



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

PLANNING DEPARTMENT

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AGENDA ITEM No. _____

January 8, 2013

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December 31, 2012

The Honorable Board of Supervisors
Alameda County Administration Building
Oakland, CA 94612

Dear Board Members:

**SUBJECT: PROPOSED AMENDMENTS TO EAST COUNTY AREA PLAN
AND CASTRO VALLEY GENERAL PLAN TO INCREASE THE
FLOOR AREA RATIO ALLOWED FOR EQUINE FACILITIES**

RECOMMENDATION:

Approve the proposed amendments to the East County Area Plan (ECAP) and Castro Valley General Plan to increase the Floor Area Ratio (FAR) allowed for Equine Facilities, adopt the Initial Study/Negative Declaration (IS/ND) that was prepared for the proposed amendments, and direct staff to bring a resolution with findings for adoption to the February Board Planning meeting.

BACKGROUND:

On February 10, 2011, the Board Transportation and Planning Committee directed staff to initiate amendments to the appropriate sections of the County General Plan to increase the FAR allowed for horse breeding and training facilities from .01 to .02 under certain circumstances. The original amendments were presented to the Planning Commission on June 18, 2012, the District 4 Agricultural Group on June 20th, the Sunol Citizens Advisory Committee on June 27th, the Castro Valley Municipal Advisory Council (MAC) on July 9th, and the Agricultural Advisory Committee (AAC) on July 24th. The AAC supported the amendments as originally proposed, as did members of the public representing the agricultural community at the other public meetings.

Due to strong opposition presented by representatives of the environmental community at each of these meetings, staff, in consultation with Supervisor Miley and supporters of the amendments, modified the original amendments to limit the additional non-residential development allowed over .01 FAR to buildings (such as horse arenas) that are related to horse breeding and training facilities and have earthen floors and no walls. The Castro Valley MAC considered the revised amendments on September 24th and adopted a motion recommending approval of the amendments with the addition of a provision allowing horse arenas to have one wall to mount mirrors for dressage training. On October 15th the Planning Commission adopted the attached resolution recommending approval of the revised general plan amendments to the Board of Supervisors and adoption of the IS/ND that was prepared for the proposed amendments. On November 5th, the Board Transportation and Planning Committee directed staff to bring the revised amendments and negative declaration before the full Board for approval.

SUMMARY/DISCUSSION:

In November 2000, the Alameda County electorate approved the Save Agriculture and Open Space Lands Initiative (Measure D). The Initiative amended portions of the County General Plan and effectively locked in limitations on development on parcels with general plan designations of Large Parcel Agriculture, Resource Management, or Water Management. For properties with one of these three general plan designations, the maximum building intensity allowed for non-residential buildings is a Floor Area Ratio (FAR) of .01, but not less than 20,000 square feet. A maximum of 12,000 square feet is allowed for residential and residential accessory uses.

FAR is a ratio of the gross building square footage permitted on a parcel to the square footage of the parcel. For example, on a 100 acre (4,356,000 square feet) parcel, an FAR of .01 would allow the equivalent of one acre (43,560 square feet) of building area for non-residential buildings. On a 50 acre (2,178,000 square feet) parcel, an FAR of .01 would allow the equivalent of half an acre (21,780 square feet) of building area for non-residential buildings. Smaller parcels, for which an FAR of .01 would equal less than 20,000, are allowed 20,000 square feet of building area for non-residential buildings, regardless of the size of the parcel.

The first stated purpose of the Initiative is “to preserve and enhance agriculture and agricultural lands, and to protect the natural qualities, the wildlife habitats, the watersheds and the beautiful open space of Alameda County from excessive, badly located and harmful development.” Since the passage of Measure D, owners of equestrian facilities have maintained that the .01 FAR inhibits their ability to operate their businesses since the proper care of horses typically requires more building area than the current FAR allows. The Supervisors have been asked to consider allowing a greater FAR for equestrian breeding and training facilities, which are considered by the State Department of Conservation to be agricultural facilities.

Section 23 of Measure D states that, “The provisions of this ordinance may be changed only by vote of the people of Alameda County;” but adds that “The Board may also make technical or nonsubstantive modifications to the terms of this ordinance ... for purposes of reorganization, clarification or formal consistency within a Plan. Any modifications must be consistent with the purposes and substantive content of this ordinance.” Most of the public comments in opposition to the proposed amendments have asserted that the increase in FAR is not a technical or nonsubstantive modification and should be subject to a vote of the people. The Office of the County Counsel has indicated that the amendments may be considered a technical modification to address the inconsistency between the stated purpose of the initiative to support agriculture and the impact of the .01 FAR on equine breeding and training facilities. County Counsel will be providing a legal memo with a more detailed analysis to address the argument that the amendments cannot be approved without a vote of the people.

Proposed Amendments

In order to eliminate the inconsistency in the ECAP and the CVGP between the floor area ratio (FAR) limitations and the importance of viable agriculture activities in the County, including commercial horse breeding and training activities, the County proposes adding Policy 96A to the ECAP and Policy 4.10-2 to the CVGP (Section 4.10, Land Use and Development – Special Planning Areas). Given the opposition expressed to the amendments as originally proposed, staff recommends minor modifications to the original language, as follows (new text *underlined and in italics*):

ECAP Policy 96A/CVGP Policy 4.10-2: The commercial breeding and training of horses is an agricultural activity, and one of the primary purposes of Measure D is to preserve and enhance agriculture and the County's agricultural lands. However, the limitations on maximum floor areas and floor area ratios in the Large Parcel Agricultural and Resource Management land use designations has had the consequence of impacting the viability of commercial breeding and training of horses, which is an agricultural activity that has a demonstrated need for certain structures, such as covered arenas, and facilities that are not required for other forms of commercial agriculture. Therefore, within the Large Parcel Agriculture and Resource Management land use designation the maximum building intensity for non-residential buildings may exceed 0.01 if (1) the additional non-residential square footage is for structures and facilities related to the commercial breeding and training of horses; (2) the additional non-residential square footage is for structures and facilities that have no more than one wall, but have an impermeable roof supported only by posts or pillars, and an earthen floor; ~~(3)~~ the additional non-residential square footage is necessary to maintain the horse breeding and training use; and ~~(4)~~ (3) the total building intensity for all structures that meet criteria 1-3, above, does not exceed 0.01 FAR and the building intensity for all other non-residential buildings does not exceed 0.01 FAR, for a total maximum non-residential building intensity of 0.02 FAR.

Pursuant to this policy, in order to implement the policy so as to mitigate environmental impacts of individual equine facility expansion proposals according to the requirements specified in the analyses described below, and to ensure protection of the public health, safety and welfare, the following Implementation Program 48A / CVGP Action 4.10-7 is proposed to be adopted to follow this policy in each amended document. No revisions to Implementation Program 48A/Action 4.10-7 as originally proposed are needed. (Originally proposed revisions are underlined.)

ECAP Program 48A / CVGP Action 4.10-7: The County shall require each Site Development Review application for an expanded horse facility that includes breeding and training activities, the floor area ratio of which would exceed 0.01 FAR but would not exceed 0.02 FAR, to be subject to environmental analysis pursuant to the California Environmental Quality Act (CEQA), and the required review shall, at minimum, address all pertinent areas of potential environmental impacts including but not limited to consideration of Aesthetics and Lighting, Agricultural Resources, Air Quality (construction and operational dust and odors), Biological Resources, Cultural Resources, Geology and Soils, Hydrology and Water Quality (especially runoff issues), Mineral Resources (when applicable), Noise (construction and operational related to traffic), and Public Utilities (stormwater facilities and waste management). Each facility shall conform to requirements of any Federal, State and County regulations designed to protect the health, safety and welfare of its citizens, including but not limited to requirements for Building and Grading permits, avoidance of 100-year floodplain, ongoing operational consistency with Stormwater Management Plans for Equine Facilities as administered by the County's Environmental Health Department, Williamson Act Contract requirements, requirements for mitigation of loss of Prime, Unique or Important Farmlands, and requirements for management of solid waste.

In addition to Policy 96A/CVGP 4.10-2, the descriptions of land use designations in the ECAP for Large Parcel Agriculture and Resource Management, and Resource Management in the CVGP, would be amended as follows (Originally proposed revisions are underlined. No additional revisions are necessary.):

Large Parcel Agriculture requires a minimum parcel size of 100 acres, except as provided in Programs 40 and 41. The maximum building intensity for non-residential buildings shall be 0.01 FAR (floor area ratio) but not less than 20,000 square feet. Where permitted, greenhouses shall have a maximum intensity of 0.025. When allowed pursuant to Policy 96A, maximum building intensities for non-residential buildings may exceed 0.01 FAR, up to a maximum of 0.02 FAR to accommodate structures and buildings necessary for the commercial breeding and training of horses. One single family home per parcel is allowed provided that all other County standards are met for adequate road access, sewer and water facilities, building envelope location, visual protection, and public services. Residential and residential accessory buildings shall have a maximum floor space of 12,000 square feet...

Resource Management requires a minimum parcel size of 100 acres and a maximum building intensity for non-residential uses of 0.01 FAR but not less than 20,000 square feet. When allowed pursuant to Policy 96A, maximum building intensities for non-residential buildings may exceed 0.01 FAR, up to a maximum of 0.02 FAR, to accommodate structures and buildings necessary for the commercial breeding and training of horses. One single family home per parcel is allowed provided that all other County standards are met for adequate road access, sewer and water facilities, building envelope location, visual protection, and public services. Residential and residential accessory buildings shall have a maximum floor space of 12,000 square feet...

The following definition would also be added to the ECAP and the CVGP:

Commercial Breeding and Training of Horses: Commercial breeding and training of horses shall mean the breeding and training of horses for the purpose of commercial sale or commercial cattle ranching, including but not limited to horses being bred or trained for racing, show competition, recreation and ranching, and which thereby constitutes an agricultural activity that produces an agricultural commodity. Equine facilities shall not be considered as commercial horse breeding and training facilities unless a minimum of 50 percent of the horses maintained on the site are categorized for breeding, in training for commercial sale, or for commercial livestock ranching.

Solar Panels over Horse Arenas

At the November 5th meeting, the Board Transportation and Planning Committee directed staff to address the placement of solar panels over horse arenas. Under current development regulations, with only building permits, solar panels can be placed on any existing legal roof, including a horse arena. Ground-mounted solar systems that generate power for on-site use are considered accessory uses and are allowed under Title 17 of the County General Ordinance Code, Sections 17.06.050, 17.52.180, and 17.52.200. Such a system could be placed over a horse arena.

Under both the current and proposed FAR requirements, the roof on which roof-mounted panels are placed would be included in the FAR calculation for a property; however, a ground-mounted solar installation would not be included as part of the FAR. Staff is in the process of developing policies for the siting of solar facilities in the unincorporated county. In conjunction with that process and in analyzing two solar projects that have already been approved in the East County, it has been determined that the FAR required in the East County Area Plan and the Castro Valley General Plan does not apply to ground-mounted solar installations. FAR restrictions, as defined in the General Plan, apply to buildings. While the General Plan does not define the term “building,” the Zoning Ordinance defines a building as “... any structure erected for the support, shelter or enclosure of persons, animals or property.” Ground-mounted

solar installations, generally solar panels supported by a framework, do not provide shelter from the elements as a weather-proof roof does; therefore, they are not considered a building. A conventional covered horse arena is considered to be a building in calculating the FAR on a property.

Draft Initial Study/Negative Declaration (IS/ND)

The California Environmental Quality Act (CEQA) requires that an IS be completed when there is a project that may cause a direct or indirect change in the environment (Public Resources Code 21065). The County has performed this analysis as required under CEQA and has concluded that there will be no significant adverse environmental impacts from adopting the general plan amendments. Since the proposed revisions to the amendments would be more restrictive than the originally proposed amendments for which the IS/ND was prepared, no modifications to the IS/ND are necessary.

The IS/ND was released on June 13, 2012; and the comment period for the IS/ND ended on July 13, 2012. Two comment letters were received during the comment period; one from the City of Livermore and the other from Dick Schneider representing the Conservation Committee of the San Francisco Bay Chapter of the Sierra Club. The letters and staff responses to the comments are attached.

CONCLUSION:

While the primary purpose of Measure D is “to preserve and enhance agriculture and agricultural lands,” the FAR requirements contained in Measure D have been detrimental to horse breeding and training facilities; therefore, staff recommends that your Board approve the proposed general plan amendments as technical modifications to Measure D, and direct staff to return at the next Board Planning meeting with a resolution containing findings for adoption.

Very truly yours,

Chris Bazar, Director
Community Development Agency

Attachments:

- Planning Commission Resolution regarding the proposed amendments to the East County Area Plan (ECAP) and Castro Valley General Plan to increase the Floor Area Ratio (FAR) allowed for equine facilities and the related Initial Study and Negative Declaration
- Negative Declaration for Proposed General Plan Amendments to the East County Area Plan and Castro Valley General Plan Regarding Allowable Floor Area Ratios (FARs) for Equine Breeding and Training Facilities
- Comment Letter A: Ingrid Rademaker, Senior Planner, City of Livermore Community Development Department, July 13, 2012
- Comment Letter B: Dick Schneider, Sierra Club, San Francisco Bay Chapter Conservation Committee, July 13, 2012
- Responses to comments on IS/ND for proposed ECAP amendments regarding increased FAR for Equine Facilities subject to specified limitations.
- Letter from Stuart M. Flashman, Attorney for the Sierra Club, October 10, 2012
- Letter from Dick Schneider, Sierra Club, San Francisco Bay Chapter Conservation Committee, October 15, 2012

