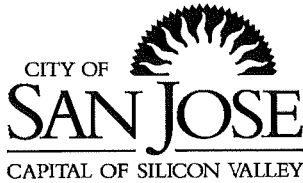


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City Manager's Office

SENT TO COUNCIL:



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

**SUBJECT: PROPOSED COUNTY POLICIES
FOR ALLOWABLE LAND USES IN
UNINCORPORATED LANDS**

DATE: November 1, 2010

Approved

Date

11/2/10

INFORMATION

On November 1, 2010, a letter was sent to Ms. Jody Hall Esser, Director of the Santa Clara County Department of Planning and Development, providing comments on several proposed County General Plan Amendments related to policies governing allowable land uses and densities of unincorporated lands within city Urban Service Areas (USAs). The letter was coordinated with the City Attorney's Office and expressed concern that the proposed Amendments would:

- Conflict with San Jose's existing City-County settlement Agreement and potentially change the City's obligation to consider large pocket annexations in accordance with the Agreement;
- Negate a Countywide policy framework in place for over 30 years;
- Result in less comprehensive land use planning and allow "spot zoning" for County pockets;
- Promote development in County pockets inconsistent with city General Plans; and
- Require extensive funding and staff resources to develop alternate land use plans for County pockets and review of lands within USAs which are not the City's current planning priority.

As requested by the County Planning Department, the letter also provides a status report on the City's progress toward annexation of County islands of 150 acres or less in size.

A copy of the letter is attached for your information. Planning staff, in coordination with other City Departments and the City Attorney's office also, will continue the dialogue with Santa Clara County Planning as these General Plan Amendments move forward through the process.

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Attachment: Comment Letter

For additional information, please contact Assistant Director, Laurel Prevetti at (408) 535-7901.

November 1, 2010

Ms. Jody Hall Esser, Director
Department of Planning and Development
County Government Center, East Wing, 7th Floor
70 West Hedding Street
San Jose, CA 95110-1705

RE: Proposed Santa Clara County General Plan Amendment Related to Policies Governing Allowable Land Uses and Densities of Unincorporated Lands within the City Urban Service Areas, and Status of Urban Unincorporated Islands within San Jose.

Dear Ms. Esser:

This letter is to provide you with the City of San Jose's initial comments on the proposed changes to Santa Clara County policies governing allowable land uses and densities of unincorporated lands within the City's Urban Service Area (USA) as described in your letter of January 19, 2010 (with attachments) and my staff's subsequent meeting with Bill Shoe of your staff on February 10, 2010.

The City of San Jose is concerned about Santa Clara County's proposed policy amendments, specifically because the City believes they would:

- Negate a Countywide policy framework in place for over 30 years, memorialized in Council and Board-approved agreements, approved by the Local Agency Formation Commission (LAFCO) and all cities within Santa Clara County;
- Result in less comprehensive land use planning for island areas within cities' USAs;
- Result in spot general plan designations and zoning;
- Promote development that is not consistent with city general plans, which is a significant disincentive to future island annexation efforts;
- Require extensive funding and staff resources for an alternate proposal for joint County-City development of specific island annexation area plans, or review of lands within City USAs, which are not the current planning priority given existing financial and other constraints;
- Conflict with San Jose's existing City-County settlement agreement which requires that the County use the City's General Plan for pockets in San Jose, and which the City is authorized to enforce; and
- Would relieve the City of San Jose of its consideration of the remaining large pocket annexations in accordance with the City-County Settlement Agreement because it would effectively change material terms, assumptions, and expectations upon which the City-County settlement agreement was negotiated and executed.

The City's concerns are addressed more fully below. The City of San Jose generally agrees with the concerns regarding the proposal as identified in the County Planning Director's report to the Housing, Land Use, Environment, and Transportation (HLUET) Committee, "Analysis of General Plan Policy U-LM7," dated May 21, 2009. The status of the City's efforts to annex urban unincorporated islands within San Jose is also provided.

Status of Urban Unincorporated Islands

The City of San Jose continues to support ultimate annexation of County lands within the City's USA. As highlighted in your letter, the City is proceeding in good faith with a multi-year plan for annexation of lands from unincorporated territory that is being implemented as agreed and scheduled per the Settlement Agreement between the City and the County. In the most recent efforts under the current State of California streamlined program for cities to complete annexation of unincorporated pockets of 150 acres or less in size, San Jose is now in Phase 3 of a multi-year program begun in 2006. Following the first two phases, and with more than half of Phase 3 work already completed, 896 acres of a programmed 1,358 acres have already been annexed, bringing more than 9,000 new residents into the City of San Jose, with a total of more than 16,600 residents expected by the end of 2010. The City is very concerned that future efforts to consider strategies for large pocket annexations (greater than 150 acres) would halt if the County were to adopt the proposed changes for the reasons that follow.

Comments on Proposed Amendments to Santa Clara County General Plan Policies

Incompatible land development

Currently, a central fundamental tenet of the County's General Plan and reflected in the City-County Agreement, is to ensure that development within "urban" unincorporated islands conforms with uses that the City's General Plan would allow, does not introduce incompatible land uses or development, and does not interfere with prospects for ultimate annexation by the City. Within the City of San Jose's Sphere of Influence, San Jose's General Plan designates the appropriate land use and development parameters for County lands located within the City's Urban Service Area and Urban Growth Boundary, providing guidance for County planners and owners of properties in these County pockets. The City's General Plan is a long range planning blueprint both for properties already within the City's Urban Service Area, and those properties in County pockets yet to be annexed, and the ultimate maximum level of development may not be planned to occur for several decades. However, all properties within San Jose's Urban Service Area are provided an interim land use in the General Plan that will not conflict with or impede the ultimate use of those lands as set forth in San Jose's General Plan. In some cases, achieving the maximum level of development anticipated by the Plan, and any resulting potential increase in land value, must await annexation and the advent of public infrastructure and/or services. This is critical to a natural growth pattern that avoids spot designation and zoning decisions with long-term negative impacts.

Ten-year timeframe for County General Plan amendments on County pockets

Because of the very long timeframes associated with natural buildout of any municipality, San Jose is concerned that one impetus for the current proposal for allowable land uses and densities on County lands slated for ultimate annexation appears to be that property owners in the County may not desire to wait for annexation of their properties to the appropriate municipality to achieve full development potential as currently required. The 10-year timeframe contemplated as the "trigger" in the proposal for allowing the County to step in and consider different General Plan designations than that of the current governing city is, in fact, a fairly short timeframe in the history of a city. As a strategy to drive cities to annex before the County could decide to allow development and/or uses not contemplated by or consistent with the City's General Plan, it is contradictory to past policy and practice. Progress in island annexation continues to be made in part because ensuring that new development conforms to a city's General Plan is key to encouraging cities to annex islands. Cities are understandably very reluctant to annex properties with non-conforming uses or structures due to code enforcement and infrastructure cost concerns. The burden would shift to cities to bear the consequences of bad planning and infrastructure decisions. Particularly, with regard to the relationship between the City of San Jose and the County, this proposal causes serious concern that it would cause a material change to the terms and expectations contained in the Settlement Agreement, which is discussed more fully below.

Other Policy Options

Two other options to the Policy amendment proposal are also briefly discussed. The first of these is to consider a program whereby joint area plans would be developed for certain County pockets by the County working together with the appropriate city, with the intent to create new County land use designations, policies or zoning districts, as needed. As acknowledged in the County Planning Director's staff report however, such a series of area plans would require considerable time, staff resources and funding to achieve a positive outcome that could be implemented. This process could potentially circumvent a city's ultimate plans for these areas as described in their respective General Plans. Given the current fiscal situation of the County and the majority of the cities in Santa Clara County, such area plans for county pockets would likely receive low priority.

In addition, the City concurs with this staff report that "the County has relied on these existing policies for many years with the approval and agreement of the cities and LAFCO. If the County were to abandon or significantly alter this basic set of overall strategies and policies, there could be major land use planning requirements, costs, and related repercussions." Such efforts would require evaluation under the California Environmental Quality Act (CEQA), as all of the affected cities are responsible agencies by law in evaluating the County's CEQA clearance, which would add time and cost.

A second option discussed is for the County to work with individual cities to review the location of each city's Urban Service Area (USA) to determine if retraction of the USA, generally

downhill, is warranted. This proposal has some merit in that it would clarify the status of the pocket areas relative to future urban development opportunities and eventual annexation to a city for property owners and the general public. This would be especially true if the County followed up promptly to apply the appropriate non-urban land use designation to those properties in the County's General Plan. Again, however, this case-by-case review and assessment of individual properties relative to the USA would be time and staff intensive, and would not likely be a priority in the current climate of reduced staffing in planning departments across the County. The City of San Jose, through its ongoing General Plan Update process to develop its Envision San Jose 2040 Plan, is proactively reviewing the locations of San Jose's USA and Urban Growth Boundary (UGB), and delineating a more exact location of the 15% slope line, in order to identify properties where retraction of either the USA and/or UGB would be appropriate. This information would first inform the San Jose City Council in its consideration of the General Plan Update Land Use/Transportation Diagram in June 2011, and could subsequently inform further discussions with the County and LAFCO as would be helpful relative to refining the status of pending pocket annexations.

City of San Jose-County Settlement Agreement

The existing City-County Settlement Agreement between the City of San Jose and Santa Clara County provides that the County use the City's General Plan for review of development and use proposals in county pockets within the City of San Jose's USA. The City is authorized by this Agreement to enforce the Agreement, which would not allow this proposed policy change to establish a process for County property owners to propose a County General Plan amendment to establish unique General Plan designations and zoning districts for pocket properties. It is imperative that the County comply with the terms and spirit of the City-County agreement, and that the City's consideration of annexation obligations under the Agreement not be impaired by a unilateral change in terms and conditions by the County. As noted previously in this letter and by County staff, the City of San Jose is actively annexing County pockets in accordance with the Settlement Agreement. There is absolutely no valid reason for the County to attempt to change the long-standing understandings and contractual obligations it has with the City of San Jose.

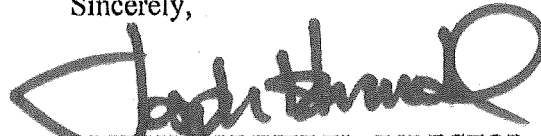
Conclusion

We appreciate this opportunity to provide comments on the proposed policy changes. The City of San Jose continues to work in good faith toward the ultimate annexation of County islands in its USA and strongly recommends that the County in good faith maintain the existing policies established with the approval and agreement of the cities and LAFCO and in force for the past 30 years, and that it comply with the terms and spirit of its Settlement Agreement with the City of San Jose. If the County abandons or significantly alters this overall policy strategy framework, significant land use planning will be required, with associated costs and resource needs, that is not the current planning priority for San Jose, or the County. Additionally, the City of San Jose will seriously need to consider the ramifications of the County's actions in relation to the Settlement Agreement and the City's obligation to consider annexations in accordance with that Agreement.

Ms. Jody Hall Esser
Proposed Changes to Santa Clara County Land Use Policies for Unincorporated Lands
November 1, 2010
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Please do not hesitate to contact me or Laurel Prevetti (408-535-7901) with comments or questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph Horwedel". The signature is stylized with a large, sweeping initial "J" and a long, horizontal flourish extending to the right.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement