

**County of Santa Clara**  
**Department of Planning and Development**  
Planning Office



PLN04 052306

Prepared by: Kavitha Kumar  
Planner III

Jim Reilly  
Planner III

Reviewed by: Bill Shoe  
Principal Planner

DATE: May 23, 2006

TO: Board of Supervisors

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

SUBJECT: Viewshed Protection Study Status Report

**RECOMMENDED ACTION**

1. Accept status report relating to the Viewshed Protection Study.
2. Consider the following options as alternatives to the current schedule and previous direction to staff:
  - a. Continue in accordance with preliminary recommendations and schedule approved by the Board in 2005, but limit initial extent of any new Design Review zoning districts to the primary viewshed (lands immediately visible from valley floor up to approximately 2 miles);

- b. Adopt no further Design Review zoning districts other than those already in existence, but require Design Review as a prerequisite for development of any new residence over a certain size, or for any accessory building over a certain size, perhaps coupled with a standard Light Reflectivity Value limit.
- c. Postpone or cease further actions or preparations concerning the Viewshed Study in light of the possible passage of the land use ballot Initiative and its proposed "Visual Safeguards" provisions regarding rural development.
- d. Continue the Viewshed Study and expand the study area to potentially include all those areas that would be affected by passage of the Initiative, i.e., Ranchlands, Hillside, and Agriculture—Large Scale areas that are visible from public places such as roads and parks.

### **FISCAL IMPLICATIONS**

No new impact to the General Fund. Potential staff resource impacts of implementing actions were addressed in a previous report February 7, 2006.

### **CONTRACT HISTORY**

Not applicable.

### **REASONS FOR RECOMMENDATION**

1. This status report updates the Board of Supervisors regarding public and community outreach conducted to date. It also provides information regarding the work components on which staff will focus during the months of May, June, and July to develop draft policies, ordinances, and standards as described to date in the preliminary recommendations the Board accepted on August 31, 2005 at its land use workshop.
2. In fulfillment of the approved schedule for the Viewshed Protection work plan item, staff conducted three major community outreach meetings in late March of 2006. These were intended primarily to solicit input from affected property owners, following a series of smaller stakeholder meetings. The speaker comments, survey results, and other input received at the meetings are described in the Background section of this transmittal and attachments (Attachment A: Speaker Comments from March 2006 Community Meetings and Attachment B: Survey Results).

3. Unless otherwise directed, staff will continue in accord with the previous direction provided by the Board and schedule approved in 2005. In response to various public input, ongoing evaluation of the project, and budget factors, this report presents no staff recommendation for changes to the project, other than that if the Board directs staff to continue as previously directed, staff recommends the initial application of any new design review zoning for viewshed protection be limited to the primary viewshed and areas most immediately visible from the valley floor.
4. Since the Board last gave staff formal direction on the Viewshed Study in 2005, a ballot Initiative has been submitted which contains similar provisions to those involved in the Viewshed Study. The "Visual Safeguards" provisions of the Initiative are contained in Section 16 of the Initiative (Attachment C). It is likely that the schedule for completing public hearings for the Viewshed Study will coincide closely with the November election. If the Initiative passes, and Viewshed Study recommendations are adopted, there will be some overlapping and some inconsistent policy provisions and implementation measures between the two. Staff will present maps of the potentially affected areas based on vantage points from public roads and parks, as described in the Initiative.

## **BACKGROUND**

### **Review of Major Issues Raised in Community Meetings**

Community meetings for property owner and public input were held March 23, 28, and 30, 2006. Summaries of the speaker comments were previously conveyed to the Board of Supervisors off-agenda. They are also attached. Staff also presented an informal survey to which attendees could respond. Results of this survey are also summarized in an attachment.

Most of the speakers and survey respondents were opposed to the Viewshed Protection Study. The most commonly conveyed objection was to any new regulations above and beyond what currently exists. Others expressed the opinion that the Viewshed Study should not be continued, that there was no significant "problem" that needed to be solved, and that the basic premises of the study and existing policies regarding scenic resource protection are either invalid or should not be the County's priority for land use matters.

Regarding the viewshed mapping analyses that have been done to identify potentially affected parcels, there were a variety of concerns expressed:

- the need to account for the mitigating effect of distance from the valley floor;
- that for many parcels beyond the primary viewshed, only the uppermost elevations of those parcels are visible (and only from significant distances) locations where it is unlikely there will be additional building;
- that for some parcels on lower elevations, such as those near the intersection of Watsonville Road along Hecker Pass Highway, parcels identified as in the lowest visibility ratings are actually not visible from the valley areas due to intervening sight obstructions, trees, and undulating terrain; and
- the need to consider exemption of lots either entirely not visible from the valley floor or exemptions from any regulations for sites within those lots not visible from the valley floor.

Another concern commonly voiced included the cumulative effect of new regulations with those already applicable to residential development in hillsides. Property owners described the incremental or additive effect of more regulation as having an overall detrimental impact to property value, because perceptions of the difficulties of obtaining building site approval or other permits have an effect on the sale of real estate. Owners also expressed concerns about the particular costs to them of complying with possible new regulations, as well as the possibility that new regulations could drive down property values, reduce general fund revenues for the County and school districts, and further reduce services.

Another theme of public comment was the desire to have more services or better services, particularly public safety and law enforcement, given the current response times and service levels. Many owners stated that they spend considerable amounts of their own time to clear drainage culverts, remove roadway obstacles, and perform other maintenance for rural roads. Lastly, many thought that illegal building activity will only tend to increase, given that the cost of obtaining building site approvals and building permits for many already lies beyond their financial reach.

Staff has attempted to report in various ways as fully as possible the discussions of the Stakeholder Committee and the input at community meetings. Please refer to the attachments to this transmittal for additional information. This summation is not intended to recapitulate public comment received to date in its full detail and entirety. Staff has also attached the "Position Paper" of the Santa Clara County Hillside Association that has been distributed through the organization's website and at all the public and community meetings to date (Attachment D).

### General Responses to Issues Raised

The purpose of County policies and regulations concerning visual and environmental impacts of hillside development is to allow reasonable use and development of private property, while moderating or mitigating visual impacts of new development, particularly for potentially very large and highly visible structures. Staff is considering ways of providing incentives and guidelines for appropriate design and to communicate the County's expectations, to address reasonable concerns of neighboring residents, and related goals. Staff acknowledges that there can be quite a diversity of opinion on the subject of the aesthetics of development, whether and how to address it through regulations, and to what level of detail.

It is fairly common for cities and counties to address such matters in their general plans and ordinances. Most of the cities within Santa Clara County have developed some form of policies and regulations to explicitly deal with visual impacts of hillside development. These provisions are mostly in response to subdivisions, road development, grading, and single site development that have occurred in the past and which appeared to have had some easily avoidable impacts. Visual impact regulations and policies typically evolve over time in response to such situations and the prospect of additional, larger developments over time. The County to date has only considered design review zoning in a small portion of the viewshed areas, including limited hillside areas adjacent to certain cities.

As to the legal and policy basis for visual impact regulation, it is within the local land use authority of cities and counties, often referred to as the "police powers" by the courts, to establish policy and regulate for the general public health, safety and welfare. The Supreme Court has established that regulation of the aesthetics of development falls within the regulatory authority of local jurisdictions. Consequently, if local elected officials find there is adequate policy basis for what they conceive to be reasonable regulation, it is within their authority to adopt standards or regulations to achieve those aims.

Where design review zoning has been applied to unincorporated hillsides of Santa Clara County to date, the right to build a new home on an existing legal lot has not been denied on the basis of failure to gain Design Review approval. A residence would remain a use permitted as a matter of right under the Zoning Ordinance, subject to obtaining Building Site Approval and other prerequisites. The County's development regulations for single building sites require that the owner obtain site approval and construct various improvements prior to

issuance of a building permit, if the parcel is not an approved building site.

These site approval regulations and requirements are fully based on issues of public health, safety, and welfare to ensure that the parcel meets current requirements to be improved for residential use. Approved building sites must be able to provide improvements such as septic systems, wells or water systems, roads, turnarounds, and driveways, water supply tanks and other standards. These improvements can be costly, particularly if an access road or driveway is long, needs supporting retaining walls, and grade improvements. With the costs of having plans drawn by an engineer and/or architect, the need for geologic reports, and other aspects of development, conforming to standards and obtaining building permits can be a significant challenge, whether one is an experienced developer or an individual owner. Construction costs are ever increasing, as are the costs of compliance. The challenges can be exacerbated the more remote, steep, smaller, or problematic the lot, and by owner preferences to at times select a building site that is considerably more expensive and challenging than alternatives might be. The County can and should review its development review processes to help property owners achieve development approvals, and it is presently doing so, but it should not do so by relaxing or eliminating fundamental standards.

As to the potential costs to the County, whether the Viewshed Study recommendations are adopted or the Initiative passes, there will be some additional administrative and enforcement costs. The Initiative's potential costs for implementation are unknown but will be significantly more than those projected from the Viewshed Study, as the Initiative addresses significantly more subjects. With regard to the prospect of significantly reduced property values, and impacts to County General Fund revenues, staff believes that Design Review zoning where it has been implemented to date has not had such an effect on overall property values. The overall impact to the General Fund even if some reduction occurred would be slight, given that the proportion of total assessed value derived from rural unincorporated lands is relatively small.

#### Options for Continuing with the Viewshed Study

At this juncture, unless otherwise directed, staff will continue with the work outlined in the schedule approved by the Board in October 2005. However, based on public input, issues presented by the the Land Use Initiative, and staff's evaluation of these various factors, this report presents for the Board's consideration the following options:

1. Continue in accordance with preliminary recommendations to adopt design review zoning for viewshed areas, in addition to the other proposals, but consider limiting design review zoning to the primary viewshed (parcels most immediately visible from valley floor) for effectiveness and reduced cost.
2. An alternative would be to adopt no further design review zoning districts other than those which already exist, but require design review as a prerequisite for development of any new residence over a certain size, or for any accessory building over a certain size, perhaps coupled with a universally applicable light reflectivity value (LRV) limit. This option would leave existing DR zoning districts as they are without changes.
3. Either postpone or discontinue further actions or preparations in light of the possible passage of the Initiative and its proposed "Visual Safeguards" regulations regarding rural development. Once November election results are known, the County will be in a better position to evaluate how to proceed with various recommendations of the Viewshed Study.
4. Continue the Viewshed Study and consider expanding the study area to include all those areas that would be affected by passage of the Initiative, i.e., Hillsides, Ranchlands, and Agriculture—Large Scale areas that are visible from public places such as roads and parks.

To illustrate the areas potentially affected by the provisions of the Initiative, staff will prepare a GIS map analysis for its presentation. It represents areas visible from publicly-accessible parks, rural scenic roads as defined in the General Plan and Zoning Ordinance, and from all freeways, expressways, and state routes like 152, 35, and 9.

The amount of land area and number of parcels affected could vary greatly depending on how the Board wishes to define the viewshed. The use of vantage points along major roads, local scenic roads, and public parks greatly expands the areas subject to potential regulation. Potential costs to County to administer design review and related Initiative provisions for visual safeguards would be more than estimated previously for Viewshed Study. How much is uncertain, depending on amount of building in more remote rural areas.

With regard to options for managing ridgeline development, staff will provide the Board with options based on current policy and the following information:

1. Ridgelines are often ridge "areas," not steeply sloped spines or spurs of mountainous areas. They can afford the most stable, optimal, and least visually obtrusive location, depending on how access is taken or to reduce grading.
2. Staff mapped identified ridgelines along with areas of steep slope to illustrate that in many hillside areas of this county, slopes range from 30 to 70 %. On some parcels, the ridge area may evidence the least slope. The County discourages building on steep slopes through its Building Site Approval (BSA) regulations and Grading Ordinance provisions, not to mention septic system requirements.
3. On a parcel by parcel basis, a ridge area may be more suitable than alternatives, if no relatively flat non-ridge or hilltop areas exist. That said, current grading policy would not promote or allow any amount of grading for roads or other improvements simply to allow use of the highest or most distant part of a property for a building site.
4. In various hillside areas of the county, there are numerous existing homes located on ridgelines and ridge areas. Discussions of potential policy that would prohibit such locations has raised concerns about the ability to rebuild in the event of a casualty.

#### Work Product Components

During May through July, unless otherwise directed, staff will produce the following components or building "blocks" of work:

1. Draft supporting General Plan policies for rural hillside development addressing grading and terrain alteration, visual impacts and use of design review, guidelines and expectations, and options for ridgeline development policies. Also included would be policies regarding rebuilding existing structures, and related topics. [Rural Growth and Development chapter, Strategy 3, new section]
2. Draft modifications to existing Scenic Resource section policies of the Resource Conservation chapter for consistency with above.
3. Prepare draft design review ordinances for affected areas, including tiered review concepts, new standards, and associated guidelines.
4. Prepare draft modifications for all design review districts and projects, including changes to exemptions, simplification of floor area definitions, "design-friendly" modifications to allow architectural features and treatments that enhance design and minimize apparent bulk, retaining wall provisions, etc.
5. Prepare draft ordinances for zoning changes to implement "-d" design review zoning for affected areas.



6. Prepare draft landscaping provisions/ordinance in consultation with FMO.
7. Prepare draft CEQA documentation for all proposed policy and regulatory changes, staff reports, maps, and presentations.
8. Tentatively schedule Planning Commission hearings for August 2006, Board of Supervisors hearings for September to October.
9. Provide regular quarterly off-agenda reports to the Board as required by work plan and post draft documents to Planning Office website.

Staff will continue with these work efforts unless directed otherwise or directed to include additional components or alternatives.

### Conclusion

In conclusion, staff offers the following information and review:

1. Countywide urban growth management policies and the current density policies of General Plan for rural areas are the two most effective strategies for preserving the generally natural appearance of hillsides surrounding the urbanized areas. As described in the April 2005 report to the Board, these are the cornerstone strategies of the Open Space element of the General Plan, in cooperation with the cities and Local Agency Formation Commission of Santa Clara County. They prevent further urban expansion by cities into these hillside areas, and they effectively manage subdivision of rural lands. Minimum lot sizes presently are such that additional subdivision in the hillside areas of concern is relatively infrequent, and in the Hillside designation, subdivision is most often clustered with 90% or more of the land being preserved in permanent open space.
2. Controls over single site development for visual and environmental impacts can also be effective, but should not be so restrictive as to preclude reasonable use and development or deprive property owners of all economic value. Where design review zoning in hillsides has been applied to date, such as the West Valley hills, and Santa Teresa Ridge areas, it provides the County with a measure of discretionary approval authority to evaluate proposed designs, require moderate landscaping, and discourages monolithic design, among other matters. The proposals for tiered review, minor changes to light reflectivity standards, and other related proposals would improve effectiveness of design review while allowing moderate size homes to obtain approvals in less time and without public hearings. Approval requirements and standards for the

largest, most visible homes and sites could be effectuated through a third tier of review, if desired, with most homes between approximately 5,000 to 10,000 square feet undergoing standard design review processes.

3. Proposed policy sections of the General Plan will provide an improved basis for Grading Ordinance implementation, findings, and approvals, as well as the provisions for single building sites with slopes of 30% or more.

### **CONSEQUENCES OF NEGATIVE ACTION**

If the Board directs staff to postpone or cease work plan efforts regarding the Viewshed Study, some land use controls for visual impact mitigation would be effectuated through passage of the Initiative, if approved. However, a majority of, but not all viewshed areas are covered by the Initiative, and many of the proposed improvements to standards, policies, and procedures would not necessarily be implemented.

### **STEPS FOLLOWING APPROVAL**

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

### **ATTACHMENTS**

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- Attachment A: Speaker Comments from March 2006 Community Meetings
- Attachment B: Survey Results
- Attachment C: "Visual Safeguards" – Land Use Initiative
- Attachment D: Position Paper – Santa Clara County Hillside Association

Santa Clara County  
Planning Office

Viewshed Protection Study  
Community Meetings

Summaries of Speaker Comments:

March 23, 2006

March 28, 2006

March 30, 2006

**3/23/06 Viewshed Protection Community Meeting Summary**  
County Government Center, Board of Supervisor Chambers

**Speaker Comments:**

**Jay Arthurs**

- Live on Bohlman Road, Saratoga hills. Long time resident, 60 years, property represents my nest egg.
- Over time, we remodeled with permits.
- Viewshed study represents the rights of the valley floor over rights of hillside property owners.

**Paul Arpin**

- In my view density equals instant sprawl.
- The viewshed study should never exist. It downgrades values, and is trampling on people's rights.

**Doug Lockie**

- Property in Los Gatos and Saratoga hills.
- I have 2 lots, 10 acres. It represents my life savings, and regulation is an emotional issue.
- House size limits would be too unfair.

**Gary Hurst**

- Lives in Three Springs subdivision, east hillsides. 1984. Has homeowners association. Often causes litigation over CCRs.
- No one has a right to a view unless you buy it.
- Study has no legality.
- Architectural control can be a "can of worms." Will be for County what it is for subdivision property owners.
- It's unfair and discriminatory.

**David Ritchie**

- I have a house in Los Gatos shielded by trees. If so shielded, will it be further regulated?
- Mostly nice houses in hills, and present no visual problem. Problem is houses all look too much the same. We need rules to encourage differing architecture, not stifling rules.

**Rick Moncrief**

- Wanted to take an open mind into process. Staff task is hard one. Need to do the right thing, not just what is legal.
- But with past hearings, such as the Trails plan hearings, I felt railroaded. So I am skeptical.
- Need to address financial impact to property owner.

**Steve Madsen**

- Third generation owner of 8 acres on Loma Chiquita, near summit. Spiritual ties to that land.

- "Legal land theft" is what I call it, being squeezed out of your property by permit costs and regulations.
- The glare of lights from development in the valley is more offensive.

#### Earl Haller

- Don't envy staff your job. I'm losing hope of being able to afford building on my lot.
- Majority of audience notified by Hillside Association, not County.
- Need to clarify whether home can be rebuilt.

#### Evan Piercy, with Hillside Property Owners Association

- Restrictions always have the possibility of affecting property value.
- Need to balance property rights with viewshed interests
- Planning Dept. should focus on matters of public health and safety, not visual impacts
- Rebuilding policy, need to make mention of it in presentation.
- All over the world, hillsides are desirable building locations.
- County should be concerned with camouflaging" homes
- It's very expensive to build in the County as it is.
- If you don't like what you look at in the hills, look away.

#### Maren Madsen

- Property has been in family 100 years. Who has the right to tell us what we can do with it?
- It's too bad that Silicon Valley ruined the orchards.

#### Debbie Lockie

- I visited East Germany once, and experienced their freedom from communism. We are so fortunate as Americans.
- This is encroaching communism. Our dream house may never be realized.

#### Joyce Steinfield

- I am an artist who lives in a hillside area. Aesthetics are relative.
- A house is a major investment and should not be over regulated.
- We live in an urban area, so how can the hills be all green?

#### Gordon Chace

- County attacked his property for trails.
- People have rights to be respected.

#### Ron Wagner

- Devil is in the details. Much potential for abuse. Well meaning regulations can morph out of control and have unintended consequences.
- Allow time for feedback in developing or implementing regulations.
- What are our protections if we feel taken advantage of? I have a parcel in the hills, can't see it. I had two diseased trees, which I understood I could remove, after looking at ordinances. I was accused by Planning staff of illegally cutting trees, violating the ordinance. Had to pay arborists fees, legal fees, and \$5,000 fines, but was vindicated in the end.

- The Open Space Initiative, all lands outside a building envelope will be under easements.
- Need flexibility if we don't have lots visible from the valley.

#### Frank Crane

- How did all this start? Seems the Board has gotten carried away.
- Real estate broker and concerned about "eroded" property rights.
- Viewshed would seem to be something sacred for valley residents, not the hillside owners.
- It's too expensive to build now as it is.

#### Charles Davis

- County should notify everyone.
- I've invested in several properties and future value will be affected.
- We should respect individuality.
- As to tree removal for fire safety, don't create or worsen fire hazard with landscaping requirements
- This should be put on the ballot and put to a vote of the property owner.
- County instead should focus on public safety and building code compliance.

#### Tom Herbst

- Mt. Loma Prieta resident concerned about not being able to rebuild. If so, that's a taking.

#### Hans Johsens

- Viewshed is a two way street. There are lots of lights and development down in the valley.
- Should meet in our neighborhood, Lakeside Community center is a possible meeting site.
- We don't want new regulations, and don't think County should be concerned with camouflaging issues.
- Fire hazard risks need defensible space, not more landscaping.
- Hillside owners feel discriminated against—it's just wrong.
- Impacts of viewshed regulations lower property values, more illegal construction and declining assessments and budget for our school.
- Most owners are opposed. The County has 1.7 million population, and only 8% are not in cities. The viewshed is discriminatory and absurd on its face.

#### C. Gortner

- Supports open space, but study won't benefit everyone. Views give property value and we have to buy those views. Why is County not focusing on parks?
- Study is in the spirit of "eminent domain."
- It has a misplaced focus, and where is the compensation?

#### Allen Baumgartner

- What will happen if owners ignore county rules? There is a lot of illegal building in the hills, and grading violations going on.
- How will County enforce regulations and what is budgeted for it?

Barbara Springer

- Why do homes have to be so big? I'm not in favor of monster homes, but believe there is a balance.
- New massive homes will get built around me and block my view, affecting my value. Would like there to be some moderation.

Manuel Austin

- Los Gatos hills owner
- The Board of Supervisors is off course, and this is an emotionally, politically charged issue.
- Regulations will deter building and affect values.
- We will take a political stance, we will hire lawyers, and we will follow through.

Mike Achkar

- My site approval took two years.
- Experienced significant resistance from neighbors.

Clarence Stone

- Issue is very personal to all of us.
- Our mailing list is from the Assessor's lists. Sent notices to all hillside owners we could identify while County has not fully decided how many will be affected.

Kris Tarabetz

- East foothills resident
- I live on a ridge. Have endured the Williamson Act battles.
- I don't want a mansion, but do want to do a good job with my development.
- We need to focus on what's reasonable and do what's right.
- Homes are getting bigger and more outrageous.
- Enforce what you already have on the books.

Dan Henroid

- I'd like to see hillsides preserved. Property values have only increased.
- Need to promote considerate development respectful of others rights.
- Development is a cancer on the valley floor. Don't let it spread to the hillsides. Why must we focus solely on maximizing profits and return on investment?
- Importance of developing responsibly and that doesn't have to be an eyesore to the community.

Gary Prevort

- I have 40 acres on Sierra Road, and can only build on 10%.
- Nothing will be gained by putting more restrictions on hillsides, as most developed hills are in cities.

Philip Dituillio

- Everyone hates the Planning Department. Permits are an ordeal. We don't want all these rules thrown on us.
- Took four years to get a house built. More taxes, more regulations, and where does it end?
- Didn't get a meeting notice for 2146 Madrone.

- We don't ask anything of the valley residents and they shouldn't ask anything of us.

#### Jerry Baker

- Coastal commissions are an example of regulation that takes too much time to get approvals.
- There are a lot of issues and distrust.
- Spoke of and complimented a Planning Office counter staff who strived to give correct information.
- Need to extend this project and give it due time.
- Need better mapping.
- Replacement of a house after a casualty or just due to age is important.
- Differences between lower ridges and horizon forming ridges.
- What about a cost-benefit analysis, how many parcels affected, cost of the study, and cost of regulations.
- Seems like taking a sledgehammer to kill a fly.
- What are the costs of added permits.
- Who on the Board started all this?
- Do you have the legal authority to regulate?
- Need to define appeal rights and make for more streamlined planning approval process at the counter.

#### Doris Whitney

- Almaden Road resident.
- Staff should talk to the Supervisors about representing us. Supervisors all live in cities and don't respect us.
- Most affected are older property owners. Will have a big impact on us.
- Given all the economic hardships facing the County and other priorities, put this study on the back burner at least.

#### Tina Boales

- Long time owner.
- There are enough restrictions already.
- Extreme environmentalists are behind this study.
- It will result in more illegal building, and I'll have more comments at the future meetings for west valley hillsides.

#### Notes:

1. The summary of public speaker comments has been compiled from extensive staff notes and is not intended to serve as a full meeting transcript.
2. Additional comments may have been provided on speaker cards and on survey forms. Some were extensive. Comments made by means other than spoken testimony will be conveyed to the Board of Supervisors by a separate summary or other manner to be determined.



**March 28, 2006 Viewshed Protection Community Meeting  
Morgan Hill Community Center**

**Speaker Comments:**

**Jon Pershing**

- Cumulative effect of viewshed study and Initiative will have major impact on property rights and values.
- What if both are passed and make some properties unbuildable, has anyone considered that possible outcome?

**Evan Piercey**

- Represents Hillside Association for property owners
- Concerned about remodels. Would a Tier 1 approval apply also to additions to small homes?
- Asked what is the definition of a legal building for rebuilding policy?
- More info needed on the purpose of the August-September hearings.
- Do we really trust the government to look out for our interests?
- Staff proposals have some balance, but everyone should be concerned if the Board expands the scope and nature of the study and possible regulations.

**Shana Boigon**

- Property rights are the key concerns of realtors. In some cases good regulations and guidelines could add to property value, but could also become too restrictive also, no telling how these processes could turn out.
- As with the Williamson Act process, process and public meetings are the key.
- Stated opposition to further deed restrictions.

**Eric Holding**

- Mentioned the importance of amateur radio to community disaster response. When cell phones and land lines are down, amateur radio is important community asset.
- Don't restrict antennas and strive for adequate public-private balance.

**Tony Kingman**

- Addressed property development on ridge areas. All current assets in his current home on a ridge.
- Current policies are working and adequate.
- If there is no allowance for ridgeline development, would definitely affect values.
- County doesn't need more rules.

**Laurence Krumm**

- Lives on Cypress Ridge. Seven homes on that ridge, but only one received a community meeting notice.
- Asked where is the "valley floor"?
- Stated that there are problems with the process and methodology.
- Board members should be attending the community meetings.
- Board as a whole should step up and represent the rights of the minority, the hillside property owners.

- Cited Sierra Club publication and statements that the new threat to the environment is from "rural sprawl." Are they referring to our property? The Board is empowering the environmental groups, not us.
- The County should take pictures of the views from the hills down to the valley, not just from the valley up to the hills.
- Look at the City of San Jose development of the Evergreen Hills and Silver Creek hills. These areas have just as much if not more impact, but neighboring rural property owners don't get to judge those developments or address their visual impacts. Needs to work both ways.
- In my neighborhood, I pass a property on my way home with cars in disrepair, and other junk. I don't like it, but I respect his right to maintain his property this way.
- We can't and shouldn't trust the Planning and Building Department. It's too hard now to get development permits.
- Neighbors should help evaluate and judge development. He and others lose their views to a neighbor's new house or addition.

Robert Littlejohn

- It took me 17 years to obtain permits to build on my property near Chesbro Lake. Spent more in fees than I should have had to.
- Big developers get to build millions of homes and government will not give the little guy a break.

Mike Vancil

- Doesn't trust staff.
- Many properties may not be affected by current study, but what about the next time? The trend is ever increasing regulation.

Bill Konle

- I have 10 acres above the old Hill County property, now Fry's golf course on the southeast of Morgan Hill.
- Concerned about the constant creep of additional regulation, such as the increases in minimum lot size over the years.
- Strikes me as "eminent domain" or property seizure by regulation, if lot sizes keep going up to the point you can't build a house on property.

Rick Moncrief

- Williamson Act and other County regulations do chase away potential buyers, which does affect property value.
- My property is in the viewshed, near a ridge, and by my estimation 6 miles from the nearest point on valley floor from which it can be discerned.
- I can't see my property very well from that point on the valley floor, but the maps show it as being red, the highest visibility rating, which I cannot understand.
- The appearance of a house in the hills makes not a hill of beans difference to anyone.
- Should weigh in the distance factor in your mapping analysis, but you didn't. Feels like just a way for staff to add more controls.
- Ridgelines are not really the important factor in addressing visual impact. Sometimes it is the optimal place to build and mitigate impacts.
- If a home is on the ridge, trees and other plantings can be more effective mitigation and sooner than one lower on a hillside. On a 30% slope, any trees that are planted

for screening will be at a greater distance from the home and take longer to grow to any substantial height to serve as screening.

- Also, many ridges are backdropped by other hillsides, or ridges. There is no difference between developing on one of those ridges backdropped by other hills than building on the side of one of those hills.
- The pictures staff showed on the hillsides, some are from urban areas with unsightly power lines, and other subjects uglier than anything built on the hillsides.
- The real motivation for this study is to create inhibitors to good development not to improve development.
- The fundamental question is if there is a right to scenic resources, and why do you the County think you own it? The notion that it is a public right is nowhere addressed.
- There is a real estate law term called "open notorious adverse possession." If someone openly asserts or takes the use of some portion of your property long enough without challenge, you may lose the right to prevent it. It seems the County is trying to take over our rights and establish the equivalent of a view easement over our properties, and if we don't fight it now, we'll lose the right to fight it in the future.

#### Clarence Stone

- Representing the Hillside Association.
- Only property owner appointed to the stakeholder meetings staff mentioned.
- Need everyone to stay vigilant.
- We are a disenfranchised minority in the hillsides. The Board is not watching out for our interests.
- We are the caretakers of the hillsides, more so than the environmental groups, and we are now being asked to turn over a portion of our rights. I ask you to stay informed and contribute to our efforts to deal with the viewshed regulations and fight the Initiative.

#### David Frazier

- Definitely affects our rights.
- What about economic feasibility. County services are being cut, but new regulations will affect property values, which reduces the tax base if only smaller homes can be built.
- Land values at time of transfer are dependent on the cost of regulations and permits. If these reduce value, eventually the property must be reassessed.
- If the County gets sued over these regulations, that will waste valuable tax dollars defending the County.
- Application fees will only increase.
- Regulations and costs are the 600 pound gorilla at the table year after year.

#### Rita Grogan

- Live outside Gilroy. Never really politically involved in county policies until Williamson Act issues.
- You can go to the County Planning Dept. and ask the same question of different people and get a different answer from every one.
- Will agricultural accessory buildings and structures be included in viewshed regulations? Or exempt? Barns don't usually look beautiful.

- Will fencing we need to keep other properties safe from animals be regulated?
- Will granny units be affected?
- We see bright lights of the valley floor, from such places as driving ranges, Costco and Lowes.
- Biggest concern born of problems being in limbo for years while County sorted out the Will. Act issues. If viewshed protection or similar regulations also put people in similar limbo, shouldn't do it.
- Should grandfather older uses and buildings.

#### Collier Buffington

- I'm in the process of purchasing property in south county.
- I sense a certain inevitability about the viewshed regulations, and it may be easier to ride the horse in the direction its already going.
- As far as house size, I don't think it's anyones right to restrict house size. If there are to be restrictions on house size, be liberal in what counts towards floor area; to enable porches and decks, eaves, and other features that make good architecture and don't penalize those features. Otherwise you end up with boxy designs no one wants.

#### Jenny Derry

- Process is very important. Enjoys being amidst "country folk" and their common sense.
- Important to get your input directly to the Board. Don't wait for the public hearing, by then it may be too late. Contact your Board directly by phone or email which is available from County website.

#### Notes:

1. The summary of public speaker comments has been compiled from extensive staff notes and is not intended to serve as a full meeting transcript.
2. Additional comments may have been provided on speaker cards and on survey forms. Some were extensive. Comments made by means other than spoken testimony will be conveyed to the Board of Supervisors by a separate summary or other manner to be determined.

**3/30/06 Viewshed Protection Community Meeting Summary**  
Quinlan Community Center, Cupertino, CA

**Speaker Comments:**

**Tina Boales**

- I'm a 23 year property owner in the hillsides. Presently have 37 acres in Saratoga hills. I have a list of puzzling issues and comments:
- There are enough tough regulations and zoning new, so what is the purpose of toughening regulations?
- Home replacement issue. In the case of fire or other disaster, new regulations could make it worse. Fear would be that people not be able to rebuild.
- Deed restrictions. We live in a litigious society, and use of recorded deed restrictions to record conditions or permits is a bad idea. Don't do it. Neighbors and open space groups will sue to enforce.
- Illegal building. There is lots and lots of illegal building going on now. County should enforce what ordinances you have now, not make new ones.
- We have even considered making a sizeable check/donation to the Board to see if that would get our issues more attention.

**Ted Halunen**

- Saratoga hills property owner for 40 years.
- Seen many zoning changes over time, but no compensation for them ever.
- We fear being squeezed out of our property if there are new regulations.
- My view of the valley is now compromised by new shopping centers and urban development.
- Staff speaks of taking distance into account, but if the County focuses on the properties in the first mile or so from the valley now, we fear it's just a matter of time before the regulations will be moved out to encompass properties five miles or more distant.
- This is just another way to spend more money and drive up costs for homeowners.

**Frans Vanwyk**

- Property on Montebello Road at a high elevation
- Increasing property values (appreciation) are now a very important part of our financial plans and future.
- Disappointed that no Board members are courageous enough to come to these community meetings. Send staff instead.
- We take it as a show of disrespect for property owners, and hope the Board treats the special interests and environmental organizations with the same disrespect.
- In all the studies, I haven't seen a statement of the problem. No problem description.
- How many residents of the cities have actually asked for these changes? Just elected officials?
- There is nothing wrong with the buildings that are in the hillsides, or with those in valley areas.
- We are good stewards of our lands.
- There are no similar regulations for properties in Cupertino's highest ridges (lands in city jurisdiction).

- County has no legal right to affect my property value. These proposals are to the point of being abusive of government power.

#### S.W. Seidman

- Property owners well understand the radical environmentalists agenda.
- We are the stewards of our lands. We open culverts. We volunteer to help prevent wildfires.
- We have some owners who have been residents of Montebello Road for a hundred years or more.
- Would the environmentalists do the same to protect and care for these areas? They would rather see the hillsides burn than see homes on them.
- Should precious tax dollars be wasted on these studies and regulations?
- The current regulations are adequate.

#### Shannon McElyeh

- I have nothing against open space preservation. My great grandfather was Fremont Older, and our family instrumental in preserving open space.
- In 1998 I bought property in the hillsides. I have had nothing but bad luck financially with other properties up to the present.
- There is open space nearby, but it's not accessible yet. Would be nice if it were.
- My home is a 1910 home and I have two old barns. This property is my only financial asset. I'd like to fix it up and improve it.
- As to being a steward of the area, I have saved a number of lives since living up in the hills. We share wells and water, help injured hikers and cyclists, even car accident victims. If no one can afford to live and build in these areas, who would be there to help others in need.
- If new laws come, no one would want to buy my property.
- Home maintenance is expensive enough without new regulations. If regulations are so burdensome that there is no incentive to keep up or improve property, then all suffer.

#### Debee Lockie

- If regulation reduces our ability to sell property, how will the county reimburse losses to property owners?
- How will the County reassess property valuations to reduce our taxes now and pay past compensation for lost value?
- How will the County address illegal building if it occurs? Will taxes be spent prosecuting offenders? Will enforcement costs go up?
- There is more and more illegal building and this will make it worse.

#### Roy Fellom

- Montebello Ridge owner, four generations. In that time, we have seen a lot of changes on the valley floor.
- What's with all the rezoning stuff? What's the compelling reason? Is it a safety issue?
- How do we measure the view? It always varies, with the climate, the season, the location from which we see the hills from the valley floor.
- Zoning should protect our view of the valley floor, but it's too late for that.

- Question should be how do we build partnerships, streamlining the building process and permit process, how generate revenues and promote housing supply.
- Regulations tend to make it impossible to improve one's property, and if that leads to devaluation, then what?
- There is a lot of money spent on County parks as open space, but they're not worth the money just for a few to hike or bike on trails.
- I'd like to propose a radical reconsideration of the study—the hillsides are not in danger.
- Instead, we should streamline permitting, increase density allowances to provide for more units, provide financial incentives for heritage farms, wineries, and vineyards, and do the things that strengthen and develop our hillside areas as communities.
- Regulations shouldn't be just about cosmetic issues, County policies should provide community enhancements and promote choices, not restrict them.

#### Nancy Fellom

- Cousin to previous speaker.
- I want to build my dream home on a ridge. Been saving for 25 years, and I don't want a mansion, but I do want a home with a good view.
- I want to make it energy independent, with solar panels, a windmill, and other improvements, but how do I do that with these regulations? Will they allow it?
- Most of us are like me, a simple home and property owner, not "developers".

#### Patty Cassidy

- I'm astounded that this study is being undertaken by the County.
- Why should I have any say in what others build or do with their property?
- I don't agree with the statements by the Hillside Association that we should make some accommodations for this study and future regulations.
- I don't support any additional regulations or design review zoning as there are many existing restrictions now.
- Minimum lot sizes have increased from 5 to 20 acres over the years.
- We cannot add secondary dwellings.
- Paint color controls obliterates property owner's rights.
- There is considerable fire hazard in these hills and we need 30-100 feet for fire protection.
- Lighting: we look on bright lights of the car dealerships and other commercial uses, they use spotlights to advertise and draw customers. Don't regulate our exterior lighting if we aren't going to control lighting on the valley floor.
- We have huge tax bills, bad fire protection, no sheriff patrols and no adequate services for our roads.
- I'm indignant at the bad services we get, but that the Board could consider more regulations. It's already too expensive to get development approvals and permits.

#### Tony Ciraulo

- I live four miles from Saratoga on Hwy. 9.
- It's hard now for people to have homes. I feel our property rights are being infringed upon. But this is extreme.
- As an example of the undue burdens of current regulations, I have a document for a development approval called a Negative Declaration for a neighbor. It's four

pages of environmental regulations and mitigations [note: possibly for grading permit].

- Landscaping requirements are already a condition of this approval.
- We are all already environmentalists, and we don't need the County to tell us how.
- Parts of the hills are already very low density and in open space—how much more can you ask for?
- I suggest that there are better things to be working on: eliminating trees with oak fungus to protect our landscapes, but the environmentalists don't want that. The County has transportation, highway maintenance issues, and housing affordability issues. Viewshed, what a waste!

Tony Rigoni

- Referred to a letter from the open space organization.
- He and others plant trees, plant vineyards, and improve property.
- We went through this with the "-d1" 9-10 years ago, why go through this again?
- To save money, County should start with the County itself.

Lowell Freudenberg

- Wants to know who's really complaining about the hillside development?
- Supervisors should travel some to get familiar with other places where hillsides are built on, perhaps Italy or Greece.
- Some have called this a liberal agenda, but it's not a liberal agenda, it's a fascist idea.
- We have no sewer, no water service, little fire service.
- Viewshed protection is a phony issue. We have mail theft, a federal crime, and the authorities respond that "those things happen in the hills"
- County shouldn't tell us how to build or what color to paint our houses. County should talk about poor roads and bigger problems.

Aaron Levenson

- I don't see many very large, highly noticeable homes.
- "-d1" zoning is working in west valley hills, why are we reviewing it?
- Current regulations are having the desired effect, and there is no need for additional restrictions.

John Kolski

- I want to provide everyone with a dose of reality. If either the Viewshed regulations or the Initiative goes into effect, you land will be devalued to the point you have to sell it.
- You probably won't be able to rebuild exactly what you have now and where, if it doesn't meet current septic and other regulations.
- Things get more restrictive year after year.

Mike Makinen

- I own 100 acres. How did the study get in the 1994 General Plan? I question the validity of that policy, and bet it wouldn't have been supported by a majority of county residents.
- Aesthetic judgments are not a valid basis for regulation
- Study should be halted as quickly as possible.



Jay Arthurs

- I live on Bohlman road, and received no notice, but County has no trouble finding us for taxation.
- The Supervisors won't get an adequate report from you, Mr. Shoe. It will probably be along the lines of "We heard community and property owner complaints. The County has the ability to add regulations, and nothing they can do will stop us. Proceed with the study and consider new regulations."
- I've been looking at the Constitution, particularly the 14<sup>th</sup> amendment. It affords equal protection under the law, but this is discriminatory against hillside property owners.
- Will similar zoning apply to valley unincorporated areas?
- We bought our properties, and they don't belong to the valley floor owners.
- Resale values should not be poisoned by your rezonings.
- You are stealing the value of our property without due process.
- We know the ultimate goal is to make our properties worthless, to have pristine hills and bulldoze our homes.

Jeff Weintraub

- Want to know who made it imperative for the Board as an issue?
- Who is the final arbiter of what is beauty in hillsides?
- I bought a piece of land with a little house of about 1,000 sq. ft. I submitted plans for design review, and now I'm afraid I won't be able to build.
- If property becomes valueless, I'll still have to pay the mortgage.
- My intent is to build a beautiful home, not destroy the hills, and I'll fight to the death to be able to do it.

Bill Tinsley

- The Supervisors have sent you staff here, in their stead, and it makes me upset.
- We as homeowners do a lot for the environment and society, without receiving much in the way of services.
- People overwhelmingly don't agree with the study or regulations. Please make sure the Board hears that statement.
- Take into account the law of unintended consequences. Make grading allowances easier to help reduce visual impact [???
- There should be no recording of permits or deed restrictions. It's just a way for neighbors to sue neighbors, and Midpeninsula Open Space will sue us all to devalue our property.
- We want a written guarantee for rebuilding what we have.

Bill Betchart

- Study and plans are an overreaction to a few sore thumbs, bad examples of development.
- It's been blown out of proportion by the Board of Supervisors, and it's a waste of tax dollars, staff time, and our time.
- The Viewshed, like the Initiative, is driven by paid lobbyists for environmental groups.
- I'm extremely disappointed that Supervisors are so easily influenced by them. I'm disappointed in my district Supervisor, and I feel she has abandoned us and

doesn't care about our issues or concerns. She is only concerned that she doesn't cross a line of causing a taking, and won't ever get my vote again.

- The "dl" ordinance and regulations are plenty, and we don't need more standards. It's alright to relax the rules for small projects and exemptions, but don't apply more regulations to small to moderate buildings that are a long way away from the valley.

Peter Mullen

- I escaped from a communist country, and I'm grateful to be in America, the greatest country on earth.
- However, our politicians and bureaucrats act too much like those in my old country. This is just plain tyranny.
- Should make such regulations apply countywide or not at all.
- There are beautiful houses in the hills, and they look nice from near or far. It's the dense housing in cities that is an eyesore, and most of the valley is ugly.
- The goal is to devalue land to buy it for open space or redevelop it by greedy developers with high density.
- Buy it for fair market value if you want it.
- Can you and the supervisors spell "r-e-c-a-l-l-?"

Doug Boales

- I worked in agriculture, and we built our own houses. We wanted to live in the hills, sold everything to do so, and built on a vacant property. Now we have been through it all, and obtained all needed permits.
- The permit fees for my driveway alone were \$42,000. We put in our own well and septic system. The inspector for that road didn't do much for the money. Drove it twice. It took two years in the permit process.
- I want our kids to live there and build another home and have the lifestyle we want for the hillsides.
- Why make it more and more restrictive? Who's driving these issues? We abide by the rules and permits, but who is driving these issues?

Nancy Carlson

- I find myself in the position of being an environmentalist fighting environmentalists. What is the rush with the process?
- In 2000 we chose to keep our property when we could have sold it for development for a lot of money.
- The only change for the worse in the hills are mountain bikers who have no regard for property or others, who ride in open space preserves recklessly and carelessly for others. These people are not stewards of the land, but it's these "so-called" environmentalists who want these regulations.
- They want to control views from local roads and parks. Where will it end?

Clarence Stone

- Staff here are just the messengers, who have been given a certain job to do. But we all need to get more involved.
- As to acquiescing, yes, we are probably going to have to give up something, but we need to protect our rights, keep the zoning the way it is, but I fear we won't prevail.

- We need your financial assistance. We hillside property owners are a disenfranchised minority, and we only have the Board of Supervisors as our elected officials.
- These measures are driven by environmentalists and we need votes on the Board of Supervisors. The only way to get these pushed back is to be active.
- There is the Initiative by PLAN, People for Land and Nature. It will have much worse impacts than the Viewshed Study. The website is Openspace2006.org to find out what they want to do with your property.

#### Rick Moncreif

- I've been to the two other meetings. I'd just like to add to those comments a story about my son. He was in school and was asked what's wrong with the houses in the hills? His friend lives in a condo in the valley. That friend sees the hills as many of us did years ago, as a place of refuge, sanctuary, and yes a place to live.

#### Hans Johsens

- These meetings should be in our neighborhoods.
- The Viewshed is an absurd idea. We all live in someone's view. I dislike the valley lights at night, and I'm entitled to that point of view.
- We have 1500 feet of house on a 20 acre property, and it's just a speck on the hillsides.
- Valley homes are allowed to cover a much greater percentage of their property and I should have the same right.
- Styles, colors, architecture, the Marin Civic Center is by Frank Lloyd Wright, and it's on a ridgeline and very distinctive. I don't care for it, but it's my opinion only.
- Taxes, I spend more time and money on maintenance of a public road than the County does, as do many, but all I get is the thanks of my neighbors.
- Had occasion to call the Sheriff about speeding motorcycles. I told a speeder to slow down, but he came back and personally threatened me. Sheriff never showed up.
- I waited once 45 minutes for a sheriff deputy to respond to a burglar alarm at our school, Lakeside. I don't call that service. It's not the deputy's fault. I blame the Board of Supervisors.
- I am against all additional regulations. It's unconstitutional.

#### Allan Baumgartner

- Color of hills changes as we know. Why do all your pictures show green hills, when for most of the year they are brown to golden? Cattle grazing caused the brown hills vegetation.
- Fire hazards. The environmentalists want the hills green and then they pose more of a fire hazard.
- In earthquakes, the hills are safe, but the valley lands are the danger zone.
- The quality control of your work is bad. I'm at 1,200 foot elevation, on your list, but my neighbors properties are more visible and not on your lists. This won't survive a court challenge.
- Moral integrity. I want responsible government, but I have lost respect for government.

- Illegal building is rampant and becoming the standard. 80% of real estate disclosures indicate some manner of illegal building. Inviting more illegal building the more restrictions we have to work with.

Speaker from Audience:

Our president says he gets lots of reports, but that he doesn't read them. How will we know that the Board of Supervisors actually reads or pays attention to our comments and concerns?

Staff response: You must ask. Contact Board offices. Staff can only provide recordings and summaries, not make anyone read them.

Notes:

1. The summary of public speaker comments has been compiled from extensive staff notes and is not intended to serve as a full meeting transcript.
2. Additional comments may have been provided on speaker cards and on survey forms. Some were extensive. Comments made by means other than spoken testimony will be conveyed to the Board of Supervisors by a separate summary or other manner to be determined.

## **Viewshed Protection Planning Review of Responses to Survey Questionnaires**

### **Summary**

Staff provided a survey questionnaire to attendees at each of the three Viewshed Protection Plan community meetings held on March 23, March 28, and March 30, 2006. Responses to the survey questionnaire were generally consistent with the spoken comments made during those same meetings. The overall response to viewshed protection planning was negative. There were slightly more supportive responses in the written comments than in the spoken comments, but supportive responses were few.

### **Purpose**

This review summarizes the responses to the survey topics, the written comments supplied on the questionnaire to two open-ended questions, and written comments supplied on the speaker cards. The survey questionnaire responses were tabulated and are attached to this review. This review supplements the summary of spoken comments previously made available to the Board of Supervisors offices, posted on the Santa Clara County Planning Office website, and attached to this transmittal.

### **Survey Questionnaire Details**

The survey questionnaire elicited opinions on six policy topics, and asked two open-ended questions. Respondents had the option of stating an opinion of "Favor", "Disfavor", or "Neutral" to the eight policy topics listed on the survey. Topics 3a and 3b concerned options for ridgeline development policy, and 5a and 5b addressed the subject of house size limits from either a strict limit or through procedural concepts such as tiered review processes.

The results of the two open-ended survey questions are grouped by the category of concern expressed, as best as possible given the diversity of concerns and methods of expressing them. Some provided comments on a range of concerns, and each comment was counted separately, so the number of comments is greater than the number of survey respondents. Comments written on speaker cards were integrated in with the open-ended survey question responses.

Some attendees may have filled out surveys at more than one meeting. Others altered the questions or topic statements. This review does not control for those factors.

### **Analysis of Policy Topic Opinions**

The survey topics were based on policy and regulatory considerations presented to date. It was intended to provide attendees with an additional means of providing specific input than just by way of public testimony. The overall results of the surveys are shown in the attached spreadsheets. Overall, topics 2, 3b, 5b, and 6 together received an average of 33% favorable responses. These topics presented options less restrictive than the alternatives. The single topic receiving the most favorable responses was #6, "Exemptions from the design review process for development on portions of lots clearly not visible from the valley floor", with 54% of the responses being favorable. The four most restrictive-sounding policies received only 8% favorable responses. These were 1, 3a, 4, and 5a.

These overall results would be even more unfavorable if they were adjusted to account for edits made by respondents to the policy topics as part of their response. However, the variety of edits and changes to the survey topics was so diverse, it would be impossible to account for all the variability.

Some commenters noted that the policy topics were referring to what kind of features a viewshed protection plan should or should not include, rather than on whether there should be a viewshed protection plan at all. Some of these commenters rejected the premise of the policy topics entirely, declining to give opinions on them in order to not lend validity to the premise.

#### **Analysis of Responses to Open-Ended Questions**

Overall, those providing responses to the two open-ended questions on the survey were more concerned about the principles behind the viewshed protection plan study than they were about the plan and study itself. The overwhelming majority of comments centered on whether the County could or should be making such rules at all, and the fairness of such a plan, rather than the technical details of scope and implementation. This focus of concern was consistent across all three meetings, and was also consistent with the spoken comments. Of the 215 surveys submitted, 161 had comments, and only 10 (6%) of those surveys' comments tended to be supportive or at least constructively critical.

About two-thirds of the comments mentioned specific issues such as property rights, transfers of wealth, reductions and transfers of property values, equal treatment, and the undesirability of any additional regulations. The concerns were mostly about whether the County had the right to impose this degree of development restrictions, whether the County should do so even if it could, and whether the restrictions created a balance of burden and benefit unfairly distributed between hillside property owners and valley floor property owners. Some commenters directly questioned the political values embodied in the viewshed protection plan proposal, with various aspects of the proposal being described as un-American and unconstitutional.

The second most prevalent set of comments were about specifics of the proposed plan, recommending elements to include or exclude, and pointing out areas where extra information or research might be appropriate. Approximately 15% of comments were about details of a viewshed protection plan.

The third most prevalent set of comments had to do with process and transparency. Many commenters asked where the idea for a viewshed protection plan had come from, and many others were disappointed with the amount of notification about the community meetings. Approximately 10% of the comments were about the process by which the viewshed protection plan became an issue, and how it was brought to the public's attention.

The single most common comment category was the category "There is no problem for these rules to solve". This category included comments such as "If it is not broken, don't fix it", "What problem are these rules trying to solve?", and "The existing regulations are adequate". Almost 10% of all comments were of this nature.

Responses to Survey Questionnaire  
Santa Clara County Viewshed Protection Planning Community Meetings  
Summary of All Meetings

Policy Topic Opinions		Favor	Disfavor	Neutral	No Response	% Favor	% Disfavor
Please provide us with your opinion on the following:							
1	The use of design review zoning (-d) as a means of applying certain standards and guidelines for case-by-case review of new development in affected viewshed areas.	19	178	11	7	9%	83%
2	Proposed exemptions from the design review process for moderate sized homes (perhaps those no larger than 4,500 square feet) that meet other set criteria for color and massing? This "tiered" review approach would allow more focus on larger more visible homes.	68	119	11	17	32%	55%
3a	Policies that generally prohibit location of homes on the ridge line, unless there is no other possible location.	7	194	10	4	3%	90%
3b	Policies that allow ridge line development with mitigations and standards for reduced visual impact.	59	127	13	16	27%	59%
4	Exterior lighting controls to reduce off-site impacts of night lighting.	28	170	9	8	13%	79%
5a	House size limits in the affected viewshed areas.	16	184	7	8	7%	86%
5b	Tiered review process or other incentives to address size and mass of buildings, without absolute limits.	38	150	13	14	18%	70%
6	Exemptions from the design review process for development on portions of lots clearly not visible from the valley floor.	117	76	9	13	54%	35%
Total number of respondents: 215							

% Favorable Responses, Questionnaire  
Least Restrictive Questions (2, 3b, 5b, 6)  
Most Restrictive Questions (1, 3a, 4, 5a)

% Favorable  
33%  
8%

**Summary of Responses to Open-Ended Questions**

**Summary Statistics**

Total Surveys Returned	215
Total Surveys with Comments	161
Surveys with either Supportive or Constructively Critical Comments	10
Total Comments	362
Percent Comments Referencing Impact of Government	65.5%
Most Referenced Comment Category: "No problem to solve with these rules".	34
Most Referenced Concern: "Role of Government".	75



Responses to Survey Questionnaire  
Santa Clara County Viewshed Protection Planning Community Meetings  
Summary of All Meetings

Responses to Open-Ended Questions		Total for Comment Category	Total for Type of Concern	Percent Type of Concern
Type of Concern	Specific Comment Category			
<b>Property Rights</b>			45	12.4%
	Regulations violate property rights	25		
	Owners are already sufficiently good stewards of the hillside land / provide open space thereby	5		
	Safety aside, only owners should be able to decide what to build, not neighbors or general public	13		
	Limitation of rights to develop	2		
<b>Takings</b>			39	10.8%
	Regulations affect Investments, Savings In house, value of house	26		
	Not allowing rebuilding is an illegal taking	7		
	No rule changes or value transfers / must compensate	6		
<b>View Rights</b>			37	10.2%
	No right to (a view/restrict development) unless you buy it	9		
	New homes nearby impose upon existing homes views	3		
	What about view of valley from hillside homes	25		
<b>Role of Government</b>			75	20.7%
	Against any new regulations, ordinances, rezoning, deed restrictions	16		
	Undesireable expansion of Government / where is limit?	12		
	No problem to solve by these rules (existing rules are adequate, or too restrictive, or current hillside developments are reasonable)	34		
	Government attempt to restrict development / other Gov't motives	6		
	Don't trust Gov't	7		
<b>Representation and Equal Treatment</b>			41	11.3%
	Incorporated areas v. unincorporated areas	2		
	Valley Residents v. Hill Residents	16		
	Should not be any more restrictions than for other citizens and owners and jurisdictions	8		
	Arbitrary and subjective (definition of beauty)	15		



Responses to Survey Questionnaire  
Santa Clara County Viewshed Protection Planning Community Meetings  
Summary of All Meetings

		5	1.4%
<u>Legality</u>		4	
	Define underlying legal authority for implementation	1	
	Viewshed is a planning concept, not a legal right		
		31	8.6%
<u>Transparency</u>		7	
	More notice of meetings, open staff meetings	14	
	Background info on how this issue came forward	2	
	Better meeting facilities	1	
	This meeting was held just so that residents could vent	5	
	Supervisors should attend these meetings / not impose these restrictions	2	
	Staff arrogant / incompetent		
		9	2.5%
<u>Cost</u>		3	
	Do comprehensive Cost Benefit Analysis	4	
	Who will pay for cost of implementation / compliance / fees	1	
	Maintenance costs imposed by new development	1	
	Impact on value in other communities		
		10	2.8%
<u>Information</u>		1	
	Need more study and input	2	
	Better parcel mapping of those affected	3	
	Clarify ridgetop, landscape, fire protection issues	1	
	Redo / get neutral party to do valuation analysis	2	
	Questionnaire skewed and biased	1	
	Relationship to watershed program		
		7	1.9%
<u>Enforcement</u>		3	
	What about existing unpermitted / noncompliant work	1	
	Cost of Enforcement	2	
	Retroactive enforcement / Grandfathering	1	
	Need reasonable safeguards on how rules are applied		

Responses to Survey Questionnaire  
Santa Clara County Viewshed Protection Planning Community Meetings  
Summary of All Meetings

<b>Scope</b>		<b>47</b>	<b>13.0%</b>
Not Decks and patios: they reduce lawn and water use	2		
Focus only on most obvious lots.	2		
Put limit on how far back from valley floor rule apply	2		
Size, Color (seasonal?),	14		
Grading & retaining walls & fences	2		
Landscaping	4		
Density / lot size (both more and less)	6		
Lights (both valley and hills)	1		
Skyline v. ridgeline	2		
Money better spent on roads / parks	2		
Hills are for homes, valleys are for Ag / Hillside development can be beautiful	5		
Height limits (restricts design options)	2		
Secondary Units and Agricultural Accessory Structures	1		
Design Review	1		
Pools	1		
<b>Permit Process</b>		<b>11</b>	<b>3.0%</b>
Appeals process	1		
Current rules too cumbersome and restrictive	10		
<b>Specific Issues</b>		<b>5</b>	<b>1.4%</b>
Neighboring property / access and trespass	2		
Park development	1		
Visual impact of the "Taj Mahal" Mosque In San Jose	1		
A landfill near 101 has highly visible white tarp--worse than a big house.	1		
<b>Totals</b>	<b>362</b>	<b>362</b>	<b>100%</b>

(b) Consistent with other provisions of this Plan, the County may increase the maximum floor area by up to 40,000 square feet, in aggregate, for agricultural employee housing and for nonresidential buildings essential for permitted agricultural services, supply or manufacture, animal facilities, mining, waste management, camps, museums, and outdoor recreation auxiliary uses. The County may increase the maximum as necessary for permitted agricultural processing, packaging, storage and use, and for government and public utility buildings.

#### Section 16. Visual Safeguards

(a) New or reconfigured parcels shall be formed to minimize the visibility of development from public places. Unless there is no other possible configuration, parcels may not be created or reconfigured so that they have no site for each permissible building other than a ridgeline or hilltop, as perceived from public places.

(b) Development and alteration of land surface shall be subordinate to and blend harmoniously with surrounding natural and open space qualities. Unless there is no less visible site on a parcel, buildings may not be located on ridgelines or hilltops or where they will project into an upward or horizontal view of a ridgeline or hilltop, as seen from public roads or parks, or on slopes of 30% or more (measured according to their natural unaltered state). Structures generally shall be carefully sited, including by setbacks, to minimize their visibility from public roads and parks, to the extent reasonably practicable and not definitely inconsistent with other existing policies of this Plan. Subject to the same limits, preservation of native vegetation, landscaping, building materials and design, including height, mass and color, shall minimize the visibility of development and surface alteration from public roads and parks.

Exterior lighting, including roadway lighting, shall be designed and placed, if possible, to confine direct rays to the parcel or roadway where the lighting is located and to protect the darkness of the night sky. Signs may not be more numerous, larger or more noticeable than is essential to provide directions and information about permissible uses in the designated Area or adjacent areas, and for political campaigns, and shall accord with Scenic Roads and Highways policies. To the extent reasonably practicable, consistent with other policies of this Plan, roads and driveways shall be located and designed so that they minimize adverse visual impact as seen from public roads and parks.

(c) Visibility of development and surface alterations from public places, parks and roads shall be determined from a reasonable, representative sample of vantage points in those public places and parks and along those roads that will accomplish the objectives of this Section.

#### Section 17. Definitions

For purposes of the Initiative, unless the text or context indicates a different meaning:

"Appreciably" means measurable or perceivable, and not minor;

"Building" is any structure with a roof having a floor area of 120 square feet or more, except greenhouses and tanks;

## **Position Paper**

### **Santa Clara County Hillside Association**

The Santa Clara County Hillside Association board has been involved with the county planning department as they prepare a land use ordinance proposal for the county board of supervisors. The following key areas of concern that could adversely impact private property values in the hillsides. This information is for property owners who attend public meetings or otherwise express their concerns to elected officials.

#### **Summary of key positions:**

- A) Scope of "Viewshed"** as defined by the planning department and the ordinance must be limited to parcels visible from urban areas on the valley floor.
- B) Structure placement and size** must not be restricted if visibility from the valley floor is reasonably mitigated. Remodel and replacement of like or better structures at same building site without burdens of a new ordinance must be allowed.
- C) Enforcement of ordinance provisions** must be the burden of the county and not property owners. Recorded title restrictions shall not be used.

#### **Details of each position:**

##### **A) Scope of "Viewshed"**

SCC Hillside Association's position is the scope of Viewshed should be a View from the Valley Floor Only – The scope of the present planning staff effort should be limited to visibility of hillside homes and buildings from within two miles of the valley floor. It must not include hillside visibility from road corridors or public areas. Nor must it include placement and permitting issues that are particularly related to the opinions of neighbors. Not-visible Sites – Any site that is not visible from the valley floor should be exempt from all viewshed provisions.

The county is considering the concept of multiple levels of "Viewshed" along with reducing restrictions on lower tiers in exchange for more scrutiny on more visible tiers. Distance from the valley floor must be recognized as an extremely important factor in lessening visibility impacts and resulting in less intensive review and less need for mitigation.

The SCC Hillside Association believes that special interest groups want NO development whatsoever in the hillsides – or anywhere else for that matter. There is a "no development" ballot initiative circulating in the county and is a perfect example of that fact and their clear intentions.

Nonetheless, the hillsides have been protected because property owners have protected them (unlike the valley floor) and now hillside property owners are being punished for our good deeds. Worse yet, our Viewshed from the hills to the valley floor is a horrible mass of visible development during the day and reflective lights at night. It is ironic that what hillside property owners will never have again, is what the

valley floor residents want—an undeveloped view. We doubt it is really the valley floor residents pushing for this ordinance instead of special interests. The scope of the ordinance must remain Viewshed as seen from the valley floor. Some special interests would like to expand the concept of "Viewshed" to "any View" but that was not the direction mandated by the County Board so we expect the planning department should hold firm on this position.

## **B) Structure placement and size**

SCC Hillside Association supports placement of a proposed structure such that the owner has full discretion within applicable setback requirements. The County is not to have any authority to dictate choice of site based on viewshed; only the authority to require appropriate visual mitigation. Some sites on a parcel may require less mitigation than others.

SCC Hillside Association supports reducing restrictions on lower tier visibility parcels in exchange for more County scrutiny on more visible parcels. For example, returning maximum house height to 35 feet and allowing for more below grade grading could greatly help and provide incentive for owners to build homes which minimize visibility yet are architecturally attractive.

SCC Hillside Association supports reducing restrictions in non-visible tiers (parcels outside the viewshed) such as no sight approvals for non-visible houses, increasing house height maximums, below grade construction, and other incentives in exchange for more restrictions in more visible tiers.

The SCC Hillside Association also supports a pre application and consulting review by County Planning Staff. If property owners know what the ground rules are and those ground rules are clearly defined, it can only serve to facilitate the process allowing property owners to get a predictable response to permit requests.

The SCC Hillside Association opposes limiting house size. House height and size (within reason) are never indicators of visibility from the valley floor. If there's ample thought to mitigating visibility factors such as wall plane heights, stepping, texturing, landscaping, paint color and grading, the visibility can be reduced sufficiently. There have been so few large homes built in the County that it is hardly worth requesting such a restriction. House size – square feet of enclosed floor area – is not, by itself, a viewshed issue. People on the valley floor cannot see floor area. The only relevance of floor area is as a very gross approximation of structure size (bulk or mass). As such, it may be convenient in setting the threshold between tiers for various intensities of review. However, it should not be used to regulate or judge visibility; wall plane area is much more relevant.

**Building Height** – The present restriction on building height (30 feet) can be self-defeating and lead to unattractive designs. Staff suggested returning to the 35-foot height limit and concentrating on breaking up wall plane areas to lessen visibility impacts. SCC Hillside Association supports increasing the house height limit as a sensible approach, as long as the wall plane guidelines stay reasonable.

SCC Hillside Association supports story limits of two stories above grade and a

basement; even if the basement daylights on the down-slope side of the structure. There should be flexibility to allow more floor levels as part of a stair-stepped, conform-to-the-slope and break-up-wall-planes design strategy.

The SCC Hillside Association opposes a total prohibition on any ridge line development and any restriction by itself which is simply a disguise to prevent someone from building, or re-building, their home on their property. Ridge-line structures that are designed with sensitivity to visual impacts from the valley floor should definitely be allowed, even encouraged. Ridge lines and spurs are often the only sensible, safe place to put a structure. They can have less visual impact than hillside sites for two reasons: If a building is set back from the shoulder of the hill, this decreases its visibility from the valley floor due to screening by the shoulder and vegetation located in this setback area. Also, the overall vertical dimension of the structure can be less since it is not spread out up and down the hill. Second and subsequent ridges and hillsides are to be recognized as having less visibility impacts and deserving less intensive review and less need for mitigation.

**Grading** – The present County grading policy (minimize grading) can be and often is counterproductive. It needs to be reconsidered to provide the opportunity for more grading when appropriate. That could occur to better situate a driveway or house to the site, improve the value to the owners of the developed use (and the County's tax base), or lessen visual impacts (for example by partially setting the house or the garage into the hillside).

**Retaining Walls** – Retaining walls that are large and visible can often be avoided or mitigated through a screening, stepping, texturing, and coloring strategy. Careful design should be encouraged, recognizing that retaining walls can have advantages by reducing grading volumes, reducing visible cut and fill surface areas and preserving native vegetation.

**Light Reflectivity Value (LRV)** – Paint reflectivity requirements seem to be a more important consideration for sites with less natural vegetation for screening and get more direct sun during most of the day. Thus, they may deserve a requirement of less reflectivity than is applicable to other areas. As an example, in the -d1 area where the allowed paint reflectivity (LRV=60) has prevented visibility complaints and therefore was an appropriate reflectivity number.

**Vegetation for Screening** – Use of vegetation for screening should be encouraged for the flexibility of allowing site development that might otherwise have undesirable visual impacts. The County now has mechanisms in the permitting process for requiring a landscaping plan, designating landscaping features that are considered to be mitigation, and noting the obligation of property owners (present and future) to implement, keep, care for, and replace (if necessary) these special items. No more regulation is needed or deed restrictions for enforcement.

**Electric Lighting** – Interior lighting should not be included any ordinance. A sensitive, common-sense approach to exterior lighting (in the form of guidelines) can accomplish everything that is needed. The most important thing is to install the lights so that the bulbs are not visible from the valley floor. This can be achieved by careful placement of the lights, using low wattage bulbs, and/or by screening the bulbs from

valley view. With this approach, any rejection or prohibition of exterior lights (e.g., for tennis courts) should be unnecessary.

### **C) Enforcement of Ordinance Provisions**

Deed restrictions put on title were proposed as a way for private property owners to enforce other property owners to comply with zoning provisions such as maintaining landscaping intended to reduce visibility of structures. The SCC Hillside Association strongly opposes deed restrictions as a mechanism to enforce zoning ordinance provisions and believes having more restrictions on titles would not solve enforcement problems. Deed restrictions cloud the title and, more importantly, can be used as mechanism for neighbors to sue each other or even environmental groups suing property owners over deed restrictions. The issue is simply enforcement by the County of existing regulations. Creating a situation for the environmental community to sue property owners over deed restrictions would be disastrous for everybody, including the County. The environmental community (POST, Mid Pen, etc.) have a well known history of suing their neighbors and so they have an interest in deed restrictions.

The SCC Hillside Association opposes the use of story poles to indicate visual impact of structures in the hillsides. First of all, they are an extremely unnecessary expense and can not be seen from the valley floor. They were also proposed in -d1 and were removed as an option. Since -d1, there has not been any problems in the West Hillsides regarding proposed building sites because -d1 mandated notice to adjoining property owners. Interested property owners, after notice, could inspect the plans at the County and attend site approval meetings. That process has worked well and story poles are simply unnecessary and too expensive so the SCC Hillside Association opposes them and supports notice to adjacent property owners. If the purpose of story poles is more local (for neighbors), it is beyond the scope of the viewshed report and should not be included within any proposed ordinance.

Computer-Based, Visual Simulation – The SCC Hillside Association opposes computer-based visual simulation for assessing visibility from the valley floor to a hillside parcel. It is simply too easy to play games (e.g., by using a wide angle or telephoto representation, depending on the result you want to portray). Accurately portraying the effect of distance is absolutely vital to visibility assessment. The design and permitting process is difficult and expensive enough without including biased and misleading information.

# What to Expect at Public Government Meetings

## **Agenda:**

Have a copy of the agenda to follow along. Sometimes agenda topics have fixed start times. You may exit and enter the room quietly during the meeting. The agenda is posted on our website.

## **What you should and should not do:**

Do Listen carefully and take notes on subjects you are concerned about and/or what to learn more about. This will help us prepare for future meetings with the planning department when public input is scheduled.

Don't do anything to anger or insult the Board of Supervisors such as clapping, booing, hissing, shouting, etc.

Don't offer conspiracy theories such as the Board siding with others or that the Board is out to get the property owners without notifying them.

Do be as polite and professional as possible given the emotional nature of the topic.

Don't center your arguments around property rights issues—not an effective approach with the Board. Focus on issues and information that should be considered as part of the process.

Do talk about how the proposed zoning ordinance will affect you personally.

Don't try to threaten the Board with expensive litigation or a drive to end their political careers—these are seasoned pros and they have survived many such attacks. It will only anger and alienate them and undermine our efforts.

## **Testifying:**

If you want to testify regarding an agenda topic fill out the form and stay in the room. The chairperson will call for you when testimony is being taken. Note the time limit. Try to give first hand information that is missing from staff reports that merits consideration as part of the process of considering an ordinance. You can see the staff reports for this meeting on our website.

When asked to speak, address the Board as: "Chairman Kniss and members of the Board of Supervisors" then give your full name. **Speak only for minutes allowed for testimony.**

**Santa Clara County Hillside Association  
P.O. Box 202  
Campbell, CA 95009**



## About the Santa Clara County Hillside Association

The Santa Clara County (SCC) Hillside Association members are private property owners who will be affected by any ordinance that changes building restrictions on hillsides. The objective of the association is to provide a means for the affected property owners to understand what the county is considering and influence the outcome for the benefit of hillside property owners, the environment and hillside neighborhoods.

The association was started by several hillside residents who have donated time and money to fund and notify the Santa Clara County private property owners in the hillsides who would be impacted by ordinances that could further restrict the use of their properties.

The SCC Hillside Association is a non-profit organization. However since we influence government agencies, politicians and policies donations to the SCC Hillside Association are NOT tax deductible. The SCC Hillside Association Can not guarantee the outcome of the ordinance process will satisfy all property owners.

The SCC Hillside Association is funded by donations from private property owners affected by proposed ordinances. The association board of directors are unpaid and volunteer their time to provide information and investigations of the land use details. The board raises money, collects and provides information on our website, hires experts to help understand and inform association members of the details of land use issues.

Association costs include mailings, website, consultants and evaluations of the technical language in the ordinance by engineering firms. Won't you consider helping the Association? Send your donation to:

**Santa Clara County Hillside Association  
P.O. Box 202  
Campbell, CA 95009**