

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: March 27, 2008

Approved

Paul Krutz →

Date

3/27/08

COUNCIL DISTRICT: # 5, 7, & 8
SNI AREA: K.O.N.A.,
EastValley/680, &
West Evergreen

**SUBJECT: RESCIND RESOLUTION NO. 71939 TO ADDRESS THE FILING OF
RESIDENTIAL APPLICATIONS IN THE EVERGREEN-EAST HILLS
DEVELOPMENT POLICY AREA**

RECOMMENDATION

Adopt a resolution to rescind Resolution No. 71939, which directed staff to discourage residential development applications in the Evergreen-East Hills Development Policy area.

OUTCOME

Residential developments of 35 units in size would no longer be discouraged from filing planning entitlement applications in the area east of Highway 101 and south of Story Road (known as the Evergreen-East Hills Development Policy area). The Evergreen-East Hills Development Policy is anticipated to be completed in the fall of 2008. In the meantime, staff would process any filed residential development applications for 35 units or less to the extent feasible without an adopted Policy. Any filed residential project that did not already have traffic allocation, would not be able to obtain environmental clearance, due to the constraints of the existing traffic policy, until after the Evergreen-East Hills Development Policy is complete and adopted by the City Council.

BACKGROUND

On January 27, 2004 the City Council approved Resolution No. 71939 (see attached), which discouraged residential development applications which did not have traffic allocation, in order for the City to work on the Evergreen Smart Growth Strategy (later renamed to the Evergreen-East Hills

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Vision Strategy), which included an update to the existing Evergreen Development Policy. The Evergreen Development Policy limits residential construction due to traffic constraints.

On May 15, 2007, the City Council decided to defer decision on conversion to residential development of the industrial properties (Berg, IDS, and Legacy) and directed Staff to update the Evergreen Development Policy with a much more limited level of development. This level of development was articulated by Council at its June 26, 2007 meeting with the following criteria:

- 1) Limiting residential development to a pool of 500 units;
- 2) Allowing only 35 residential units on any one property unless the development incorporates affordable housing, historic preservation, or mixed use components; and
- 3) Allowing 500,000 square feet of new commercial retail and 75,000 square feet of new office development.

Since the adoption of Resolution No. 71939, staff has been discouraging the filing of residential Projects in the Evergreen-East Hills area that do not conform to the existing Evergreen Development Policy; however, some applications have been filed (such as the Mirassou property).

In response to a memorandum dated March 10, 2008 from Vice Mayor Cortese, the Rules and Open Government Committee placed the rescission of Resolution No.71939 on the Council agenda of April 15, 2008.

ANALYSIS

The proposed rescission of Resolution No. 71939 would facilitate the filing of residential development applications for projects that do not conform to the existing Evergreen Development Policy. Given Council's direction in June 2007, these applications should be primarily small residential projects of 35 units in size or less. Upon filing, staff would begin initial review of these development proposals for conformance to the City's General Plan, Zoning Ordinance, and established design guidelines, but the staff will not be able to complete their review because the necessary environmental review and other staff analyses will not be possible until the Evergreen-East Hills Development Policy is finally adopted. Council consideration is expected in Fall 2008.

The pending Policy is needed to complete the processing of any pending application within the Evergreen-East Hills area. This is because the Policy, including the environmental report, would provide the analytical framework for the traffic analysis for individual proposals. In addition, the Council may adopt a Policy with allowance for projects larger than 35 units, if they meet mixed use, affordable housing, or historic preservation criteria. Once the Policy and its criteria are adopted, staff would be able to evaluate the pending applications for conformance with the new Policy. Therefore, these applications could proceed to hearing as soon as practically possible after the adoption of the Policy. No projects would be able to be heard by the Council at the same meeting as the Policy adoption.

EVALUATION AND FOLLOW-UP

The Evergreen-East Hills Development Policy Update is anticipated to be brought forward to City Council in the fall of 2008. If City Council rescinds Resolution No. 71939, staff will provide an Information Memorandum before the July recess describing all pending applications within the Policy area.

POLICY ALTERNATIVES

Alternative: Do not rescind Resolution No. 71939 and continue to discourage the filing of residential development which does not conform to the existing Evergreen Development Policy.

Pros: Until the Policy is updated, prospective applicants do not have certainty regarding the Policy's parameters beyond the direction provided in June 2007. Even if filed, application processing cannot be completed until the Policy update is adopted by the City Council.

Cons: Even though staff "discourages" applications, property owners and developers retain the ability to file.

Reason for not recommending: Staff is continuing to receive numerous inquiries about development opportunities in the Evergreen-East Hills area. Some developers and property owners are filing applications despite being "discouraged" by staff. The rescission of the Resolution could result in more applications being filed, which may provide useful data to the staff and Council in its deliberations regarding the Policy itself. Staff would caution, however, that applications that are filed would not be able to complete their processing until after the Policy update is adopted by Council

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This item does not meet any of the above criteria; however, staff is following Council Policy 6-30: Public Outreach Policy for the Evergreen-East Hills Policy update process. For example, staff conducted a community meeting on March 17, 2007 at the Hillview Library to receive feedback on the proposed policy criteria still in preparation.

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Staff will conduct a second community meeting to receive input on the EEHDP. The second community meeting will be conducted in late-June after the transportation analysis is complete, to present the draft policy, traffic analysis results, and proposed traffic impact fee. Staff will notify members of the community of these meetings through existing email lists. Staff will also post the community meeting information and received comments on the Evergreen-East Hills Development Policy link on the Planning, Building, and Code Enforcement webpage (www.sanjoseca.gov/planning/evergreen). There are no funds budgeted for media ads, however staff will outreach to community newspapers to provide information about upcoming community meetings.

FISCAL/POLICY ALIGNMENT

Rescinding of Resolution No. 71939 would facilitate the filing of residential applications prior to the completion of the Evergreen-East Hills Development Policy update. These residential development applications are expected to be guided by the criteria approved by the Council in June 2007. The applications will be evaluated against applicable General Plan policies, City ordinances, design guidelines, and Council Policies, including the Evergreen-East Hills Development Policy update.

COORDINATION

This project is being coordinated with the Department of Transportation and City Attorney's Office.

CEQA

The rescission of the Resolution is not a project under CEQA.


JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Laurel Prevetti at 408-535-7901.

RESOLUTION NO. 71939

**ADOPTION OF A RESOLUTION OF THE
CITY COUNCIL OF THE CITY OF SAN
JOSE CLARIFYING AND REAFFIRMING
THE EVERGREEN AREA DEVELOPMENT
POLICY AND DIRECTING STAFF TO
DISCOURAGE CERTAIN RESIDENTIAL
DEVELOPMENT APPLICATIONS UNTIL
COMPLETION OF THE EVERGREEN
SMART GROWTH STRATEGY**

WHEREAS, in 1976, the City Council of the City of San José adopted that certain "Evergreen Area Development Policy," which Policy was revised in 1995 to guide development in the Evergreen Area of the City; and

WHEREAS, in November of 2003, the City Council approved that certain Funding Agreement with Yerba Buena Opco, LLC under which certain developers in the Evergreen Area of the City agreed to provide funding to the City for that certain Evergreen Smart Growth Strategy, which endeavor entails a comprehensive, long range land use and transportation planning effort that would include the preparation of an update to the Evergreen Area Development Policy as well as related environmental analyses and documents, in order to further guide and direct development in the Evergreen Area of the City; and

WHEREAS, the City Council desires to provide direction to the City Administration pending City Council consideration of and action upon the Evergreen Smart Growth Strategy to continue to apply the Evergreen Area Development Policy and to discourage certain residential development applications and believes the provision of such direction furthers the public interest, health, safety and welfare.

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

SECTION 1. The City Council hereby reaffirms the "Evergreen Area Development Policy" of the City pending completion of that certain "Evergreen Smart Growth Strategy" currently underway and scheduled for completion and consideration by the City Council in June of 2005 and directs staff to continue to apply the "Evergreen Area Development Policy" in accordance with its terms during the period of time prior to completion of and consideration and action by the City Council on the Evergreen Smart Growth Strategy.

SECTION 2. The Administration, including without limitation the Departments of Planning, Building and Code Enforcement, the Department of Public Works and the Department of Transportation, are directed to discourage applicants from

submitting applications for or related to general plan amendments, rezonings, and other development permits or approvals (collectively referred to as "development applications" and individually referred to as a "development application") for real properties within the area being analyzed under the "Evergreen Smart Growth Strategy" when those proposals meet all of the following criteria:

- A. The development application relates to residential development on real property within the area of the Evergreen Smart Growth Strategy; and
- B. The development application requires or the applicant is requesting City action on the application prior to consideration by the City Council of the results and recommendations of the Evergreen Smart Growth Strategy; and
- C. The proposed development described in the development application contemplates or would require that additional residential unit allocations or residential unit density increases be provided or recognized in order to facilitate the proposed development.

The area being analyzed under the Evergreen Smart Growth Strategy is the area generally shown upon and outlined on that certain map attached hereto as Exhibit "A" and incorporated herein by this reference as though fully set forth herein.

SECTION 3. Notwithstanding the foregoing direction contained in SECTION 2 hereinabove, the Administration is further directed to process all complete development applications received in accordance with all applicable laws where the applicant refuses to defer or withdraw consideration of a development application until completion and consideration of and City Council action on the "Evergreen Smart Growth Strategy" currently scheduled for completion and City Council consideration in June 2005.

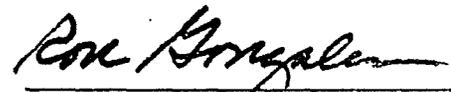
ADOPTED this 27th day of January, 2004, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO,
GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER;
GONZALES

NOES: NONE

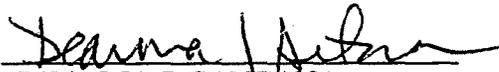
ABSENT: NONE

DISQUALIFIED: NONE



RON GONZALES
Mayor

ATTEST:



DEANNA J. SANTANA
City Clerk

EXHIBIT A



EVERGREEN SMART GROWTH STRATEGY
Study Area