



AGENDA REPORT

COMMUNITY DEVELOPMENT DEPARTMENT

DATE: April 6, 2021

TO: Mayor Butt and Members of the City Council

FROM: Lina Velasco, Community Development Director

SUBJECT: General Plan Amendment and Zoning Amendment related to implementation of the Richmond Hills Initiative, a Council-approved voter Initiative (PLN20-269)

STATEMENT OF THE ISSUE:

The City Council adopted the Richmond Hills Initiative (RHI), a voter initiative in January 2017. In April, 2017, a complaint was filed to the Superior Court of the State of California by certain property owners impacted by the RHI against the City of Richmond for actions related to the Council adoption of the voter initiative. On October 25, 2019, the Court of Appeal issued its opinion remanding it to the Superior Court with direction to issue a new writ of mandate. The Superior Court issued a new writ of mandate on June 17, 2020, directing the City of Richmond to take action within 120 days to cure the inconsistency with the General Plan caused by adoption of the RHI. The parties agreed to provide an extension to the City to respond to the new writ. City staff is presenting a General Plan Amendment to correct the inconsistencies within the General Plan and zoning amendments to align with the proposed General Plan Amendment and implement the RHI.

RECOMMENDED ACTION:

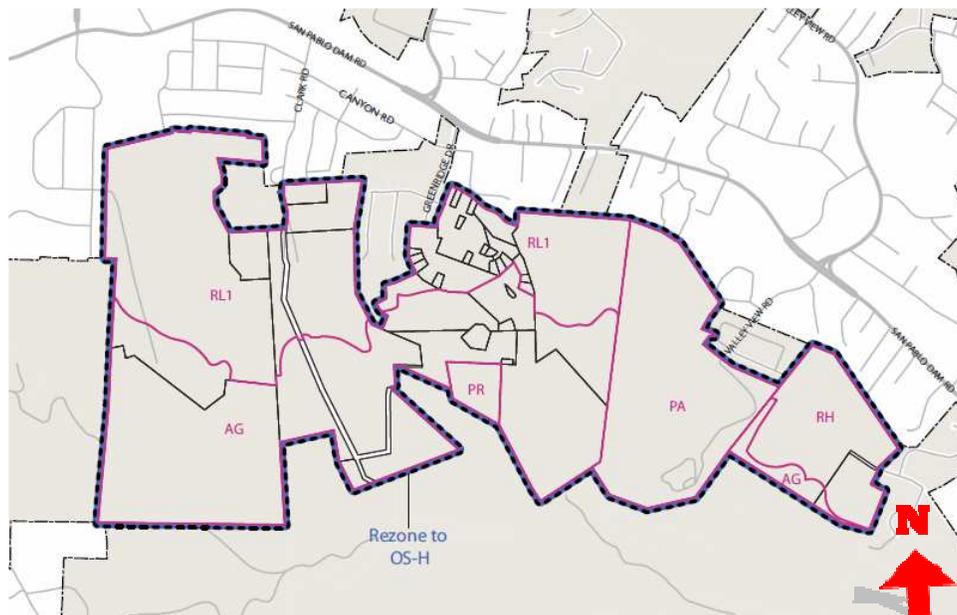
HOLD a public hearing to: ADOPT a resolution adopting a General Plan Amendment to cure inconsistencies within the General Plan to implement the Richmond Hills Initiative, a voter initiative, that restricted housing development in a ~430 acre area in the El Sobrante Hills to protect undeveloped rural hillside land; and INTRODUCE an ordinance (first reading) amending various sections, including Articles 15.04.202, 15.04.206, and 15.04.611 of the Zoning Ordinance to align with General Plan Amendments related to the Richmond Hills Initiative and to implement requirements of the RHI.

FINANCIAL IMPACT OF RECOMMENDATION:

The proposed actions have no impact on the General Fund. The proposed General Plan Amendment correct inconsistencies within the General Plan that need to be made in response to a writ issued by the Superior Court. The zoning amendment is proposed to align with the General Plan Amendment.

DISCUSSION:

In 2017, the City Council adopted the RHI (see Attachment 1), a voter-initiative, that restricted residential development in an area of the El Sobrante Hills, by amending the Housing Element of the General Plan. As depicted in the map below, the RHI area is approximately 430 acres, comprised of 38 parcels, and located north and east of Wildcat Canyon Regional Park, and southwest of San Pablo Dam Road.



The current General Plan designation of this area is Hillside Residential, Agriculture, and Parks and Recreation.

Pursuant to the RHI, development of any kind would not be permitted if it would reduce the quantity or quality of wetlands or water and/or native vegetation in a stream corridor. The RHI includes minimum lot sizes, limited development envelopes, and maximum floor area of all buildings constructed in connection with a permissible land use. However, it is subject to certain exceptions including the design of structures, roads, and lighting.

The RHI also established a transferable development credit program intended to provide parcel owners the right to develop residences in designated areas within the City, subject to specified limitations and privileges.

DISCUSSION:

State Government Code Section 65358(a) allows a city's legislative body to amend its general plan four times a year, if it deems to be in the public interest. This request constitutes the first General Plan Amendment in calendar year 2021.

In order to address the legality of the RHI relative to the 2030 General Plan, staff recommends that the City Council adopt a General Plan Amendment and Zoning Amendment (see Attachment 2 and 3) to address the inconsistencies in the General Plan resulting from the adoption of the RHI, and a Zoning Amendment to align with the proposed General Plan Amendment and RHI. Exhibit A of Attachment 2 provides each page number to be updated in the General Plan document and Exhibit A of Attachment 3 provides the Zoning text and map amendment proposed. The underlined text will be added while the strikeout text will be deleted. Figures and maps are being updated accordingly.

Proposed General Plan Amendment Summary

This proposed General Plan Amendment will serve the public interest by protecting undeveloped rural hillside land in the El Sobrante Hills area. Development in this area would be harmful and would displace agriculture and outdoor recreation, destroy scenic resources, impact stream flows, exacerbate erosion and pollution, reduce wildlife habitat, and substantially increase traffic. The amendment would further achieve the following 2030 General Plan Goals:

GOAL CN1: Preserved and Restored Natural Habitat and Biodiversity.

Continue to preserve and restore natural habitat and associated plants and wildlife including wetlands, baylands, riparian areas, oak woodlands and other sensitive biological resources. Take restoration efforts such as controlling invasive species, re-establishing natives, daylighting creeks and reclaiming priority conservation areas in order to maintaining critical habitat and biodiversity. Carefully balance natural lands, habitat and protection of multiple species with the need to accommodate development.

GOAL CN2: Conserved Open Space

Conserve open space to ensure that Richmond's expansive shoreline, network of parklands, trails, hillsides and undeveloped natural areas remain viable in supporting biological communities and providing sanctuary for future generations. Conserve open space, expand public access to open space, where appropriate, and acquire additional lands where feasible. Continue to protect surrounding hills and viewsheds as character-defining features that provide scenic backdrops, as well as publicly accessible trails and vistas.

Specifically, development in the RHI area would be harmful and would displace agriculture and outdoor recreation, destroy scenic resources, impact stream flows,

exacerbate erosion and pollution, reduce wildlife habitat, and substantially increase traffic.

Proposed Zoning Text and Map Amendment Summary

Zoning Text Amendments (see Exhibit C) and rezoning of the RHI area is also being recommended to ensure consistency with the proposed General Plan, as amended, and the zoning regulations in Article XV of the Richmond Municipal Code. These amendments also respond to Senate Bill 330 and the RHI's requirement for a Transfer of Development Credits Program.

Rezoning in Response to SB 330 and Related Zoning Amendments

The Housing Crisis Act of 2019, established by Senate Bill 330, imposes specific limitations, which are codified in Government Code, on development policies and standards a City may enact that may affect its ability to accommodate the community's share of regional housing goals and implement the Housing Element of the General Plan. More specifically, Government Code Section 66300 (b)(1) states that a City cannot "downzone" residential land or otherwise change development standards that will reduce the residential development capacity of an area unless it concurrently "upzones" land elsewhere to ensure no net loss of residential development capacity citywide. This limitation applies to land use designations and zoning ordinances that were in effect on January 1, 2018. While the RHI was passed by the voters in 2017, the implementing actions called for by the initiative have not yet be enacted, so it would be prudent to conform to these requirements.

The Government Code requires that the ordinance implementing the restriction of residential development potential in the RHI area and also providing for the upzoning so there is no net loss in residential development capacity to be submitted to the State Department of Housing and Community Development (HCD) for their approval, and if the requirements of this section of the Government Code are met, then the changes in urban growth boundaries, as was done by the RHI, are not voided.

City staff, working with the City's consultant, has determined how many housing units need to be provided elsewhere through an upzoning. The RHI (RHI) area applies to 433 acres, but only land under the 400 foot elevation needs to be included in this analysis because the General Plan does not allow for residential development above that elevation point. It also is important to note that the General Plan establishes density on a "net" acreage basis, meaning land devoted to roads, sidewalks, and neighborhood parks has to be deleted from the gross developable acreage - the land under the 400 foot elevation.

Below are the key numbers:

Land under 400 foot elevation: 229.4 acres

Potential Loss in Residential Development Capacity with RHI: 868 units

The logical areas to upzone are the CM-4 and CM-5 zoning districts. However, much of the land in these zoning districts is developed for viable uses and not likely to be redeveloped in the next ten years – the remaining General Plan buildout time period. To calculate the probable increase in residential development capacity, as opposed to a theoretical increase, the analysis focused on vacant and underdeveloped sites, where the improvement value to land value, as established by the Tax Assessor, is less than 0.75:1, meaning the site has redevelopment potential over the next ten years. When the value of improvements is greater than the value of the land, the site is considered fully developed and not likely to be redeveloped over the next ten years.

The table below summarizes the findings of this analysis, showing that the units with the density transfer will ensure a no net loss in residential capacity. In the table below, the term “Underutilized” is the ratio of Assessor’s Improvement Value/Land Value. The number of “Potential New Units” is based on net developable acreage, assumed to be 80 percent of gross developable acres. The proposed increase in the maximum residential density is +7.5 units in the CM-4 zoning district and +10 in the CM-5 residential district. These increases are sufficient to ensure no net loss in residential development capacity citywide.

Vacant and Underutilized Acres By Zoning District Outside RHI Area								
Zoning District	Vacant	Non-Residential Uses		Residential Uses		Increase in Residential Development		
		Underutilized (0 - 0.5)	Underutilized (0.51 - 0.75)	Underutilized (0 - 0.5)	Underutilized (0.51 - 0.75)	Additional Units/Net Acre	Developable Acres	Potential New Units
CM-4	0.24	2.13	1.17	0	0	7.5	3.54	21.3
CM-5	7.66	10.58	81.09	2.73	4.54	10	106.60	852.8
Total								874.0

This increase in the maximum development allowed in the CM-4 and CM-5 zoning districts does not conflict with the General Plan because the General Plan states on page 3.10 that the maximum number of allowable units in a land use designation may be exceeded to accommodate a density transfer or development rights transfer as is being proposed in these zoning amendments.

Proposed zoning text amendments for the CM-4 and CM-5 up-zoning (RMC Article 15.04.202) along with other zoning amendments required by the RHI are in Exhibit A of Attachment 3. The additional zoning amendments include specific provisions enumerated in the Initiative for a new Hillside Open Space District to be incorporated in RMC Article 15.04.206, Open Space Districts. These amendments implement the General Plan amendments that are also required by the Initiative to be adopted by the City.

Transfer of Development Credits Program

One of the provisions in the RHI calls on the City to establish a Transfer of Development Credits (TDC) Program. More specifically, the RHI states:

“As part of General Plan implementation, the City Council shall establish a transferable

development credit (TDC) program for the RHI Area. The City shall grant one credit to the owner or owners of each parcel, and one credit for each 5 acres of a parcel in excess of 5 acres, unless all remaining permissible residential development has previously been transferred from the parcel. Credits may not be granted for parcels or acres above 400 feet elevation. Each credit may be used to build one residence in a receiving area, with the consent of the parcel owner there.”

Article XV of the Richmond Municipal Code, the Zoning and Subdivision Regulations, already includes in Article 15.04.611 enabling authority for a Transfer of Development Rights (TDR) program, so City staff proposes that the program called for by the RHI be incorporated into this article. The proposed TDR program is limited to the RL1, RL2, RM1, and RM2 zoning districts. With the specific transfer ratios established in the zoning amendments, the potential number of units allowed (1,744) is more than sufficient to meet the needs of those owners desiring to transfer development credits. Moreover, not all of the owners in “Receiving Zones” who would be eligible to participate in the program may actually choose to do so. Recognizing this, the proposed TDR program provides a theoretical potential that is more than twice the number that may be required to allow development rights affected by the RHI to be transferred elsewhere in the City. The table below summarizes how this development potential was determined, using the same methodology as used in the SB 330 rezoning analysis, which looked at vacant and underutilized land.

Potential New Units with Transfer of Density Program for Richmond Hills Area								
Zoning District	Vacant	Non-Residential Uses		Residential Uses		Potential Units With TDR Program		
		Underutilized (0 - 0.5)	Underutilized (0.51 - 0.75)	Underutilized (0 - 0.5)	Underutilized (0.51 - 0.75)	Additional Units/Net	Developable Acres	Potential New Units
RL1	16.39	0	0	16.38	9.12	1	41.89	33.5
RL2	36.43	3.75	0.75	483.16	319.38	2	843.47	1349.5
RM1	22.43	0.67	0	31.63	24.69	3	79.43	190.6
RM2	3.50	2.41	0.15	27.44	19.87	4	53.37	170.8
Totals	78.75	6.83	0.90	558.62	373.06		1018.16	1744.48

Exhibit A of Attachment 3 also includes the specific zoning text amendments in Article 15.04.611 required for the TDC program that is to be established pursuant to the RHI.

Reasonable Use Determination

The proposed zoning amendments clarify the General Plan Amendment and Zoning Amendment are not intended to preclude reasonable economic use of property within the proposed OS-H, Hillside Open Space zoning district. A property owner who believes the regulations deprive them of all reasonable economic use of their property may apply to the Planning Commission for a Reasonable Use Exception (RUE). Based on that application, the Planning Commission may approve the RUE if it makes the required findings. The grant or denial of an RUE application is appealable to the City Council. Exhibit A of Attachment 3 includes the specific zoning amendments establishing this process.

Rezoning

The Zoning Amendment includes a zoning map amendment to rezone the RHI area from PA, Planned Area, RL1, Single Family Very Low Density Residential, AG, Agriculture, PR, Parks and Recreation to OS-H, Hillside Open Space (see Exhibit A of Attachment 3 for Rezone Map). This rezone will align with the proposed General Plan land use classification

Planning Commission Recommendation

On March 4, 2021, the Planning Commission held a public hearing to consider making a recommendation regarding the proposed actions to the City Council. At the conclusion of the public hearing, the Planning Commission adopted Resolution 21-03 to recommend adoption of the General Plan Amendment and Zoning Amendment with certain amendments presented by staff in response to public comments to the City Council, while encouraging the City Council to direct staff to embark on an education and outreach program to the property owners regarding the transferable development credit (TDC) program for the RHI Area after adoption.

ENVIRONMENTAL REVIEW

In *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, the California Supreme Court held that CEQA does not apply to “citizen-sponsored” initiatives, even where the initiative is adopted by local officials rather than the voters.

In the Writ of Mandate, the Court ordered the City to cure the inconsistencies in the General Plan related to the RHIs. The proposed amendments have no potential for causing a significant effect on the environment because they only provide protection of the hillsides in the designated area from development and a transfer of density from one area of the City to another, with no increase overall in total residential development capacity over the term of the General Plan. The Transfer of Development Rights Program had been previously established in Article XV and was subject to CEQA review at the time that Article XV was amended and this program was put in place at the end of 2016. Also, the General Plan and Zoning text and map amendments are required to ensure consistency with an existing City Council-approved voter initiative, which is exempt from CEQA. Accordingly, a Notice of Exemption under Sections 15061b(3) and 15308 of the CEQA Guidelines will be filed if the proposed General Plan Amendment and Zoning Amendment are adopted.

GENERAL PLAN AMENDMENT AND ZONING AMENDMENT FINDINGS:

The City Council must adopt certain findings in approving a General Plan Amendment and Zoning Amendment. Statements of fact for supporting the required findings are contained in the draft Resolution No. in Attachment 2 and draft Ordinance, in Attachment 3.

CONCLUSION:

The City Council adopted a citizen's initiative known as the RHI, which amended the General Plan. However, the amendment did not include all the corresponding updates of the General Plan to be internally consistent, as it only included amendments to the Housing Element. As a result, the Superior Court directed the City to take action to cure the inconsistencies in the General Plan. The proposed General Plan Amendment would cure the internal inconsistencies, and the Zoning Amendment would align with the proposed General Plan Amendment and implement the RHI.

DOCUMENTS ATTACHED:

Attachment 1: Richmond Hills Initiative

Attachment 2: Draft Resolution No.

Exhibit A: General Plan Amendment

Attachment 3: Draft Ordinance Amending Article XV of the Municipal Code and Zoning Map

Exhibit A: Proposed Zoning Text and Map Amendment