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Department of Planning and Development

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DATE: August 7, 2009

TO: Chair Gage and Vice Chair Kniss,
 Housing, Land Use, Environment and Transportation Committee (HLUET)

FROM: Jody Hall Esser, Director, Department of Planning and Development

SUBJECT: Answers to Questions Raised at May 21, 2009 HLUET Meeting
 Regarding Draft Components for a County Green Building Ordinance for Multi-Family and Non-residential Buildings

On May 21, 2009, the Committee considered the components staff recommends be part of a Green Building Ordinance for Multi-family and Non-residential buildings. Prior to deciding whether to forward these policy recommendations to the full Board for consideration, the Committee Chair asked that staff respond to a number of questions.

Questions and staff responses are noted below.

Question # 1: *What happens if someone follows the process, gets their house built and then finds they fall short by a point or two in a category that they can no longer access, such as the foundation?*

Response: This proposed phase of the Green Building Ordinance does not address single-family residences (SFRs). Nonetheless, it is important to consider this question in the context of the adopted ordinance for SFRs. The same considerations that apply to SFRs are recommended to also apply to multi-family and non-residential green building certification.

Under the existing Green Building Ordinance, applicants can use either the Build it Green GreenPoint Rated checklist or the LEED for Homes checklist.

Both the GreenPoint Rated and LEED for Homes rating systems have mandatory requirements plus different options of meeting overall performance standards (green building points).

The required items for GreenPoint Rated are:

- 1) 50% construction waste diversion;
- 2) Exceed Title 24 requirements by 15%; and
- 3) Incorporate Green Point Rated checklist in blueprints.

The Title 24 requirements and checklist are incorporated into the building plans and therefore integral to and would not be missed during actual construction.

Through research, staff determined that common construction waste disposal practices in Santa Clara County allow almost all projects to achieve 50% waste diversion without difficulty

The LEED for Homes Checklist has a longer list of mandatory requirements, which include ventilation and exhaust standards and the need to use sustainable wood sources. While these measures would be more difficult to achieve, an applicant is not required to use the LEED checklist and can choose the Build it Green Checklist which has less stringent standards.

There are several reasons why staff does not believe an applicant would miss building a house to the required green building standards and only realize this after the structure is finished.

- a) All Green Building measures will be included on the building plans and many of the required green building practices will be integrated into the structural plans that are used and checked during construction.
- b) In practice, the Green Point Raters routinely inspect residential projects during construction to verify that all the green building measures are being installed at the right time.
- c) Under the County's Green Building Ordinance, residences under 3,000 square feet in size only need to obtain 50 points under the Build it Green Checklist. Residences larger than 3,000 square feet would need to achieve higher points, based on the size of the house. There are a total of 350 points available, and houses that only need to meet 50 points have many options and alternatives in meeting that requirement.
- d) The existing Single Family Green Building Ordinance has provisions that allow applicants that haven't achieved the total required points at final inspection to receive temporary occupancy and additional time to obtain the required points, upon approval of the Building Official. The flexibility in the point system under Build it Green as described above

allows applicants to obtain points in different categories to make up for areas that were missed. For example, if an applicant was supposed to use sustainably produced lumber as part of the house framing but didn't, they could later achieve the same equivalent points through modifications to late project construction/installation components such as cabinets, flooring or landscaping.

Question #2: *If multifamily projects of more than 10 units would need 70 points, how many would buildings of 2 to 10 units need?*

Response: Duplexes are proposed to be included in the SFR Green Building Ordinance. Buildings with 3 to 9 units need 50 points (the lowest number of points for certification). Buildings with 10 or more units would need 70 points.

Question #3: *What are the historic and hardship exemptions that are available in Sunnyvale, and are they something that the county has looked into?*

Response: Sunnyvale adopted a green building ordinance in March 2009. The Ordinance exempts listed historical ('Heritage') buildings from mandatory requirements. The Sunnyvale Ordinance also has provisions for hardship exemptions that could apply in cases of practical infeasibility or when a historic resource would be harmed. The text of the draft Ordinance is listed below:

"19.39.060. Hardship or infeasibility exemption.

If a project applicant believes that circumstances exist presenting an unreasonable hardship to meet the requirements of this chapter, the applicant may apply for an exemption as set forth in this section. In applying for an exemption, the burden is on the applicant to show significant hardship. Acceptance or denial of an exemption is at the discretion of the director of community development. Hardship exemptions will only be granted in unusual circumstances based upon a showing of good cause and a determination that the public interest is not served by compliance or other compelling circumstances. An unreasonable hardship shall be defined as practical infeasibility, difficulties, or results inconsistent with the general purposes of this chapter or harms designated historic resources."

The County's existing Green Building Ordinance does not reference historical buildings as it only applies mandatory green building standards to new buildings.

Though evaluated by staff, a hardship provision was not recommended or included in the Single Family Residential Green Building ordinance. Staff continues to believe that the standards under the County's Green Building Ordinance are reasonable, further County goals and objectives and can be met by applicants without foreseeable hardship

Question #4: *What sort of effect on building and growth in the county are the water provisions – credits, demand offsets, pre-plumbing – expected to have? That is, if a developer cannot offset demand at another building, perhaps because that developer does not have another building or the retrofit of the other building would be prohibitively expensive, the developer would have the option of buying water credits, correct? How much might those cost? And if a developer finds he or she cannot afford them, what does that mean for the project? What if the project is already under construction?*

Response: Yes, it is correct that as envisioned, if a developer has done all he reasonably can to conserve water on the primary site, the developer could offset the balance of new/increased demand at another building he owned. Alternatively, the balance could be offset by purchasing water credits from the County. Staff cannot precisely estimate what those credits would be sold for at this time, but will continue to research this concept with other jurisdictions, and water purveyors.

A complete analysis of this concept and its implications as well as alternative approaches to further water conservation if discovered, will be presented to the Committee and Board along with the Draft Ordinance. The Draft Ordinance will not, however, be dependent on inclusion any specific offset or conservation method/means—the Board will of course have the liberty to include only those provisions it believes will effect the County's goals without undue detriment to property owners and developers. And certainly, staff would propose that any required (design for pre-plumbing) or offset would be determined prior to issuance of building permits. As a result, the Supervisor's concern that the need to address any shortfall should arise during construction, would not come to pass.

JHE:mh