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County of Santa Clara
Department of Planning and Development
Planning Office



PLN02 082906

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DATE: August 29, 2006

TO: Board of Supervisors

FROM: *Valentin Alexeeff*
Valentin Alexeeff
Director, Department of Planning and Development

SUBJECT: Countywide Viewshed Protection Study

RECOMMENDED ACTION

Hearing to consider proposed recommendations relating to County Viewshed Protection Study, including General Plan text amendment, Zoning Ordinance Text Amendments, and Zoning Map amendments to apply "-d1" Design Review Zoning District to certain parcels within areas visible from the valley floor (File No. 8630-00-00-06GP-06Z).

Possible action:

- a. Open public hearing and receive testimony.
- b. Close public hearing.

- c. Approve Use of the County General Plan Environmental Impact Report (EIR) as California Environmental Quality Act (CEQA) clearance.
- d. Adopt Resolution of the Board of Supervisors of the County of Santa Clara Amending the text of the General Plan "Growth & Development Chapter," Rural Unincorporated Areas Issues & Policies, to add "Strategy #3: Ensure Environmentally-Safe and Aesthetic Hillside Development."
- e. Adopt Ordinance No. NS-1200.320, An Ordinance of the Board of Supervisors of the County of Santa Clara Amending Appendix I of the County of Santa Clara Ordinance Code to Implement Regulations Related to Viewshed Preservation. (Roll Call Vote)
- f. Adopt Ordinance No. NS-1200.321, An Ordinance of the Board of Supervisors of the County of Santa Clara Amending the Official Zoning Maps, Section 1.20.060 of Appendix I of the County of Santa Clara Ordinance Code, to Rezone Certain Parcels to Include the "-d1," Design Review Zoning District (Roll Call Vote)
- g. Approve the following policy related to development projects in process: "As of the effective date of any new regulations, any project for which single building site approval and/or grading approval has been granted shall be allowed to develop in the approved location as shown on and in accordance with approved plans. However, any building or structure would be subject to new zoning or other regulations that become effective prior to building permit issuance."
- h. Direct that staff evaluate the viewshed-related policies, ordinance amendments, and guidelines within 18-24 months following adoption and provide a status report to the Board with any changes that may be appropriate to enhance effectiveness, provide necessary flexibility, or improve clarity.

FISCAL IMPLICATIONS

There is no fiscal impact to the General Fund. The costs associated with implementing new policies and regulations are already contained within the Department's current approved FY 2007 budget.

CONTRACT HISTORY

Not applicable.

REASONS FOR RECOMMENDATION

1. Environmental Determination: California Environmental Quality Act (CEQA) Clearance

The proposed policies, regulations, standards, and procedures for Viewshed Protection ("project") have been reviewed in accordance with the California Environmental Quality Act (CEQA). Staff has determined that the project was adequately addressed in the Environmental Impact Report (EIR) prepared for the County General Plan for the following reasons:

- a. On December 20, 1994, the County Board of Supervisors certified the Final Environmental Impact Report (FEIR) which was prepared for the County General Plan.
- b. The Viewshed Protection Study and related General Plan text amendment, Zoning Ordinance text amendments, and Zoning Map amendments to apply Design Review zoning to primary viewshed areas are consistent with the 1994 County General Plan and further implement existing goals and policies contained therein.
- c. The project is not expected to result in any new or substantially more severe environmental impacts, in that its intent and purposes are to minimize environmental and visual impacts which could result from hillside development.
- d. Any potential environmental impacts which could occur as a result of implementation of the project have been adequately evaluated within the 1994 EIR prepared for the adoption of the General Plan. Therefore, no additional environmental review is necessary or required at this time.

2. Proposed General Plan Amendment to add a section to the Growth & Development Chapter, Part 3: Rural Unincorporated Area Issues & Policies, entitled "Strategy #3: Ensure Environmentally-Safe and Aesthetic Hillside Development."

- a. The project includes a new section of the Growth & Development Chapter for Rural Unincorporated Area Issues & Policies to better address topics such as visual impacts of hillside development, use of Design Review zoning districts, grading approvals, development on slopes of 30% or more, and ridgeline development issues. The proposed policies, informational text, and implementation recommendations provide an improved basis for development review and decision-making, elaborate upon and clarify various ongoing issues of land development and permitting, and strengthen the County's ability to address a number of aspects of hillside and viewshed area development, per the Board's direction.
- b. With regard to ridgeline development issues, staff's recommendation for the proposed text amendment includes an alternative for the Board's consideration that would create a more restrictive policy for ridgeline development. If this option generally prohibiting new development on ridgelines were adopted, the County would need to enact additional

ordinance amendments effectuating such restrictions for development projects not subject to a discretionary approval process. Where a discretionary approval is required, the policy would be effectuated through the discretionary application process. Whichever policy alternative the Board ultimately selects, the policy would not be enforced if a ridgeline location proved to be the only feasible development site and the prohibition of ridgeline development would preclude reasonable use and development of a property.

c. Staff and Planning Commission recommendations are to adopt proposed policies R-GDP 30 through 35 as presented in the text amendment, not the alternative, more restrictive alternative ridgeline development policies. With regard to proposed policy R-GD 33, the Planning Commission recommended the word 'may' be replaced with the word 'shall.' Staff recommendation is that policy be reworded for clarification as follows:

R-GD 33

For existing legal lots, if a ridgeline or hilltop location is a potentially suitable location for development, consistent with grading and/or other land development policies and regulations, due to the particular geologic circumstances, access needs, or other suitability characteristics of the lot, the following conditions or mitigations to visual impacts of development shall be considered and applied through applicable land use and development approvals, as necessary and appropriate:

- a. landscaping and vegetation retention, as appropriate for fire protection;
- b. color and material choices that blend with the natural surroundings; and,
- c. any other similar requirements or mitigations that reasonably relate to the degree of visual impact. [Note: Where Design Review zoning applies or is required by condition of subdivision or another approval, such requirements will be addressed through the applicable Design Review procedure].

Reasons for the proposed clarification to incorporate Planning Commission's recommendation:

- i. The Commission's recommendation, as worded, would be as follows:

R-GD 33

If a ridgeline or hilltop is a suitable location, development of which is consistent with grading or other land development policies and regulations, due to the particular geologic circumstances, access needs, or other suitability characteristics of the lot, mitigations to

visual impacts of development imposed through Design Review or other discretionary approval shall include, but are not limited to:

- (a) the use of Design Review as a condition of approval (if not in a Design Review zoning district);
- (b) landscaping and vegetation retention, as appropriate;
- (c) color and material choices that blend with the natural surroundings; and,
- (d) similar requirements or mitigations that reasonably relate to the degree of visual impact.

If adopted, such policy would apply throughout the rural unincorporated area and would mandate the application of Design Review zoning for nearly the entire rural area in order to be implemented and utilize Design Review for any ridgeline or hilltop building location. That outcome would be inconsistent with the unanimous consensus of the Commission not to apply the "-d1" Design Review zoning district beyond the primary viewshed areas.

ii. The intent of the draft policy is to provide the ability to condition a land use approval with mitigations for visual impacts, as needed and appropriate. For example, if existing landscaping and tree cover is adequate, it would be unnecessary to require or mandate additional landscaping, which would result if the word 'shall' were substituted for 'may.'

iii. For lands subject to Design Review Zoning, either "-d," "-d1," or "-d2" districts, visual impacts to either ridgeline or other hillside development will be addressed through the applicable provisions and procedures. For more remote lands beyond those under Design Review Zoning, staff and the Commission consider distance and perspective will generally be adequate to reduce visual impacts.

3. Proposed Zoning Ordinance Text Amendments for Viewshed Protection

The project includes Zoning Ordinance text amendments to implement new or modified regulations for reducing or avoiding adverse visual impacts of viewshed area development.

- a. The primary recommendation is to adapt and modify the "-d1" district regulations to serve as the primary viewshed protection Design Review Zoning District.
- b. A tiered-review process would be created to reduce regulatory burdens on projects with less potential for significant visual impacts (Tier 1), require a standard design review process for other projects up to a certain size (Tier 2), and require a more rigorous design review process for the largest new structures or projects with the greatest potential for visual impacts (Tier 3).

- c. Sites not visible from the valley floor would be exempted. Standard types of design review exemptions, statutory and discretionary, would be increased to allow moderately-sized additions and accessory buildings to be potentially exempted.
- d. Light reflectivity value (LRV) or color brightness standards are generally reduced from 60 to a more effective 45 LRV standard.
- e. All Planning Commission recommendations for text revisions provided at its August 3, 2006 meeting are included in the attached Ordinance No. NS-1200.320. The Commission voted unanimously to recommend adoption of the proposed Zoning Ordinance text amendments, with those few minor revisions included in the draft ordinance, attached.

4. Proposed Zoning Map Amendment to apply "-d1" Design Review Zoning District to Viewshed Parcels

The project includes amendments to the Official Zoning Maps to apply the "-d1" Design Review Zoning District to those parcels identified as being within the primary viewshed areas visible from the valley floor. Primary viewshed parcels are defined as those most immediately visible from the valley floor, up to and including the first discernable ridge, and approximately 1-2 miles distant from the edge of the valley floor.

- a. The primary viewshed areas have been the traditional areas of focus in previous studies, where Design Review zoning has been applied. Areas already within the "-d1" zoning district for the west valley hillside area are proposed to remain within the "-d1" zone. Those decisions were based on joint planning and extensive discussions with the west valley cities, and to deviate from those decisions and propose significant modifications to the zoning district boundaries should only be considered with appropriate consultation and input from the cities' representatives. City representatives for those cities have expressed either support or no objection to the project proposals.
- b. The vast majority of hillsides visible from the valley are contained within the primary viewshed area as identified in County mapping. Inclusion of secondary viewshed areas would add a marginal percentage of land to Design Review zoning, at a distance of up to 3-4 miles from the valley floor.
- c. Distance helps mitigate potential for visual impact. The more remote and distant properties are often visible only from distances much greater than the three to four miles separating them from the edge of the valley floor. From those distances, homes may appear as little more than specks on the landscape. Combined with dense tree cover and vegetation in many areas, visual impacts of new development are insignificant. Design Review zoning and permit requirements would not be nearly as effective as for primary

viewshed areas. Lastly, many of the more distant, secondary viewshed parcels are only visible in the higher, steepest portions of the parcel, where development is generally inadvisable, less feasible, and more costly.

d. The Planning Commission unanimously recommended that the "-d1" Zoning District be applied to primary viewshed parcels, not secondary areas, based on staff recommendation and voluminous public testimony and correspondence.

For additional discussion, please refer to the Reasons for Recommendations in the attached Planning Commission staff reports.

BACKGROUND

Project Summary Information

The project includes a set of specific recommendations based on work done to date regarding the County's Viewshed Protection Study. This study, a major part of the Planning Office's work plan, has included:

- a pilot study with the City of Morgan Hill,
- a countywide viewshed mapping analysis,
- a major report to the Board of Supervisors in April of 2005 outlining preliminary recommendations,
- an August 2005 all-day land use workshop with the Board of Supervisors,
- a series of six stakeholder committee meetings during January and February of 2006, including the public,
- three major community meetings in March 2006, attended by 250–300 each meeting;
- and periodic status reports and updates to the Board, and to the Housing, Land Use, Environment, and Transportation (HLUET) Committee of the Board of Supervisors; a status report and discussion for the Planning Commission at a workshop meeting in April of 2006;
- a workshop session with the Planning Commission on July 6, 2006; and,
- Planning Commission public hearings and deliberations on July 6, 2006 and August 3, 2006 regarding the proposed General Plan text amendment, Zoning Ordinance text amendments, and Zoning Map changes.

The components of staff's recommendations to complete this study include the following:

- 1) a General Plan amendment (GPA) to the Growth & Development Chapter, Rural Unincorporated Area Issues and Policies, to include background context and policies for the use of design review, for grading, and policies concerning development on steep slopes and ridgeline areas;
- 2) Zoning Ordinance text amendments to Ch. 5.50, Design Review, Ch. 3.20, Design Review Combining Districts, and Ch. 1.30 Definitions;
- 3) Zone change to apply "-d1, Design Review" zoning to lands within the primary viewshed areas, those most immediately visible from the valley floor, up to and including the first ridge, approximately 1–2 miles distant from the edge of the valley floor.

Additional revisions and clarifications to the County Design Review Guidelines are also anticipated, and those revisions will follow in the near future.

Viewshed Project History

Much of the project history has been documented in previous reports. A synopsis is as follows:

- Board of Supervisors adopts Design Review Zoning in the late 1980's to provide for similar type of discretionary review of hillside development and visual impact mitigation as that which a number of cities employed.
- Board updates and adopts the General Plan in 1994, including implementation recommendations to further evaluate the need for Design Review zoning and/or other means of addressing visual and environmental impacts of development for scenic resource areas.
- Work Plan for County Planning Office drafted and adopted in 2002 to commence work on a number of new legislative priorities, and facilitate completion of many in-process projects. Viewshed Protection Study assigned high priority.
- Work on the study began with a pilot project with City of Morgan Hill on a greenbelt study that included Geographic Information System (GIS) mapping of viewshed lands, and preliminary recommendations from staff and a citizen committee. Periodic reports were provided to the HLUET Committee of the Board.
- Countywide mapping analyses followed, with a major report and presentation to the Board in April of 2005. In August 2005, at a land use workshop, the Board

unanimously accepted the preliminary recommendations of those reports regarding the viewshed study.

- A schedule for completing the study in summer or early fall of 2006 was approved in October of 2005, in follow-up to the August workshop.
- Staff conducted a public outreach and information process in the Spring of 2006, as directed by the Board (see next background section for more information).
- Staff began work on draft work products in fall of 2005, and resumed work on those products following the public outreach meetings. A status report was requested and provided to the Board May 23, 2006.
- Public hearings before the Planning Commission were held on July 6, 2006 and August 3, 2006.

Public Outreach

Prior to Planning Commission hearings, public outreach was facilitated in three main ways, a formal stakeholder meeting group, three large community meetings with notice to all potentially affected property owners within identified viewshed areas, and extensive publication of information and reports of the Planning Office website, www.sccplanning.org.

The stakeholder committee was formed to provide expertise and diversity of opinion to help shape and inform discussions. It made no formal report or recommendations. However staff documented the discussions and published these to the website. The committee provided a very useful and effective way of hearing a variety of issues, concerns, and comment on possible recommendations. The meetings were open to the public, and as meetings continued through January and February of 2006, attendance averaged approximately 25–30 per meeting, with the majority being private property owners. Staff believes the Stakeholder Committee was as open and inclusive as it could be while fulfilling the purposes of the Board to have many viewpoints represented, and to provide a manageable forum for discussion preliminary to the larger community outreach meetings.

Three major community outreach meetings were held, with notice provided to each potentially affected property owner. The Santa Clara County Hillside Association, a group of private property owners, also disseminated notice of these meetings to all owners throughout the rural hillsides of Santa Clara County. Each meeting was attended by 250–300 people, included staff presentation, and extensive comment opportunity. Staff published detailed summaries of all

public comments received at each meeting, and provided recordings of two of the three meetings to the Board of Supervisors (at one meeting, the recording device failed to record properly). The summaries of these meetings were published to the County Planning Office website, and summarized in the May 23, 2006 status report to the Board.

Notice Provided for Planning Commission and Board of Supervisor Hearings

For public notice of the Board of Supervisors and Planning Commission hearings, staff provided the following forms of notice and public information. These actions meet or exceed required noticing requirements.

- individual property owner notification mailed to the owners of each property proposed to be included in "-d1" zoning districts for viewshed preservation;
- an ad placed in the San Jose Mercury News of at least one-eighth of a page;
- Planning Commission agenda publication in San Jose Post Record (customary means of agenda publication) and other required postings;
- publication of reports and agenda to the Planning Office website; and,
- e-mail notification to those who have provided e-mail for this purpose.

CONSEQUENCES OF NEGATIVE ACTION

If the Board of Supervisors does not approve the recommended actions, no additional Viewshed Protection measures, policies, regulations, or standards will be enacted. Existing policies and regulations will remain in effect.

STEPS FOLLOWING APPROVAL

The Clerk of the Board will provide documentation of the Board's actions to the Planning Office for its records.

ATTACHMENTS

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- Attachment 1: CEQA Document

- General Plan Amendment (Resolution and Exhibit)
- Zoning Text Amendment (Official)
- Attachment 4: Zoning Text Amendment (Edit Version)
- Zoning Map Amendment
- Attachment 6: August 3, 2006 Planning Commission Report
- Attachment 7: July 6, 2006 Planning Commission Report
- Attachment 8: Proof of Publication of Notice of Hearing
- Attachment 9: Property Owner Mailer for 8/29/2006 Board Hearing
- Attachment 10: Planning Commission Action Record (8/3/2006)
- Attachment 11: Correspondence