

BERLINER COHEN

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING
PROFESSIONAL CORPORATIONS

TEN ALMADEN BOULEVARD
ELEVENTH FLOOR
SAN JOSE, CALIFORNIA 95113-2233

TELEPHONE: (408) 286-5800
FACSIMILE: (408) 998-5388

www.berliner.com

THOMAS P. MURPHY
MICHAEL VIOLANTI
CHRISTIAN E. PICONE
EILEEN P. KENNEDY
PETER BAJOREK
DAN W. COOPERIDER
HARRY A. LOPEZ
JOHN F. DOMINGUE
SETH J. COHEN
CHRISTINE H. LONG
BRADLEY G. HEBERT

DAVID D. WADE
THOMAS E. EBERSOLE
MILES J. DOLINGER
LAURA PALAZZOLO
AARON M. VALENTI
SHANNON N. COGAN
A. BRYAN DIAZ, JR.
CLAIRE L. IMELLI
ANDREW J. GIORGLANNI
FORREST W. HANSEN
GENEVIEVE M. NICKERSON
HEATHER H. MUNOZ

SANFORD A. BERLINER*
ANDREW L. FABER
ROBERT W. HUMPHREYS
RALPH J. SWANSON
PEGGY L. SPRINGGAY
JOSEPH E. DWORAK
SAMUEL L. FARB
ALAN J. PINNER
FRANK R. UBHAUS
LINDA A. CALLON
JAMES P. CASHMAN
STEVEN J. CASAD

NANCY J. JOHNSON
JEROLD A. REITON
ROBERT L. CHORTEK
JONATHAN D. WOLF
KATHLEEN K. SIPLE
KEVIN F. KELLEY
MARK MAKIEWICZ
ROBERTA S. HAYASHI
JEFFREY S. KAUFMAN
JOLIE HOUSTON
BRIAN L. SHETLER

*A Professional Corporation
RETIRED
SAMUEL J. COHEN

Branch Office – Merced, CA

IN ASSOCIATION WITH
MCGRANE GREENFIELD LLP
SAN JOSE • SAN FRANCISCO

OF COUNSEL
HUGH L. ISOLA
STEVEN L. HALLGRIMSON
ERIC WONG
NANCY L. BRANDY
CHARLES W. VOLPE
VICTOR A. PAPPALARDO

September 27, 2006

VIA FACSIMILE AND E-MAIL

Ms. Laurel Prevetti
Deputy Director of Planning
City of San Jose Planning Commission
200 E. Santa Clara Street
San Jose, CA 95113

Re: Evergreen Development Policy
Residential Pool Allocation
Our File No.: 14426.001

Dear Ms. Prevetti:

This letter is written on behalf of Richard H. Lambie, Trustee of the Mirassou Trust and owner of the 14[±] acre Mirassou property located at the corner of Aborn Road and Ruby Avenue in Evergreen.

As you aware, Mr. Lambie has been actively following the Evergreen East Hills Visioning process, as his duty as Trustee is to safeguard the interest of the beneficiaries of the Trust through proper disposition of the site. We have had several meetings with staff, including with interested developers, attended many of the Task Force discussions, and felt reassured that the Vision would always include a minimum of 500 Pool Allocations, and that the Mirassou site would not be restricted from obtaining appropriate allocations.

We are concerned about three aspects of the draft Evergreen Development Policy policies, and would like these concerns to be discussed and these comments to be added to the public record. The three concerns are as follows:


Ms. Laurel Prevetti
September 27, 2006

1. We had always understood that the EDP would include a minimum of 500 Pool Allocations. We have now heard from staff that the pool might be lowered to as few as 300 units. We would strongly oppose this reduction. The 500 units that have always been discussed should be an absolute minimum.
2. Language recently added to the third draft of the EDP (Page 24 and 25) now recites that no more than 25% of the units in the total Residential Development Unit Pool may be allocated to any single development project. This is new, and seems unwarranted. As far as we know the only site that could be adversely affected by this policy would be the Mirassou site. There is no reason to artificially limit development on that site. Development should be controlled by sound planning principles, not by an arbitrary cap. In the same vein, the reservation of 25% of the units for projects of four units or less seems arbitrary.
3. The Policy also requires that any project using the Allocation Pool be consistent with the General Plan. As you know, the Mirassou Property, in order to allow for an appropriate mix of uses, requires a General Plan amendment. This should, of course, not be a bar to a Pool Allocation for that Project.

Thank you for your consideration of these comments. We would be pleased to provide any further information that would be helpful.

Very truly yours,

BERLINER COHEN



ANDREW L. FABER

E-Mail: andrew.faber@berliner.com

ALF:clc

cc: Richard Lambie
George Reilly
Jeannie Hamilton
Mike Enderby
Aaron Yakligian
Chris Davenport
Eric Schoennauer