

County of Santa Clara

Department of Planning and Development
Planning Office

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STAFF REPORT
Planning Commission
August 3, 2006

Item #7

File: 8630-00-00-06GP-06Z

Viewshed Protection Study - Project Recommendations

- 1) General Plan amendment to Growth & Development Chapter, Rural Areas, regarding policies for Design Review, Grading, Steep Slopes, Ridgeline development issues; —
- Approved*
2) *Amend* 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 in primary viewshed areas.

Staff Recommendation: Favorable recommendation to Board of Supervisors.

Applicant:	County of Santa Clara
Location:	Countywide
APNs:	See master list for Zoning Map amendment
Gen. Plan Designation:	Various
Zoning District:	Various
Parcel Area:	Primary Viewshed Areas: Approximately 3,300 parcels (57,000 acres); Secondary Viewshed Areas: Approximately 800 parcels (31,000 acres).
Supervisory Districts:	#1, 2, 3, and 5
Staff report prepared:	July 25, 2006 <i>JS</i>
Prepared by:	Bill Shoe, Principal Planner; Jim Reilly, Kavitha Kumar, Planners
Approved by:	Michael M. Lopez, Interim Planning Manager <i>mm</i>

PROJECT / PROPOSAL DESCRIPTION

The Planning Commission held a public hearing at its July 6, 2006 meeting regarding the Viewshed Protection proposals. It continued the hearing to its August 3, 2006 meeting to consider several suggested modifications to the proposed Zoning Ordinance text amendments and to consider the extent of land area to which the proposed "-d1" Zoning District should be applied. Specifically, the Commission requested mapping and noticing be provided to allow consideration of secondary viewshed areas, in addition to the staff proposal to initially apply "-d1" zoning to lands in the primary viewshed areas.

RECOMMENDED ACTIONS

A. Actions Concerning Environmental Determinations and Findings

Documentation will be prepared for public hearings before the Board of Supervisors. No California Environmental Quality Act (CEQA) determination is necessary to forward a recommendation to the Board of Supervisors.

B. Actions Concerning the Project Proposal

1. Recommend that the Board of Supervisors adopt the proposed General Plan amendment (GPA) (Attachment A).
2. Recommend that the Board of Supervisors adopt the proposed Zoning Ordinance text amendments (Attachment B), with the following specific modifications and clarifications:
 - a. Excavation for basement floor area to be exempt from grading quantity limits for Tier 1 review category in "-d1";
 - b. Additional time allowance for submitting an application for building permit to rebuild a building destroyed by casualty, beyond the initial two year application filing requirement, with Planning Director or designee as granting authority;
 - c. Clarification that Tier 1, 2, and 3 provisions for "-d1" districts supersede ordinary statutory and discretionary exemption categories where there may be a conflict;
 - d. Exemptions for agricultural accessory buildings to be addressed through proposed statutory and discretionary exemptions for buildings up to 2,500 square feet, similar to residential accessory buildings.
 - e. Other minor non-substantive text clarifications as noted in Attachment B.
3. Recommend that the Board of Supervisors adopt zoning map amendments to apply the "-d1" Design Review combining zoning district to candidate parcels identified within the "Primary Viewshed" areas, only (Attachment C). The staff recommendation for this component is unchanged from the July 6, 2006 staff report and does not include candidate parcels within the areas shown as "Secondary Viewshed."
4. Recommend that as of the effective date of any new regulations, any project for which single building site approval and/or grading approval has been granted be allowed to develop in the approved location, but the building would be subject to new zoning regulations that become effective prior to building permit issuance.

5. Recommend that the County evaluate the viewshed-related Zoning Ordinance text amendments, Zoning Map amendments, and Design Guidelines within 18-24 months following adoption and implementation, to consider any changes that may be appropriate to enhance effectiveness, provide necessary flexibility, or improve clarity.

REASONS FOR RECOMMENDATION

A. Reasons for Recommended Actions Concerning Environmental Determination

1. The project builds upon and reinforces existing policies and regulations intended to conserve resources, improve environmental protection, reduce impacts from development, and enhance the visual quality of the environment, consistent with existing goals, policies, and implementation recommendations of the General Plan.
2. Appropriate CEQA documentation will be finalized prior to Board hearings.

B. Reasons for Recommended Actions Concerning Proposals

B1: Proposed General Plan Text Amendment (no changes to reasons for recommendation contained in July 6, 2006 staff report. See Attachment D).

B2: Proposed Zoning Ordinance Text Amendments – Modifications and Clarifications requested at July 6, 2006 meeting and/or identified by staff in subsequent review (see original reasons for recommendation, Attachment D):

1. §3.20.040 (A)(1)(c), Grading for Tier 1 eligibility, p. 3 of 11 of Attachment B, has been revised to exempt excavation quantities for foundation, basements, and pools.
2. §3.20.040 (G), Exemption for Sites Not Visible, p. 5 of 11, has been revised to substitute language "...shall be eligible for..." for "...may be subject to..." discretionary exemption.
3. §3.20.040 (I), Rebuilding, subsection 3, p. 5 of 11, has been revised to provide the Planning Director (or designee) with authority to extend the two year time limit in which to apply for a building permit, when warranted by special circumstances.
4. §3.20.040 (I), Rebuilding, subsection 5, p. 5 of 11, has been revised to allow rebuilding subject to design review discretionary exemption, rather than full design review through a public hearing, with focus on meeting the applicable Tier 1 level standards only. This reduces the regulatory burden placed on property owners while maintaining the same basic level of visual mitigation prescribed by current rebuilding provisions.
5. §5.50.030, Approval Authority, p. 8 of 11, has been revised to retain the word 'shall,' which was inadvertently omitted.
6. §5.50.050, Statutory Exemptions, p. 8 of 11, has been revised to clarify that such projects are exempt except where any conflicting "-d1" process requirements apply. In other words, Tier 1, 2, and 3 provisions and process requirements take precedence within the "-d1" district over the exemption provisions that would ordinarily apply in any "-d" zones or situations where Design Review is a requirement.
7. §5.50.060, Discretionary Exemptions, p. 9 of 11, also has been revised to clarify that such projects are exempt except where conflicting "-d1" process requirements apply.

8. §5.50.060, Discretionary Exemptions, subsection E, p. 10 of 11, has been revised to clarify that the types of discretionary exemptions referred to in "-d1" zones include the "Tier 1" review and "Exemption for Sites Not Visible."
9. With regard to the Planning Commission's discussion of possible exemptions for all agricultural accessory buildings on lands under Williamson Act contract, staff has further evaluated that possible modification and offers the following discussion:
 - a. Within the hillside areas potentially subject to Design Review, proposed categories of Statutory Exemptions and Discretionary Exemptions from Design Review for all accessory buildings, either residential or agricultural, have been liberally increased and should suffice for most cases (up to 2,500 sq. ft.).
 - b. Agricultural accessory buildings such as barns, animal shelters, or other storage buildings larger than 2,500 square feet (and not eligible for possible exemption) may also be exempted if located within a portion of the parcel not visible from the valley floor. However, if a more substantial agricultural building must be proposed on a property in the viewshed areas where it will be visible, it would be more consistent with the goals and purposes of the General Plan and Zoning Ordinance for such larger buildings to be treated the same as would a residential accessory building. In other words, if the overall purpose and aims of the Board of Supervisors for the Viewshed Protection Study are first and foremost to address and mitigate visual impacts of development in the hillside areas subject to "-d1" zoning, it would be more appropriate to regulate similar structures similarly than to exempt all agricultural buildings of any size. Large agricultural will have similar potential for visual impacts in the primary viewshed areas as will similarly sized homes or residential accessory buildings, depending on mass, design, and color.
 - c. Staff does not believe that Zoning regulations and applicability thereof should be distinguished on the basis of "Williamson Act" (Land Conservation Act) contracts or similar non-permanent contractual restrictions. If the Commission desires to recommend further exemptions for agricultural accessory buildings in "-d1" districts, it would be more appropriate to make those provisions available to any parcel with a valid agricultural use that requires an agricultural accessory building(s).

B3: Proposed Zoning Map Amendments to apply "-d1" Viewshed Protection Zoning District to Primary Viewshed areas (no changes to Reasons for Recommendation contained in July 6, 2006 staff report, Attachment D).

10. In response to the request of the City of Morgan Hill to include such areas as Finley Ridge parcels, the Planning Commission requested staff provide mapping of parcels and notice to owners within secondary viewshed areas for consideration at its August 3, 2006 meeting. A map of candidate parcels in the secondary viewshed area, up to approximately 4 miles distant from the edge of the valley floor is shown in Attachment E.
11. Staff has further considered the option of including secondary viewshed parcels within the initial application of revised "-d1" Zoning Districts. However, staff has concluded that the staff recommendation should remain that "-d1" zoning be applied initially to primary viewshed parcels; not including secondary viewshed areas. That recommendation is based on the following:

- a. Staff recommends that existing areas of west valley hillsides "-d1" zoning remain in the "-d1" zoning district. These zoning decisions were made on the basis of significant multi-jurisdictional planning studies and extensive meetings and collaboration with elected representatives of the West Valley cities of Cupertino, Saratoga, Monte Sereno, and Los Gatos. To propose significant changes to these zoning district boundaries would involve further discussions and review by the affected cities with the County, and would significantly delay the conclusion of the Viewshed Protection Planning Study.
- b. For other viewshed areas proposed to be zoned "-d1," the preponderance of areas visible from the valley floor are contained within the primary viewshed. In some study zones, nearly all the visible areas are contained in the primary viewshed area, with only a smattering of visible areas beyond the first ridge or mile from the valley floor.
- c. For many of the parcels in the secondary viewshed, only a small percentage of the land area of each parcel is visible, often the highest and steepest parts. These are visible from distances typically greater than the 3-4 miles that separate them from the edge of the valley floor. Many new structures would qualify for the exemption for sites not visible, and even where visible, the distance and perspective factors tend to mitigate most visual impacts. Finley Ridge, for example, is over two miles from the edge of the valley floor, and four miles or more from Highway 101 and central Morgan Hill. From such distances, the existing homes along that ridge area are relatively insignificant and unobtrusive. Staff respects the opinions of the City of Morgan Hill and concerns about future development impacts, but believes that the distance factor should be more adequately taken into account.
- d. Secondary viewshed areas extending up to 3-4 miles from the valley floor would also include some of the heavily forested, remote areas such as Redwood Estates and Chemeketa Park subdivisions near Hwy. 17, in the Lexington Reservoir Basin. These areas are comprised of very small lots, most much less than an acre, with small homes that cannot be significantly increased in size and that are practically invisible from Hwy. 17, or the valley floor. There is little to no benefit to be derived from including the many hundreds of those substandard parcels in the proposed "-d1" district.
- e. The overall number of new homes in all rural areas for the last ten years has averaged 64 per year, many of which were replacement homes. If the secondary viewshed area were assumed to generously account for 10% of that total, which is more than the actual percentage of land area, the average number of new homes would be 6-7 per year, some of which would qualify for Tier 1 review or be exempt on the basis of not being visible. The several other new homes per year that would not be eligible for some exemption would not appear to justify the additional expense of applying and administering Design Review regulations for the areas affected. Most of the accessory buildings or secondary dwellings proposed in these areas would also qualify for exemptions or would not be very visible from the valley floor, if at all.
- f. In conclusion, application of "-d1" district regulations to secondary viewshed candidate parcels would not be nearly as cost-effective as making the initial application to primary viewshed parcels, and many of the secondary areas are sufficiently remote that new building is relatively limited.

BACKGROUND

July 6, 2006 Planning Commission Hearing

The Planning Commission held a public hearing on July 6, 2006 to consider staff recommendations and public testimony. There was general consensus regarding a small number of Zoning Ordinance text revisions the Commission requested, as described in this report. The Commission also discussed the issue of the extent of proposed "-d1" Design Review Zoning, and requested mapping and noticing of property owners to allow for consideration of the inclusion of secondary viewshed areas. The Commission also discussed possible inclusion of lands visible from rural transportation corridors such as State routes 35, 152, 9 and 35, or other major rural routes, but elected to focus instead on the question of whether to include lands beyond the primary viewshed areas for inclusion in the areas proposed for "-d1" zoning.

The Commission also discussed but did not arrive at a recommendation regarding its choice of the two alternative ridgeline development policies that were contained in the draft General Plan text amendment for the Growth & Development Chapter, Attachment A.

Proposed Option A, based on current policy, is to avoid ridgeline locations for new lots created by subdivision, if at all possible, and discourage ridgeline locations on existing lots, taking into account other applicable development factors, such as slope, habitat, geology, and similar matters.

Alternative Option B would generally prohibit new ridgeline or hilltop development, unless that policy would preclude all reasonable use and development.

Whichever alternative is selected in the Planning Commission's recommendation, it should be pointed out that any ridgeline development policy will apply throughout the rural unincorporated areas of the County, not just within those areas subject to Design Review. Such policies would apply through the applicable development application processes, such as for building site approval, subdivision, or grading approvals, or in the case where only ministerial permits are required such as a building permit, through the enactment of additional Ordinance Code or Zoning Ordinance regulations implementing the ridgeline development policy provisions.

Refer to the July 6, 2006 staff report for additional background information.

Notice Provided for Planning Commission Hearing

For public notice of the Planning Commission meeting of August 3, 2006, staff provided the following forms of notice. These actions meet or exceed required noticing requirements.

- individual property owner notification mailed to the owners of each property in the "Secondary Viewshed" Areas to be considered for inclusion within "-d1" zoning districts for viewshed preservation;
- an advertisement of hearing notice 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,

- email notification to those who have provided email for this purpose.

Individual property owners who were sent notice of the July 6, 2006 public hearing were not individually re-noticed for the continued public hearing of August 3, 2006 Planning Commission meeting.

Next Steps

The Planning Commission must hold at least one public hearing regarding the proposed General Plan amendments and Zoning text and map amendments. The purpose is to consider staff recommendations, public comment, and formulate a recommendation to the Board of Supervisors. The August 3, 2006 Planning Commission meeting is a continuance of the July 6, 2006 hearing. No additional noticing of the continued hearing is required other than that necessary to consider inclusion of the secondary viewshed candidate parcels. Board of Supervisors hearings will be scheduled as soon after the Planning Commission completes its deliberations. An August 29, 2006 Board of Supervisors hearing has been discussed as a tentative hearing date, assuming the Planning Commission completes its consideration of the project at the August 3 meeting.

ATTACHMENTS

- A. Proposed General Plan Amendment to the Growth & Development Chapter, Rural Unincorporated Area Issues and Policies, "Strategy #3: Ensure Environmentally-Safe and Aesthetic Hillside Development."
- B. Proposed Zoning Ordinance text amendments to Chapters 3.20, 5.50, and 1.30 of the Zoning Ordinance.
- C. Proposed map of "Primary Viewshed" lands for which the "-d1" Design Review Zoning District is proposed.
- D. July 6, 2006 Planning Commission Staff Report, pp. 1-8 of relevance to August 3, 2006 Report and Discussion (does not include May 23, 2006 status report to Board of Supervisors or Stakeholder Committee Meeting Summary)
- E. Map of Candidate Parcels in "Primary Viewshed," with "Secondary Viewshed" Parcels

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