise also asked what the intent for the proposed use would be for the site.

Planning staff clarified that no development project is currently proposed. Staff described the rear setback in the HI-Heavy Industrial zoning district and that the project site is approximately 90 feet from the rear lot line of the residential properties located to the south of the site.

Commissioner Young made a motion to approve staff recommendations as part of the consent calendar, and Commissioner Rosario seconded the motion. The motion passed 8-0-1 (Casey absent).

The Planning Commission recommended that the City Council consider the Negative Declaration in accordance with CEQA and approve the proposed General Plan Amendment and the Conforming Rezoning.

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 from January 12, 2023, through February 1, 2023.

The IS/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. Three comments were received from public agencies. Comments received concerned the following: land use compatibility, easement rights, annexation interests, and future development's potential impacts to air quality, biological resources, hazardous materials, hydrology and water quality, public services, transportation, and utilities and service systems. The comments received on the draft IS/ND did not raise any new issues about the project's environmental impacts or provide information indicating that the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/ND. The entire IS/ND report, comments, and responses to those comments are available for review on the Planning website at: <https://www.sanJoseca.gov/NegativeDeclarations> under file nos. GP22-001 and ER22-150.

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 Michael Brilliot, Deputy Director, at
Michael.brilliot@sanjoseca.gov or (408) 535-7831.

The principal author of this memorandum is Sanhita Ghosal. For questions, please contact
Sanhita.ghosal@sanjoseca.gov or (408) 535-7851.

ATTACHMENT

Exhibit A: Planning Commission Staff Report dated March 22, 2023

Exhibit B: Letter from Mustafa Kilavuz

Exhibit C: Letter from the City of Milpitas



Memorandum

TO: PLANNING COMMISSION
SUBJECT: GP22-001, C22-036, ER22-150

FROM: Christopher Burton
DATE: March 22, 2023

COUNCIL DISTRICT: 4

Type of Permit	General Plan Amendment (GP22-001) Conforming Rezoning (C22-014) Environmental Review (ER22-150)
Project Planner	Sanhita Ghosal
CEQA Clearance	Negative Declaration, Pecten Industrial General Plan Amendment
CEQA Planner	Nhu Nguyen

RECOMMENDATION

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

1. Consider the Negative Declaration in accordance with California Environmental Quality Act (CEQA); and
2. Adopt a resolution approving the privately-initiated General Plan Amendment to change the Envision San Jose 2040 General Plan Land Use/Transportation Diagram designation from Public/Quasi-Public to Heavy Industrial (Exhibit B).
3. Adopt an ordinance approving the conforming conventional Rezoning from R-1-8 Single Family Residence Zoning District to HI- Heavy Industrial Zoning District (Exhibit C).

PROPERTY INFORMATION

Location	West side of interstate 680 and east side of Pecten Ct (0 Pecten Ct)
Assessor Parcel Nos.	092-08-016
Existing General Plan Land Use Designation	Public/Quasi-Public
Proposed General Plan Land Use Designation	Heavy Industrial
Existing Zoning District	R-1-8 Single Family Residence Zoning District
Proposed Zoning District	HI- Heavy Industrial Zoning District
Growth Area	No
Current Use of Site	Vacant
Demolition	n/a
Historic Resource	n/a

Annexation Date	6/23/1960 (Piedmont No_1)
Council District	4
Acreage	3.62 acres
Floor Area Ratio	n/a
Proposed Density	n/a

PROJECT SETTING AND BACKGROUND

On February 28, 2022 the applicant VOP Pecten, LLC. submitted the following applications related to the approximately 3.66-gross acre site located on the west side of interstate 680 and east side of Pecten Ct (0 Pecten Ct):

1. General Plan Amendment request to change the General Plan Land Use/Transportation Diagram land use designation from Public/Quasi Public to Heavy Industrial; and
2. Conforming conventional Rezoning from the Public/Quasi Public to Heavy Industrial Zoning District.

As shown on the **aerial map** (in Figure 1 below), the site is located the on the west side of interstate 680 and east side of Pecten Ct. The larger 3.69-acre lot is comprised of two assessor's parcels. A 3.62-acre portion of the lot (APN 092-08-018) is located within the boundary of the City of San Jose. A 0.07-acre portion of the lot (APN 092-08-016) is located in the City of Milpitas and abuts Pecten Ct. This General Plan amendment and rezoning application is for APN 092-8-018. The "site" in this staff report refers to this APN hereafter.

The site is accessed through Pecten Ct via the smaller assessor's parcel APN 092-08-016. The site was previously owned and used by San Jose Water Works as a corporation yard, and is currently vacant.

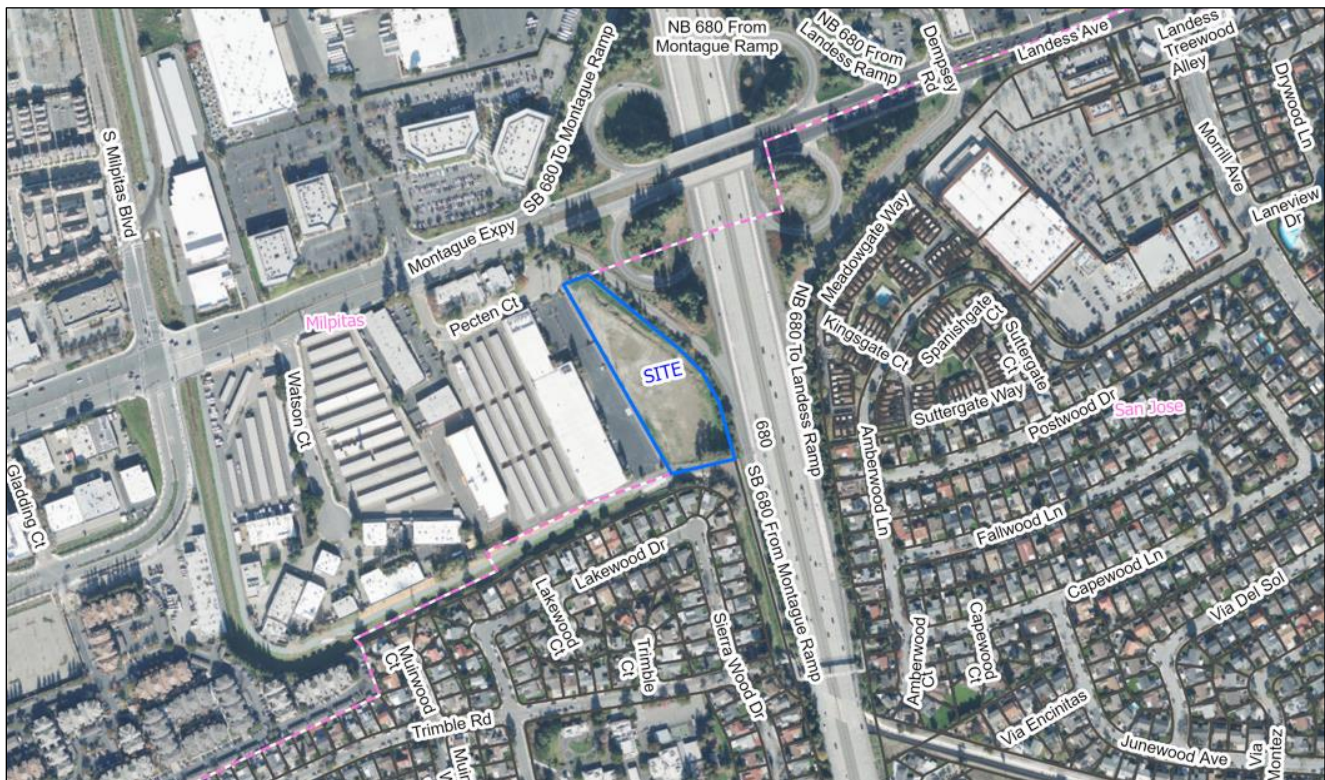


Figure 1: Aerial Photograph of the Site and Surrounding Areas

SURROUNDING USES			
	General Plan	Zoning District	Existing Use
North	N/A	N/A	Montague Expressway, industrial buildings located in the City of Milpitas
South	Residential Neighborhood	R-1-8-Single Family Residential	Single Family Homes
East	N/A	N/A	Interstate 680 and access ramp
West	N/A	N/A	Self-storage facility, Industrial and office building located in the City of Milpitas

The surrounding area on both sides of Pecten Ct comprise of industrial uses including machining and tooling businesses, mechanical engineering firm, electrical supply company, a roofing business, a construction firm, a sign company, a home staging company, and self-storage facility. All of these uses are located in the City of Milpitas. The figure below shows the City of Milpitas General Plan designation of the surrounding area located in the City of Milpitas. The smaller assessor's parcel adjacent to the subject site (APN 092-08-018) and the surrounding parcels have a designation of Business Park, Research and Development.

ANALYSIS

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

- Envision San José 2040 General Plan
- City of San Jose Municipal Code Title 20 (Zoning Ordinance)
- Senate Bill 330
- City Council Policies
- California Environmental Quality Act (CEQA)

[Envision San José 2040 General Plan](#) Conformance

Existing Land Use Designation

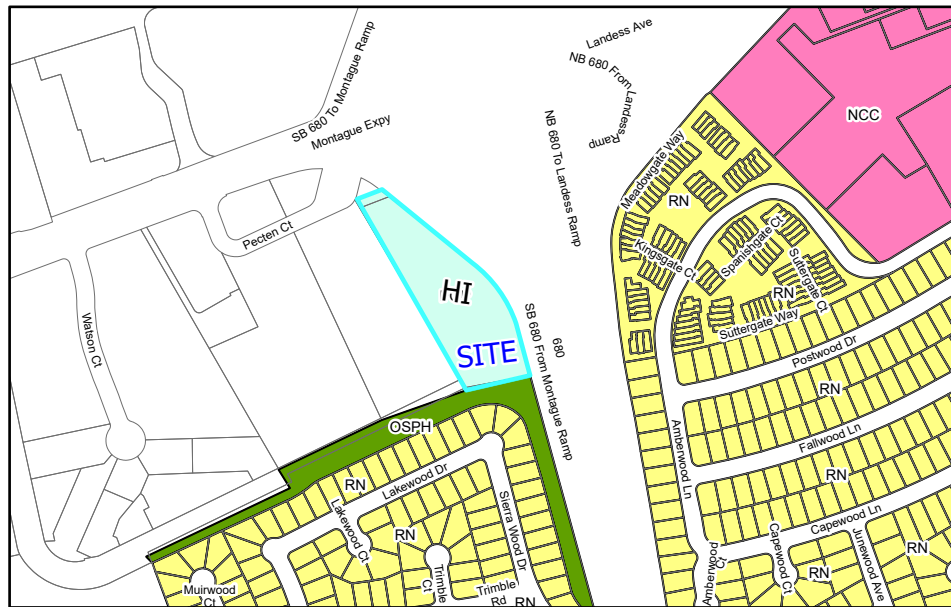


Figure 2: Existing General Plan Land Use Designation

As shown in the General Plan Map (Figure 3 above), the project site has Envision San José 2040 General Plan designations of **Public/Quasi Public (PQP)**, which does not have minimum or maximum density or floor area ratio (FAR). This land use category is used to designate public land uses, including schools, colleges, corporation yards, homeless shelters, religious assembly, permanent supportive housing, libraries, fire stations, water treatment facilities, convention centers and auditoriums, museums, governmental offices, and airports. This category is also used to designate lands used by some private entities, including private schools, daycare centers, hospitals, public utilities, and the facilities of any organization involved in the provision of public services such as gas, water, electricity, and telecommunications facilities that are consistent in character with established public land uses. The appropriate intensity of development can vary considerably depending on potential impacts on surrounding uses and the particular Public/Quasi-Public use developed on the site.

Proposed General Plan Land Use Designation

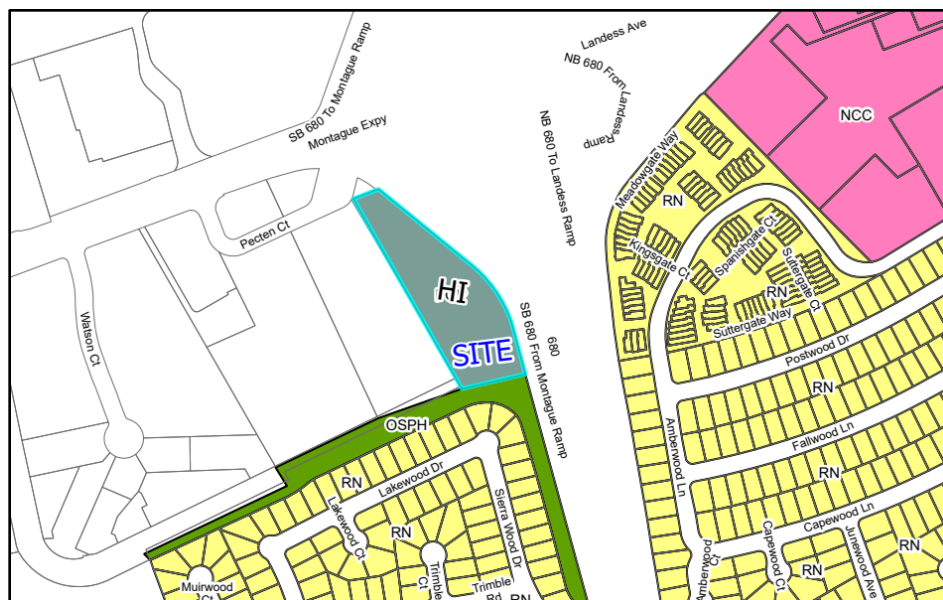


Figure 3: Proposed General Plan Land Use Designation

As shown in the above figure of the proposed General Plan Map, the proposed land use designation is: **Heavy Industrial (HI)**. The proposed Heavy Industrial (HI) 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.

General Plan Goals and Policies

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

1. Major Strategy #4: Innovation/Regional Employment Center: Emphasize economic development within the City to support San José's growth as a center of innovation and regional employment. Growing San José's role as an employment center will enhance the City's leadership role in North America, increase utilization of the regional transit systems, and support the City's fiscal health. This project would improve the City's jobs/housing balance or Jobs/Employed Residents Ratio (J/ER) as a critical objective to address multiple City goals.
2. Major Strategy #8 Fiscally Strong City of San Jose: San José will maintain a Fiscally Strong City, by providing adequate land for uses that generate revenue for the City and by focusing new growth in developed areas where existing infrastructure (e.g., sewers, water lines, and transportation facilities), and City facilities and services (e.g., libraries, parks and public safety) are already available, resulting in maximum efficiency
3. Goal LU-6 – Industrial Preservation: Preserve and protect industrial uses to sustain and develop the city's economy and fiscal sustainability.
4. Goal LU-7 – Attract New Industrial Uses: Attract new industrial uses to expand the City's economy and achievement of fiscal sustainability, stimulate employment, and further environmental goals.
5. General Plan 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. Use available public financing to provide necessary infrastructure improvements as one means of encouraging this economic development and revitalization.
6. General Plan 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.
7. General Plan Land Use Policy LU-7.1: Encourage industrial supplier/service business retention and expansion in appropriate areas in the City.
8. General Plan Land Use Policy FS-4.5: Maintain and expand the total amount of land with either a Light Industrial or Heavy Industrial designation. Do not add overlays or other designations that would allow for non-industrial, employment uses.

9. General Plan Land Use Policy FS-4.6: Consider conversion from one employment land use to another, except for Light Industrial or Heavy Industrial land uses, where the conversion would retain or expand employment capacity and revenue generation, particularly for intensification on-site if the proposed conversion would result in a net increase in revenue generation.
10. Fiscally Sustainable Land Use Framework Policy FS-3.3: Promote land use policy and implementation actions that increase the ratio of Jobs to Employed Residents to improve our City's fiscal condition, consistent with economic development and land use goals and policies. Maintain or enhance the City's net total employment capacity collectively through amendments made to this General Plan in each Annual Review process.
11. Land Use/Transportation Scenario Guidelines B-14: Ensure that sufficient heavy industrial lands are available to meet the projected needs of residents and businesses.
12. Broad Economic Prosperity Policy IE-6.2: Attract and retain a diverse mix of businesses and industries that can provide jobs for the residents of all skill and education levels to support a thriving community.

Analysis: The proposal is requesting to change the land use designation from one employment use to another. This project fulfills General Plan Goal LU-7 of attracting new industrial uses, which will also contribute towards bolstering City's economic, fiscal sustainability, and environmental goals. The project site is located outside of a Growth Area, which is appropriate for industrial uses because they are lower intensity and density than high-density office towers or high-density housing developments that are intended for designated Growth Areas. The Envision San José 2040 General Plan includes many goals and policies related to the preservation and creation of industrial land within San José, such as Goals LU-6, LU-7 and other sub goals mentioned above, and Policy FS-4.6. Consistent with these goals and Policy FS-4.6, the proposed land use amendment has the potential for more job creation and revenue potential for the City. Consistent with Policy IE-6.2, this proposed change will enhance the variety of jobs in the city. The proposed change of land use designation will allow the site to be developed fitting the surrounding context. Future development would be subject to the General Plan goal and policies, Zoning Ordinance, design review, and findings which require consideration of compatibility with surrounding land uses. Project specific environmental review would also be required in conjunction with any discretionary planning permits.

There is inconsistency with General Plan Land Use Policy LU-1.9 which aims to preserve existing Public / Quasi-Public lands in order to maintain an inventory of sites suitable for Private Community Gathering Facilities, particularly within the Residential Neighborhoods, Urban Villages and commercial areas, and to reduce the potential conversion of employment lands to non-employment use. The site is not located close to a residential neighborhood but cannot be accessed by the residents conveniently and does not meet the spirit of this policy. It is not located in Urban Village. This proposed General Plan amendment will not result in loss of employment land and will not result in the loss of an existing activity space. On the contrary, this General Plan amendment will provide the opportunity to convert a vacant parcel with industrial uses which has a higher economic and employment value than the current designation and increase the area of industrial land in the City.

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: An application for a conforming rezoning is required for consistency with the proposed General Plan Amendment, per SB 1333. Planning staff has received a conforming rezoning application from R-1-8- Single Family Residence Zoning District to HI-Heavy Industrial Zoning District, which is the conforming Zoning District for the proposed Heavy Industrial General Plan land use designation.

For the reasons outlined above, staff recommends approval of the proposed General Plan Amendment request and the proposed Conforming Rezoning.

Zoning Ordinance Conformance

The proposed project is located in R-1-8 Single Family Residential Zoning District Zoning District, [see Zoning District Map](#) in figure 5 below. The proposed rezoning from R-1-8 Single Family Residential Zoning District to HI-Heavy Industrial Zoning District (Exhibit E) conforms with Table 20-270, [Section 20.120.110](#) of the San José Municipal Code, which identifies the HI-Heavy Industrial Zoning District as a conforming district to the Heavy Industrial General Plan land use designation.

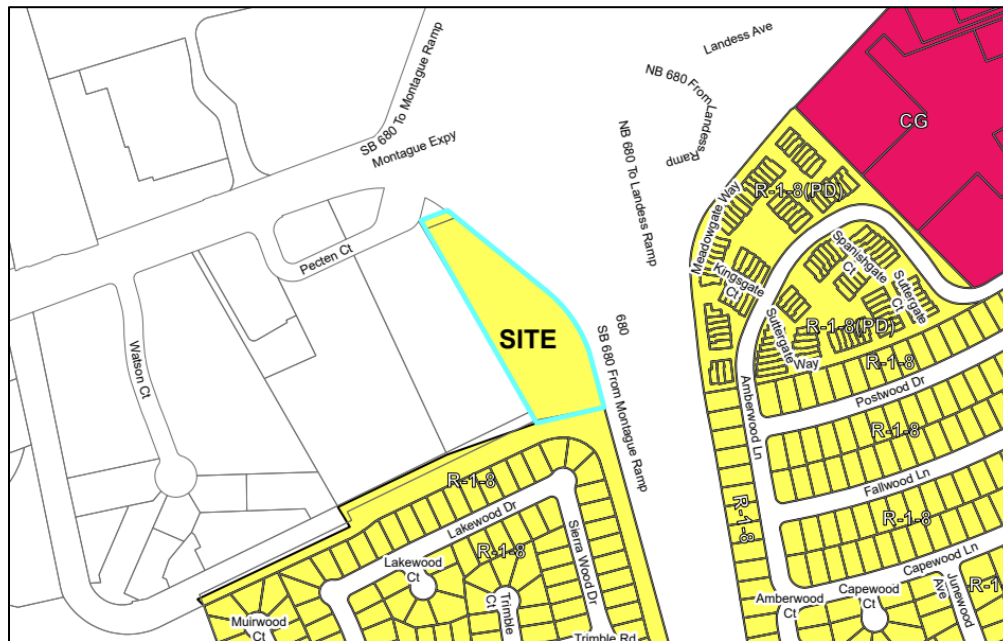


Figure 4: Existing Zoning Designation

The proposed rezoning would allow the properties to be used and developed in accordance with the allowable uses in Table 20-110, [Section 20.50.100](#), and consistent with the Heavy Industrial General Plan land use designation and consistent with Senate Bill 1333 mandate that zoning be consistent with the General Plan designation.

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; and other kinds of increased requirements. An exception to this is that the intensity of residential uses on a property may be reduced if changes in land use designations or zoning elsewhere ensure “no net loss” in residential capacity within the jurisdiction.

There are two parts to the SB 330 calculation: General Plan residential capacity and Zoning District residential capacity. An increase in residential capacity at the General Plan level may be used to offset a General Plan amendment that decreases residential capacity if they are concurrently approved. Any increase in residential capacity in the Zoning District may be used to offset a rezoning that decreases residential capacity if they are concurrently approved. 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.

SB330 states that a site's allowed intensity and uses are to be considered based on the regulations in effect on January 1, 2018. The General Plan currently allows permanent supportive housing in the Public/Quasi-public General Plan, but this use was added to the General Plan in December 2019. However, the PQP-Public Quasi Public zoning district allowed residential care facilities before January 1, 2018, built at an average density of 100 DU/AC. Hence, the density for the Public/Quasi-Public land use designation is considered as 0 DU/AC for General Plan amendments but 100 DU/AC for rezonings associated with this General Plan and zoning designation.

Approval of the proposed General Plan Amendment (File No. GP22-001) would change the land use designation of the subject site from Public/Quasi-Public with no residential density (0 DU/AC) to Heavy Industrial with no residential density (0 DU/AC), resulting in no net loss of residential capacity in the City. Approval of the proposed conforming rezoning (C22-036) would change the zoning district from R-1-8 Single Family Residence zoning district with a maximum density of 8 DU/AC to HI- Heavy Industrial Zoning district and would result in a decreased residential capacity of 29 units. The decrease in residential capacity would be offset by an increase in residential capacity from rezoning File No. C22-023 (corresponding to previously identified GP22-008) which is being considered concurrently and will increase residential capacity in the City by 127 units.

The table below shows the gain and loss of residential units for six relevant land use actions, that are being heard concurrently during the same hearing. As shown below, there will be no net loss of residential capacity associated with the subject General Plan Amendment or the Rezoning request.

Table 1: SB 330 Compliance Calculation for All Sites During the Hearing

City File No.	Area (Acre)	Current General Plan Designation	Proposed General Plan Designation	Gain or Loss Due to General Plan Amendment	Current Zoning Designation	Proposed Zoning Designation	Gain or Loss Due to Rezoning
GP22-001/C22-014 Pecten Ct	3.69	Public/Quasi-Public	Heavy Industrial	0 units	R-1-8 Single Family Residence	HI-Heavy Industrial	-29 units
GP22-007 /C22-022 Presentation High	0.39	Residential Neighborhood	Public/Quasi-Public	- 3 Units	R-1-8 Single Family Residence	Public/Quasi-Public	+36 units
GP22-008/C22-023 Julian St	0.48	Mixed Use Commercial	Transit Residential	+96 Units	LI -Light Industrial	TR- Transit Residential	+120 Units
			Net	+93 Units		Net	+127 units

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 4 office to discuss the project on September 19, 2022. No comments were received during the community meeting.

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 from January 12, 2023 through February 1, 2023.

The IS/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. Three comments were received from public agencies. Comments received concerned the following: land use compatibility, easement rights, annexation interests, and future development's potential impacts to air quality, biological resources, hazardous materials, hydrology and water quality, public services, transportation, and utilities and service systems. The comments received on the draft IS/ND did not raise any new issues about the project's environmental impacts or provide information

indicating that the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/ND. The entire IS/ND report, comments, and responses to those comments are available for review on the Planning website at:

<https://www.sanJoseca.gov/NegativeDeclarations> under file nos. GP22-001 and ER22-152.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy. The applicant has posted the on-site sign to inform the neighborhood of the proposed project. 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. A notice was published in San Jose Post newspaper. The staff report was posted on the City's website. Staff has been available to respond to questions from the public. A community meeting was held on September 19, 2021 for the subject file numbers. One member of the public attended the meeting. No comments were received during the community meeting or after the hearing noticed were mailed out.

Project Manager: Sanhita Ghosal

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

ATTACHMENTS:

Exhibit A: Draft General Plan Resolution

Exhibit B: Draft Rezoning Ordinance

Exhibit C: Draft CEQA Resolution

Exhibit D: Initial Study Negative Declaration

Owner:	Applicant:
VOP REF Pecten LLC 734 The Alameda San Jose CA 95126	VOP Pecten LLC (Scott Connelly) 734 The Alameda San Jose CA 95126

Exhibit B: Letter from Mustafa Kilavuz

Ghosal, Sanhita

From: Mustafa Omer Kilavuz [REDACTED]
Sent: Wednesday, March 22, 2023 12:53 PM
To: PlanningSupportStaff
Cc: Ghosal, Sanhita
Subject: My concerns regarding rezoning of a nearby land: (GP22-001, C22-014 & ER22-150 G)

[External Email]

Dear Planning Support Staff,

I will be happy if you could include my public comment below into the agenda for today's planning commission hearing regarding the rezoning of 0 Pecten Ct (GP22-001, C22-014 & ER22-150 G)

Best regards,
Mustafa Kilavuz

Dear Planning Commission,

I am writing to express my concerns regarding the proposed General Plan Amendment to modify the Envision San Jose 2040 Land Use Transportation Diagram designation from Public/Quasi-Public to Heavy Industrial for the land across the creek from my house. While I agree that this land should be converted to a business zone, I am very concerned about the type of zoning being proposed. As a father, I am particularly concerned about the potential negative impact on their health and well-being if hazardous businesses were to be established on this land.

While I understand that a business establishment benefits the land owner and the city, I believe other types of zonings would still provide economic benefits to the community without the potential hazards associated with heavy industry. I urge the planning commission to reconsider the type of zoning being proposed for this land and explore other options that would better align with the community's needs and concerns.

In addition to my concerns about potential hazards to my children's health and noise pollution, I am also worried about the negative effects of this type of zoning on the value of my property. If hazardous businesses were to be established on the land across from my house, it could significantly decrease the value of my home and other properties in the area. This could have long-term consequences for the community, and I believe it is important to carefully consider the potential impact of any zoning decisions on property values.

Thank you for considering my concerns and for your commitment to responsible land use planning in our community.

Sincerely,
Mustafa Kilavuz

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City of Milpitas

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February 2, 2023

Mr. Christopher Burton, Director
Attn: Nhu Nguyen
Planning, Building and Code Enforcement
San José City Hall
200 East Santa Clara Street
San José, CA 95113

Dear Chris:

Thank you for providing the Notice of Intent to adopt a Negative Declaration for the General Plan Amendment (GP22-001 and ER22-150) for the proposed development at Pecten Court, which also requires a conforming rezone of the site from the R-1-8 Residential Zoning District to the HI – Heavy Industrial Zoning District. We understand that this comment period runs through February 1, 2023 and that the project will be considered by the Planning Commission on Wednesday, February 22.

In February 2023, the Milpitas City Council will adopt the Milpitas Metro Specific Plan, which is an update of the City's 2008 Transit Area Specific Plan (TASP). The subject site on Pecten Court directly abuts properties within the expanded Milpitas Metro Specific Plan boundaries, and the entire area surrounding the Pecten Court site will be upgraded from its current land use designation and zoning for light industrial uses to a land use designation of Business Park/Research and Development (BPRD), with an anticipated intensity of office/R&D development at 1.0-2.5 Floor Area Ratio (FAR). The City of Milpitas is concerned about the compatibility of potential uses allowed under the Heavy Industrial land use designation in San Jose, such as solid waste transfer and processing stations, with future development in a planned Innovation District in Milpitas that will include a substantial population of workers in a walkable, high-intensity office and retail/restaurant environment. With respect to the Initial Study and Negative Declaration prepared for the project, the City of Milpitas has the following comments:

1. **Proposed Land Use Designation/Zoning:** No proposal is currently before the City of San José on this site, but the Heavy Industrial land use designation and related zoning could allow uses that are not compatible with or complementary to nearby uses, including residential neighborhoods within the City of San José to the south and east of the site where sensitive receptors may be present. The classes of uses allowed by these designations would also not be incompatible with planned use on abutting and nearby properties within the City of Milpitas, which uses share access to the site via Pecten Court. The planned land uses west of the site, within Milpitas, are acknowledged in Section 4.11 Land Use (IS/ND p. 110). Related issues are discussed in the environmental document.



2. **Site Development:** The 3.62-acre site noted here that is subject to the City of San José General Plan and rezoning action is located within the City of San José boundaries, but depends upon a small parcel under the same ownership, but that is located in the City of Milpitas. The two parcels must be developed concurrently and as a unit in order to provide access to the greater portion of the site from the only street providing access, Pecten Court in Milpitas. Coordination between the two cities regarding access and utilities, as well as public safety services and environmental oversight, is essential for any future development proposal.
3. **Air Quality: Potential Exposure of Sensitive Receptors to Pollutant Concentrations:** The City of Milpitas concurs that any future project proposal in this Heavy Industrial designation should be required to conform to sensitive receptor impact thresholds to be in compliance with San José General Plan policies MS-11.2 and MS-11.3 (IS/ND p. 36).
4. **Biological Resources: Environmental Setting:** The Negative Declaration (IS/ND p. 43) indicates the nearest protected water feature is “Berryessa Creek, approximately 70 feet south of the project site.” In fact, the Valley Water Berryessa Creek right-of-way directly abuts the project’s entire southern border, while the low-water stream course is approximately 30 feet from the project property line. The City of Milpitas concurs that a future project proposal would necessitate a project-specific environmental analysis to ensure conformance with City riparian corridor policies (IS/ND p. 53).
5. **Hazardous Materials: Transport, Use and Disposal:** The Negative Declaration notes that while no development project is currently proposed, the land use and zoning designations would permit the use and transport to/from the site of hazardous materials (IS/ND p.100). The property’s street frontage and point of access to Pecten Court is a separate parcel located in the City of Milpitas. The City of Milpitas concurs with this as a condition of approval for any future development, including obtaining any necessary allowances from the City of Milpitas for access and monitoring across Milpitas rights-of-way. The Use of hazardous materials on the site will also require review and approval by the City of Milpitas Fire Department as future development would likely require emergency services by the City of Milpitas.
6. **Hydrology and Water Quality: Setting, Policies and Regulations:** Because no development is proposed at this time by this action, the applicability of the City of San José post-construction runoff and storm water management policies and regulations (IS/ND p. 104) are highly questionable here. Unless the City of San Jose and the developer obtain rights to deposit stormwaters from new impervious development features directly to Berryessa Creek, the stormwater would otherwise be directed southward along/across the Berryessa Creek right-of-way to existing storm drain facilities in San Jose or into the City of Milpitas storm drain system through the small Pecten Court frontage parcel (portion of the development site) within the City of Milpitas. If future use of the Milpitas storm system is anticipated, that must be evaluated and addressed in the environmental review document.
7. **Public Services: Police, Fire and Parks:** Because of the unique jurisdictional “island” situation of the project site, police and fire services must leave the San José jurisdiction and enter Milpitas to gain access to the project site. Milpitas Fire Station No. 2 is located approximately 1.5 miles away at 1263 Yosemite Drive, but service of the site from Milpitas would require an agreement between the two entities.

Parks tend to incidentally serve employees at the lunch hours and during breaks, assuming a close proximity. Northwood Park in San José is only 0.25 miles from the site, but it is not directly accessible by pedestrians or vehicles due to the substantial barrier created by Berryessa Creek. Bob McGuire Park in Milpitas is approximately one half-mile away for pedestrians, bicyclists, or vehicles, but Montague Expressway is a significant barrier. The analysis indicates no impacts on parks insofar as nonresidential development has no obligation to contribute to parkland development.

8. **Transportation: GPA Analyses:** The IS/ND analysis (IS/ND Sect. 4.17 p.131) indicates no transportation related impacts with the proposed re-designation of the site. The City of Milpitas concurs with this conclusion but notes that GPAs in the City of San José require a transportation analysis for each as to impacts on the citywide transportation system. The analysis prepared by Hexagon Transportation examines six (6) GPA sites, but only the Pecten Court project is unique in its location at the edge of San José where a substantial portion of the trip distribution will likely occur within the City of Milpitas. The analysis makes no mention of this jurisdictional difference (see Hexagon report, App. E p. 9, Site 4). The environmental analysis must address potential traffic impacts to adjacent roadways in Milpitas, including Montague Expressway, which will provide primary access to the site via Pecten Court.
9. **Utilities and Service Systems:** The utilities and services analysis (IS/ND Sec. 4.18 p. 147) discusses services that will be needed when the property develops, although no specific development project is proposed at this time. These services, some of which are subterranean, include wastewater, water, storm drainage, solid waste and natural gas and electricity. Not all services are provided to the site in its vacant condition, and the site setting, with respect to its separation from other City of San José lands and rights-of-way, does not include an adequate description as to how access to required utilities and services systems will be provided. This seems shortsighted in decision-making on this action that envisions development of the parcel.

In addition, the eastern border of the site is the I-680 right-of-way and its southern border abuts the Valley Water right-of-way for Berryessa Creek. The remaining edges of the site border City of Milpitas properties, with access to Milpitas rights-of-way and utility services. The analysis should indicate what potential impacts may occur if access to underground utilities in San José must be taken through the Valley Water or Milpitas jurisdictions. Cited Policy IN-3.3 (IS/ND p. 149) says: "Meet the water supply, sanitary sewer and storm drainage Level of Service objectives through an orderly process of ensuring that before development occurs, there is adequate capacity." Given the separation of the site from other City of San Jose lands and rights-of-way, access to these utilities must be evaluated for feasibility and practicability. These potential impacts are considered as a "Less Than Significant Impact" because there is no development proposed at this time, but this access is unique in this setting and could result in impacts, particularly if access across the Berryessa Creek ROW is needed, where it is only briefly touched upon (IS/ND p. 150 Item 1).

In addition to the CEQA-related issues outlined above, the disposition of this property is of critical concern to the City of Milpitas because Pecten Court (in Milpitas) provides the only viable public access to this site, and future development will likely require the extension of utility infrastructure and public services from the City of Milpitas. Based on our understanding of this site and the constraints to future development, we continue to believe that the land development interests of both cities will best be served by engaging in negotiations toward annexation of the property into Milpitas. Such

discussion would be entirely consistent with San José City Council Policy 6-15, which provides that the City of San José *will enter into good-faith negotiations with an adjacent jurisdiction regarding a boundary adjustment* if the proposed change includes an equal exchange of like territory, population or tax base [emphasis added]. The City of Milpitas has expressed an interest in having this type of discussion with you and would welcome the opportunity to negotiate a fair and equitable revenue sharing agreement between the cities that will allow facilitate development of the Pecten Court property.

Thank you for the opportunity to comment on the environmental document for the proposed GPA and zone change. While the proposal includes no specific development at this time, a future development proposal will likely require further analysis of potential environmental impacts and may include environmental considerations that are not addressed here, but which could be considered in light of the unique property location constraints.

Sincerely,



Ned Thomas, AICP
Planning Director
City of Milpitas

cc: City Manager Steven G. McHarris
Assistant City Manager Ashwini Kantak
City Attorney Michael Mutalipassi
Economic Development Director Alex Andrade
Acting City Engineer Steve Chan
Police Chief Jared Hernandez
Fire Chief Brian Stelling
Metro Plan Manager Kevin Riley