

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel and
Larry Lisenbee

**SUBJECT: EVERGREEN-EAST HILLS
DEVELOPMENT POLICY
APPROPRIATION AND STATUS
REPORT**

DATE: September 24, 2007

Approved Paul Krut Date 10/3/07

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

RECOMMENDATION

Staff recommends that the City Council take the following actions:

1. Adopt the following Appropriation Ordinance amendments in the General Fund:
 - a. Establish a city-wide appropriation to Planning, Building and Code Enforcement for the Evergreen-East Hills Development Policy Update in the amount of \$150,000.
 - b. Decrease the Contingency Reserve by \$150,000.
2. Accept the status report attached hereto as Attachment 1.

OUTCOME

If City Council approves the appropriation action, work can start on supplementing the environmental impact report that was certified in December 2006 and the traffic fee nexus study in furtherance of Council's June 2007 direction on this project. Staff expects the updated policy and traffic impact fee to be ready for City Council consideration by June 2008.

EXECUTIVE SUMMARY

The purpose of this memorandum is to request City Council to approve an appropriation action to pay for additional consultant work on transportation and environmental analyses necessary to complete the Evergreen-East Hills Development Policy update in the amount of \$150,000. Staff also requesting that Council accept the attached Status Report (Attachment 1).

BACKGROUND

On June 26, 2007, the City Council approved the criteria for the update of the traffic policy (known as a development policy) for the Evergreen-East Hills area. The Council approved the motion made by Vice Mayor Cortese to adopt the recommendation in his June 22, 2007 memo with amendments added by Mayor Reed and Councilmember Liccardo. Below summarizes the action taken by the City Council on the proposed Evergreen-East Hills Development Policy update and related items.

- **500 Residential Unit Pool**: The proposed Policy should create a 500 unit pool for development projects with no more than 35 residential units unless the development incorporates affordable housing, historic preservation, or mixed use components. The updated Policy should also include language that prohibits “clustering” and other attempts to transfer to exploit the allocation process while subdividing the existing parcels.
- **Development Triggers for More than 500 Residential Units**: Residential development beyond the 500 pool units should only be allowed in only one of two circumstances:
 1. The occurrence of 11,600 jobs on the planned campus industrial lands as contemplated in the Evergreen Specific Plan. Once the jobs are present; a maximum of 3,900 units would be “phased in relation to job creation.”
 2. A “bonafide” plan that accomplishes the requirements set forth in the Guiding Principles of the Evergreen-East Hills Vision Strategy (EEHVS), including funding for the entire Highway 101 corridor project and all other traffic infrastructure required within the policy area, and “fair share” funding of the items recommended in the EEHVS amenities list.
- **Other Proposed Policy Changes**: The Administration was directed to return with policy changes that encourage development of employment producing lands, quality commercial/retail opportunities in the Evergreen-East Hills area, and discourages new supermarkets of over 20,000 square feet in Southeast Evergreen.

ANALYSIS

Proposed Evergreen-East Hills Development Policy Update

Based on City Council's June 26, 2007 motion, Staff began work on additional environmental and policy analyses needed for the new Policy, but requires additional funding for necessary traffic and environmental consultant work (see Attachment 1 for detailed Status Report).

- Scope of the Policy Update: The proposed Evergreen-East Hills Development Policy (EEHDP) would enable 500,000 square feet of new commercial development, 75,000 square feet of new office development, and a pool of 500 residential units, which can be built anywhere in the EEHDP area. The non-residential development capacity is based on the certified Environmental Impact Report for the Evergreen-East Hills Vision Strategy. The updated Policy would also list criteria for affordable housing, mixed use, and historic preservation projects drawing from the 500 unit pool, which can build more than 35 units on a development site.
- Triggers for Additional Growth: The EEHDP update would also include two trigger options to increase the development capacity beyond those mentioned immediately above: (1) A practical and realistic (i.e., "bonafide") plan for financing transportation improvements and amenities identified in the EEHVS process, or (2) the occurrence of 11,600 jobs on properties zoned for campus industrial uses. Staff is investigating whether it is more appropriate at this time to phase residential development beyond the 500 pool units with job growth in excess of the 11,600 campus industrial jobs or to recommend another update to the area development policy to consider additional residential development at such a time that all 11,600 campus industrial jobs are in place.
- Unfunded Community Amenities: The community amenities priority list, which resulted from the EEHVS will be referenced in the Policy update, but cannot be funded through the "fair share" contributions of the 500 pool units and the commercial development that will be authorized by the proposed Policy update.

Jobs/Housing Triggers for Additional Development Beyond 500 Residential Unit Pool

City Council's motion on June 26th included items that are potentially conflicting. One item directed staff not to bring back amendments to an updated Evergreen-East Hills Development policy unless all the campus industrial jobs assumed in the Evergreen Specific Plan are in place. This implication is that residential development would be limited to the 500 unit pool unless all of the 11,600 jobs assumed from the campus industrial are realized.

Another item in the motion stated that the policy update was to include a jobs/housing trigger that would phase additional residential units with additional jobs, at a rate of 1 housing unit per 2 new jobs at a cap of 3,900 dwelling units. This item did not specify whether the timing of the additional dwelling units in excess of the 500 unit pool were to occur after all 11,600 campus industrial jobs were in place, assuming even further job creation in Evergreen or whether the additional units in excess of the 500 unit pool, were to be phased with partial job growth of the

11,600 campus industrial jobs themselves. Staff has interpreted the motion literally and assumes that no additional development beyond the 500 pool units is to occur unless a practical and realistic (i.e., “bonafide”) plan is prepared or the entire 11,600 jobs assumed in the Evergreen Specific Plan are in place. After additional traffic analysis is completed to analyze the 500 pool units, Staff may also recommend, in lieu of phasing more housing with jobs in excess of the 11,600 campus industrial jobs, that a subsequent update be performed at such time that all the campus industrial jobs are in place in order to reassess the traffic circulation patterns in the development policy area.

Staff defines of “jobs” for the purposes of reaching the 11,600 jobs contemplated in the Evergreen Specific plan as industry driving jobs that are anticipated to be created from the campus industrial land. “Jobs” for this purpose will not be any employment resulting from any new commercial or office development in the Evergreen-East Hills area.

Environmental and Traffic Analyses

The June 26, 2007 City Council motion reflected a fundamental change in the proposed Policy update. It is likely that the smaller amount of development proposed through the Policy update cannot fund all the transportation improvements identified in the Evergreen-East Hills Vision Strategy, identified in Table 14 in the Final EIR (See Attachment 2).

- Scope of Environmental Work: A Supplemental EIR is proposed to be prepared because the traffic impacts evaluated with under the Evergreen-East Hills Vision Strategy EIR certified in December 2006 did not require substantial traffic mitigation due to the large package of transportation improvements that were proposed by the four Opportunity Site developers that were included in the project description as part of the base project.
- Data Gathering and Analysis: The environmental work will include: 1) determining the transportation level of service impacts from the 500 pool units, 500,000 square feet of commercial, and 75,000 square feet of office development , 2) identifying potential mitigation measures to reduce these impacts, 3) analyzing which mitigations are physically and financially feasible and are priorities, and 4) performing an updated nexus study to assess traffic impact fees on the 500 pool units, and what, if any, fee should be assessed on commercial and office development to pay for the determined improvements.

The identified cost of preparation of the updated environmental review, including the consulting work of traffic and environmental specialists, and an updated traffic nexus study is expected not to exceed \$150,000.

Public Engagement Approach

The following means of public participation are anticipated to be incorporated into the Policy update process:

- Staff will host a minimum of two community meetings to solicit input on the East Evergreen Hills Development Policy.

- The draft Policy will be brought to the Historic Landmarks Commission for review and comment on the portion of the Policy that allows projects including historic preservation to develop more than 35 residential units from the 500-unit pool.
- The Supplement to the Final EIR will include a 45-day review process. The draft Policy will also be presented to the Planning Commission for recommendation, as they must certify the Supplement to the Final EIR.

It is anticipated that the Policy update will be ready for City Council in June 2008, after the necessary outreach, policy work, and environmental review update is completed.

Other Proposed Policy Changes

Staff will bring forward General Plan Amendments to City Council in December 2007 to add policies that encourage employment producing land and quality retail in the Evergreen-East Hills area and discourage grocery stores over 20,000 square feet in Southeast Evergreen.

POLICY ALTERNATIVES

In addition to the staff recommendation, below is another alternative for City Council consideration.

Alternative: Do not approve the appropriation to fund work to complete the Evergreen-East Hills Development Policy update.

Implications: Work on the Evergreen-East Hills Development Policy update would stop. The existing Evergreen Development Policy would remain in place.

Reason for Not Recommending Alternative: Based on Council direction on June 26th, there is a community expectation that work will continue so that City Council will consider an updated Policy which would focus on allowing small developments and additional commercial development to move forward.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**

- Criterion 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 memorandum will be posted on the City's website to facilitate the public's ability to watch, attend and/or address the City Council at the meeting. Once this memorandum is made public, it will also be emailed to community members and interested parties. Staff intends to have a stakeholder meeting prior to the City Council meeting on October 16, 2007.

Outreach on the preparation of the EEHDP will follow Council Policy 6-30: Public Outreach. Interested members of the public can still be informed about the policy by visiting <http://www.sanjoseca.gov/planning/evergreen/>.

COORDINATION

This memorandum was coordinated with the City Attorney's Office, Department of Transportation, the Department of Parks, Recreation, and Neighborhood Services, and Department of Public Works.

FISCAL/POLICY ALIGNMENT

The Evergreen-East Hills Development Policy update aligns with the General Plan General Strategies. It is appropriate for the General Fund to pay for long-range planning work described in this memo.

BUDGET REFERENCE

The table below identifies the fund and appropriations proposed to fund the consultant work as described in this memo.

Fund #	Appn #	Appn. Name	Total Appn	Proposed Budget Page	Last Budget Action (Date, Ord. No.)
001	7901	Contingency Reserve	\$30,583,642**	IX-31	

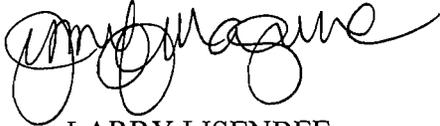
* The 2007-2008 Proposed Operating Budget was approved by City council on June 19, 2007.

** The Contingency Reserve amount has been adjusted to reflect city Council action that will take place on October 16, 2007.

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CEQA

Not Applicable



LARRY LISENBEE
Budget Director



JOSEPH HORWEDEL, DIRECTOR
Planning, Building, and Code Enforcement

For questions please contact Laurel Prevetti, Assistant Director, at (408) 535-7901

ATTACHMENT 1

EVERGREEN-EAST HILLS DEVELOPMENT POLICY STATUS REPORT

Based on the City Council's motion on the June 26, 2007, Staff began work on scoping additional environmental and policy analysis needed for the new area development policy.

Environmental Analysis

It is anticipated that the Supplement to the Final EIR would provide environmental clearance in regards to transportation impacts for additional development up to 500 pool units, 500,000 square feet of commercial and 75,000 square feet of office development in the Evergreen-East Hills Development Policy area. However projects may still be required to perform project-level environmental and operational traffic analysis.

Scenario VI in the Final EEHVS Environmental Impact Report analyzed and disclosed impacts associated with a project that would retain 320 acres of industrially designated land and up to 3,900 residential units, in addition to 575,000 square feet of retail and office.

Given that the Final EIR evaluated the majority of the proposed 3,900 residential units on specific opportunity sites, additional transportation analysis is needed to analyze the impacts that would result from distribution of the 500 residential pool units throughout the EEHDP area.

There is no voluntary "package" from property owners to fund various transportation and community amenities. As a result, new analysis should be done to determine what the "fair-share" contribution is from development for mitigating transportation impacts.

Assessment of Traffic Impact Fees on Commercial and Office Developments

An updated nexus study will be performed to determine the "fair share" contribution of residential, commercial, and office development to construct all the improvements in the policy area. Exemption of any traffic impact fee for commercial or office developments for these specific improvements can be an incentive to increase employment lands in the Evergreen-East Hills area, but the loss of fees from such an exemption would need to be supplemented with City funding and cannot be charged to the proposed residential development.

Incorporation of Guiding Principles into EEHDP

The Guiding Principles of the Evergreen-East Hills Vision Strategy are proposed to be included as evaluation criteria for any projects in the development policy area. Since the

voluntary funded amenities package as part of the Evergreen-East Hills Vision Strategy is no longer feasible, Staff may incorporate only those Guiding Principles, which can be expected of all development projects including, which takes into account legal nexus requirements for development and adherence to the City's Park Dedication Ordinance/ Parkland Impact Ordinance (PDO/PIO).

Exceptions to the Limit of 35 Units Within the 500 Residential Unit Pool

Staff is preparing parameters to evaluate development proposals that include affordable housing, historic preservation, or mixed-use components which would qualify for the development of more than 35 units from the 500 residential unit pool. Below includes Staff's approach to development of such criteria.

Affordable Housing Exception: Coordination with the Housing Department is expected to inform what the necessary income mix within a project and affordability guarantees need to be present to qualify for development of affordable housing projects that propose more than 35 residential units.

Historic Resource Exception: There is not sufficient data available to provide a comprehensive list of existing historic resources in the Evergreen-East Hills area given that there are only ten properties that are on the City's Historic Resources Inventory located within this area. The most significant known historic resources in the Evergreen-East Hills area include the Wehner Mansion, a City Landmark, and the Mirassou Winery, a listed Candidate Historic City Landmark. While creating an incentive for preservation, such as the ability to develop more than 35 residential units from the 500-unit pool, the development policy may include criteria to allow more than 35 residential units only if a development proposal is sensitive to the resource and provides protections of that resource. The policy may include requirements that projects involving existing or eligible historic resources meet the Secretary of Interior's Standards for the Treatment of Historic Properties, including but not limited to, preservation of the resource, sensitivity of development interfacing with the resource, successful continued use or adaptive re-use of the resource, and preservation of adequate context and setting, such as landscaping, that contribute to the significance of the resource. Consultation with the Historic Landmarks Commission may inform additional criteria as it relates to parameters for allowing more than 35 residential units on sites with historic resources.

Mixed Use Development Exception: Mixed-use developments proposing to construct more than 35 units from the 500-unit pool should provide retail and office opportunities near residences, and the design of the retail and office components should have sufficient size, street visibility, and access to support their long-term viability. Mixed-use developments should be compatible with the existing neighborhood character and scale of development. Staff expects to include in the area development policy update design criteria taken from the

City's existing design guidelines and from research on already built mixed-use projects with successful ground floor retail/office spaces.

"Bonafide" Plan for Additional Development Beyond 500 Residential Unit Pool

It is not appropriate at this time to prepare a realistic and practical (i.e., "bonafide") plan given the Council and community priority to facilitate commercial opportunities and small residential development. Such a plan as described in the June 26, 2007 Council motion is expected to meet the requirements of the guiding principles of the EEHVS, provide all funding for the entire 101-corridor project as well as all other traffic infrastructure requirements within the policy area, and provide "fair share" funding of the items recommended in the EEHVS amenities list. If a plan were presented to Staff in the future, adequate fees would be assessed to support Staff's work to evaluate such a plan. In order for the plan to be considered "bonafide," it is anticipated to that it would accomplish the listed criteria, should have a reasonable timeline, and have its funding guaranteed.

Unfunded Community Needs

The priority amenities list is proposed to be documented into the development policy in order to acknowledge these desired priorities and may be useful in determining future capital improvement budgets, including the use of PDO/PIO dollars.

Policies that Prohibit Clustering and Exploitation of the Development Policy Controls

The existing Evergreen Development Policy allows properties to develop up to the maximum number of traffic allocations assigned to that particular parcel. Since traffic allocation was assigned prior to an entitlement process for zoning on these properties, the number of allocations assigned to each parcel was a function of the size of the parcel and what the designation was for each parcel on the General Plan Land Use diagram. Therefore the number of allocations assigned any property did not take into account the particular geographic or ecological characteristics of the parcel. Also, allocations were limited only to those properties that participated in the traffic report study.

These and market factors created pressures to develop properties in Evergreen with more residences than was suitable for particular sites with substantial grading, riparian areas, or other environmental constraints. Exploitation of the current development policy in Evergreen has yielded sites where an area of a parcel is clustered with development, leaving large areas vacant in order to preserve an opportunity to develop if additional allocation to were ever given to the parcel at a later date or if the development policy were ever amended.

A benefit of the new Evergreen-East Hills Development Policy is that traffic allocation is not assumed to be assigned to parcels ahead of time, but rather traffic impact fees would be assessed based on the project's fair share contribution to the identified transportation improvements. However, pressures to piecemeal properties are expected to continue

given that there is expected to be a cap of 35 residential units for all projects that do not meet the affordable housing, historic preservation, and mixed use exceptions. In order to prevent piecemeal development on sites, the Evergreen-East Hills Development Policy may not allow a property to draw from the pool of 500 residential units if the potential to develop the property is greater than 35 residential units. Evaluation of whether more than 35 units could develop on the site may be based on the size of the parcel, project's conformance to the General Plan, the project's compatibility with existing neighborhoods, and its conformance to adopted Design Guidelines.

Policies that Encourage Development of Employment Lands

A revised framework for preservation of employment lands is anticipated to be presented to City Council in the near future and is be pertinent in the Evergreen East Hills Development Policy area it is applicable citywide. In addition, a new policy to encourage commercial and industrial development in the Evergreen-East Hills area is proposed to be added through a staff initiated text amendment to the existing City of San Jose General Plan 2020, which is anticipated to be brought before City Council in December 2007.

Further Evaluation of Additional Supermarkets in Southeast Evergreen

Staff expects to bring forth a General Plan Amendment in December 2007 which discourages the addition to supermarkets over 20,000 square feet in size in the Southeast Evergreen area in order to further support existing and planned retail opportunities in planned residential communities.