



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**

**ENVIRONMENTAL SERVICES AGENCY**

**DATE:** November 30, 2004

**SET TIME:** 9:45 a.m.

**BOARD MEETING DATE:** December 7, 2004

**TO:** Honorable Board of Supervisors

**FROM:** Marcia Raines, Director of Environmental Services *MR*

**SUBJECT:** EXECUTIVE SUMMARY: Consideration of an Application to approve the Highland Estates Residential development, including a Rezoning and General Plan Amendment, pursuant to Section 6550 of the San Mateo County Zoning Regulations, to rezone a portion of the 12-acre site currently zoned R-E/SS-107 to RM, R-1/S-8 and PUD as well as rezone portions of the remaining 85 acres of the property currently zoned RM to R-1/S-8; to modify the General Plan designation of portions of the property from General Open Space to Medium-Low Density Residential; to subdivide the subject property, pursuant to the San Mateo County Subdivision Regulations, and construct a 40-unit townhouse complex and 26 single-family residences on a property located between Bunker Hill Drive, Polhemus Road and Ticonderoga Drive in the unincorporated San Mateo Highlands area of San Mateo County.

**BACKGROUND**

The 97-acre site is situated on the Pulgas Ridge, which runs east of the Crystal Springs Reservoir and west of Polhemus Creek in an unincorporated area near the City of San Mateo. The site is heavily vegetated with over half of the site with 50% or greater slopes. The site is surrounded by existing development, including single-family residences to the west, north and northeast and an existing townhouse complex to the south. Prior to 1958, the subject site was zoned R-1, allowing development on lots of

7,500 square feet. In a series of rezonings by the County in early 1958, the subject site was rezoned to R-E (Residential Estates) requiring a 5-acre minimum parcel size. In 1976, after the adoption of the RM (Resource Management) regulations in 1973, the subject property, with the exception of a 12-acre portion, was again rezoned to RM. The RM zone does not have a specific minimum parcel size but is based upon the constraints of the property. When determining density of a given amount of acreage, there will never be a value of less than one density credit per 5 acres on any part of the property.

### **SUMMARY**

Before considering the approval of a project, the deciding body must complete and consider environmental review under the California Environmental Quality Act (CEQA). However, CEQA does provide an exception to the environmental review process when an agency denies a project. The Board also has discretion under its police power authorities to consider and deny a request for rezoning, provided the decision is not arbitrary, irrational or capricious. The subject property's current General Plan and Zoning designation are consistent with the County's General Plan which strives to protect the natural open space characteristics of properties where natural resources are in need of protection and where it is necessary to protect the public health and safety. Due to the project site's steep slopes, varied topography and existing vegetation, there are substantial development challenges. While it is possible that modern engineering and site design can resolve some of the challenges, it is within the Board's discretion whether or not to entertain that possibility. The current General Plan and Zoning designations address those concerns while still providing development potential for the site. These reasons would provide a rational basis to support denial of the application for General Plan amendment and rezoning.

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County File Number: PLN 2002-00552 (Chamberlain Group)

**BACKGROUND**

- A. Introduction:** On July 27, 2004, the Board considered a request to execute an agreement with EIP Associates for preparation of an EIR for the Highland Estates Project, which involves a general plan amendment, rezoning, subdivision, and other approvals for a 66-unit residential development near the San Mateo

Highlands. After testimony from the applicant's counsel and representatives from the Highlands Community Association, your Board directed staff to conduct a public scoping meeting during the week of September 5, 2004, and return to your Board with a final scope of work, schedule and cost for approval on October 5, 2004.

The public scoping meeting was conducted on September 9, 2004, in the Highlands. Approximately 260 people attended including four staff members and four consultant team members. This meeting provided public input on the EIR content. At the conclusion of the meeting, staff was presented with a document prepared by five local community associations. Additional information was also submitted the following week. All of this information was synthesized into the scope of work presented to your Board on October 5, 2004.

At the October 5, 2004 meeting, your Board requested that EIP Associates prepare a matrix clarifying what issues had been included within the revised scope of work prepared by EIP Associates. EIP Associates prepared the matrix as requested and was presented to your Board at the November 9, 2004 meeting.

At the November 9, 2004 meeting, your Board discussed issues surrounding the proposed Rezoning and General Plan Amendment associated with the project. Concerns were raised as to whether or not the applicant should spend a significant amount of money for the preparation of an Environmental Impact Report if the Rezoning and General Plan Amendment could not be supported. Your Board directed staff to prepare a zoning history on the project site for consideration and continued this matter to the December 7, 2004 meeting.

- B. Description of Property Site:** The property site contains approximately 97 acres of undeveloped land in unincorporated area near the City of San Mateo. The site is bounded by Ticonderoga Drive to the south, the Highlands subdivision to the east, Bunker Hill Drive to the north and Polhemus Road to the east.

The site is located on the Pulgas Ridge which runs east of the Crystal Springs Reservoir and west of Polhemus Creek. The project site slopes steeply downward from west to east. Of the 85 acres zoned Resource Management, approximately 51.6 acres have slopes greater than 50% and 19.5 acres have slopes greater than 30% but less than 50%. The site is heavily vegetated with a mixture of native habitats including coastal oak woodland, valley foothill riparian, coastal scrub, mixed chaparral and serpentine and annual grassland. Trees are mainly confined to drainages and swale areas, while hill slopes are largely covered by dense brush. There are three main drainage areas and minor drainage swales on the property, which primarily run east and ultimately merge with the valley floor near Polhemus Creek. This forms at least three (3) main canyons in the property.

The site is surrounded by existing land uses. To the west, north and northeast are the single-family residences of the Highlands community. To the south across Ticonderoga Drive is a 45-unit townhouse complex within the City of San Mateo limits. To the east adjacent to Polhemus Road is the 68-unit Hillsborough West Apartments. To the northeast on Bunker Hill Drive is the Crystal Springs Methodist Church. The Baywood Plaza neighborhood and Crystal Springs Shopping Center are located nearby on the eastern side of Polhemus Road. There are four (4) water tanks on two (2) separate parcels owned by the California Water Service Company on the southeast portion of the site near the intersection of Newport Street and Yorktown Road.

There is no existing public vehicular access into the project site although informal public use of the site has resulted in the formation of paths throughout portions of the site.

### **C. Zoning and General Plan Land Use History:**

#### **1. Prior to 1958**

Prior to 1958, the entire property and an adjacent three (3) acre site on Polhemus Road, ultimately developed as Hillsborough West Apartments, were zoned R-1, allowing single-family residences with a minimum parcel size of 7,500 square feet or approximately six (6) parcels per acre. This would have theoretically allowed over 500 parcels on the property. It was the same zoning as the Highlands Subdivision to the west.

#### **2. 1958 to 1973**

In January 1958, the Board of Supervisors rezoned the adjacent three (3) acre parcel (Hillsborough West Apartments) from R-1 to R-3, allowing multiple-family development. At that time, the Board deferred the question of rezoning of the subject property to the Planning Commission for recommendation. Between January and June 1958, there were a series of actions which rezoned all or a portion of the property, but finally in June 1958, the Board approved rezoning of the entire property from R-1 to R-E/BD, a residential estates zoning designation allowing one unit per five (5) acres. The "B-D" zoning overlay district was later changed to "SS-107," but it did not change the minimum 5-acre parcel size. The adjacent three (3) acre parcel was ultimately developed as the Hillsborough West Apartments. At or about the same time, the Crystal Springs Shopping Center was developed.

#### **3. 1973 to Present**

In late 1973, the Board of Supervisors adopted the Resource Management Zone (RM) in order to implement the County's Open Space and Conservation Element as required by State Planning Law, which became effective around

that time. Prior to 1973, the County's open space designations were A (Agriculture) and F (Forestry and Conservation). The 1973 action rezoned all properties carrying an A or F designation to RM. The RM zone does not have a specific minimum parcel size. Instead, development potential is based upon an analysis of specific criteria (a "density matrix calculation") that generally looks at the development constraints of the property. The RM Zone can have a lower density than the previous R-E/B-D designation.

In 1976, the Board rezoned twelve (12) additional areas to RM. The subject property was one of the specific areas rezoned to RM, except for a 12-acre portion north of the intersection of Ticonderoga Road and Polhemus next to the Hillsborough West Apartments. At the time, the owners of the subject property asked to retain the 12 acres in existing zoning (R-E/SS-107) so that it could be used potentially as an expansion of the apartments next door.

In September 1976, the owners submitted a proposal to subdivide the entire property into three lots: the 12-acre portion, a small lot along Ticonderoga and the remainder of the property. The subdivision was approved by the Planning Commission, but due to an inability to meet required conditions of approval, the owners defaulted on the subdivision, and it was never finalized and recorded.

Also in or about 1975, County Planning initially determined a density matrix calculation for the RM portion of the subject property, concluding at that time that the area south of Bunker Hill Drive could support 10 units. This was later corrected to five units.

In 1986, the Board of Supervisors adopted the County's current General Plan. The Maps attached to the Plan designated the subject property as Open Space. The site's zoning has not been changed since the rezoning to RM in 1976. A new density analysis would need to be completed to determine the development potential based on existing zoning.

#### 4. Issues Regarding Zoning History

It has been suggested that the 1958 rezoning decision included a transfer of density from the subject property to the adjacent three (3) acre parcel that was ultimately developed as the Hillsborough West Apartments. After an exhaustive search of County records, staff has found no evidence that a formal transfer of density occurred. In fact, it appears unlikely since there was no recognized form of density credits or a transfer of density at that time. What staff found is that in 1958, when the subject property was rezoned from R-1 (a 7,500 sq. ft. lot minimum) to R-E/B-D (a 5-acre lot minimum), the basis was to retain as much of the subject property in open space as possible due to the steep slopes and its prominent location within the San Mateo Highlands Community. The property was rezoned in effect to reduce the

density of development. There was no transfer of remaining density to another property. When the property was once again rezoned in 1976, when all but the 12-acre portion was placed in RM, this again reduced the allowable density of the subject property under the RM density analysis. Again, there was no formal transfer of remaining density as a result of this process. Although it is possible to infer that the rezoning of the three (3) acre parcel prompted review and consideration of rezoning the subject property, there is no evidence of a formal connection between the two actions.

It has also been suggested that, during the proceedings leading to the RM rezoning and the 1976 subdivision application, there was an agreement between the then owners of the property and the Highlands Community Association. There is a letter from the former owners dated September 10, 1976 which states the following:

“In consideration of the Highlands Community Association withdrawing its opposition to our development of the twelve acre parcel in Area C off Polhemus and Ticonderoga by September 29, 1976, we agree that:

1. The only structural improvements will be ten single-family detached homes, to be located between Bunker Hill and Ticonderoga, and four single-family detached homes near Brandywine. The maximum lot size for each home will not exceed 20,000 square feet.
2. Upon completion of our construction or sale, we shall donate the remaining acreage in areas B and C to the Highlands Recreation District for it to hold as permanent open space.”

The County was not a party to this agreement and never approved development or rezoned the property in a manner that would support this agreement. A development proposal for an apartment building of up to 100 units was never approved. In any event, even if there was an agreement between the owners and some of the community members, that agreement is not binding on the County.

- D. Description of Current Application:** The current owners have submitted an application for a General Plan Amendment, Rezoning, subdivision and other approvals for a 66 unit residential development on the subject property. This would include a 40 unit town home development in the portion of the property near Polhemus Road and Ticonderoga Drive, and an additional 26 single-family residences in approximately four (4) areas on the west and north sides of the property. This development involves rezoning a portion of the 12-acre site currently zoned R-E/SS-107 to RM, R-1/S-8 and PUD as well as rezoning portions of the remaining 85 acres of the property currently zoned RM to R-1/S-8. The project also involves modifying the General Plan Land use designation for portions of the property from General Open Space to

Medium-Low Density Residential. The remaining acres, approximately 82.5 acres, would remain open space with a RM zoning and General Open Space land use designation.

## **DISCUSSION**

- A. Applicable Legal Standards:** Before considering the *approval* of a proposed public project, the deciding body must complete and consider environmental review required under the California Environmental Quality Act (Public Resources Code, §§ 21000, et seq. ("CEQA").) However, CEQA and the CEQA Guidelines provide an exception to the environmental review process when an agency *denies* a project. As explained in one court case,

The Legislature has determined for reasons of policy to exempt project disapprovals from environmental review under CEQA. Our state legislators evidently concluded that public agencies should not be forced to commit their resources to the costly and time-consuming environmental review process for proposed private development projects slated for rejection, whatever the reason for agency disapproval. (*Main San Gabriel Basin Watermaster v. State Water Resources Control Board* (1993) 12 Cal.App.4th 1371, 1383-1384; rev. denied.)

In this matter, the Board cannot consider the approval of the proposed Highlands Estates project until an EIR is completed and certified. However, the Board may consider the denial of the project without the EIR. Thus, the Board may consider denial of the request to change the General Plan land use designation and rezoning of the property without waiting for the EIR to be completed. The following memo outlines considerations for denial of that application.

The Board also has discretion under its police power authorities to consider and deny a request for rezoning. Under California law, there is no right to any particular or anticipated zoning. (*Avco Community Developers, Inc. v. South Coast Regional Comm'n* (1976) 17 Cal.3d 785, 796.) Rather, the decision to change a General Plan land use designation and rezonings is a legislative matter within the discretion of the Board. However, the decision cannot be arbitrary, irrational or capricious. It must have a rational basis that is substantially related to the public health, safety or general welfare.

- B. The Subject Property's Current General Plan Land Use and Zoning Designations Are Consistent With the County's General Plan:** A General Plan land use designation of General Open Space is consistent with the provisions in the County's General Plan. The General Plan uses locational criteria in determining land use designations. For the General Open Space land use designation, applicable criteria are:

1. Where natural resources are in need of protection.



2. Where there is managed production of resources.
3. Where it is necessary to protect the public and health and safety.
4. Where outdoor recreation is or could be suitably provided.

The Open Space designation here on the subject property protects the scenic, vegetation and wildlife conditions on the project site in conformance with the first criteria listed above. In addition, the designation conforms with the third criteria above. In fact, in the Background for the General Plan adopted in 1986, it was recognized that, unlike other urban neighborhoods, a large part of the Highlands/Baywood Park area lies in open space, owing in part to the steep terrain. (Background and Issues, p. 8.9) Further comments state that “[c]are must be taken to ensure that new development [in the Highlands/Baywood Park area] is consistent with both the architectural quality of existing development and sensitive to the constraints imposed by sloped terrain and natural vegetation.” (Background and Issues, p. 4.39) The Background also states that “Ths[sp] issue of conserving the established development character of the Highlands/Baywood Park seems partially addressed by current zoning district standards.” (Background and Issues, p. 4.45).

In addition, the denial of rezoning would be consistent with the Housing Element of the General Plan which was adopted earlier this year. The proposed development is not necessary to meet the County’s regional housing allocation.

The zoning designation of RM (Resource Management) is also consistent with the General Plan. For each General Plan land use designation, there are various zoning districts that implement the goals and objectives of the respective General Plan land use designations. Specifically the RM zoning was developed to provide the regulations for implementing the goals and objectives of the General Open Space land use designation. As noted in the Background adopted in 1986, the RM provides explicit development review criteria that primarily seeks to reduce the disruptive impact of development upon the natural features of the landscape present at the building site. The zoning district requires that development be subordinate to the pre-existing natural character of the site, and it contains supplemental criteria applicable to development within scenic corridors and areas determined to possess those natural features which can be considered scenic. There are additional provisions that address public views, vegetation removal, access routes, screening, and finally, the location of development either in grass or brush land areas or upon landscape features which have unusual scientific, historic, or scenic value. (Background and Issues, p. 4.26) All of these provisions support and ensure protection required for lands designated General Open Space.

**C. The Property's Current General Plan Land Use and Zoning Designations Are Supported by Considerations for the Public Health and Safety and General Welfare:** The property's current land use designation in the County's General Plan is Open Space and the use of RM zoning most likely resulted from consideration of development constraints associated with the geologic and topographic features of the site, its aesthetic values to the surrounding community, and access and circulation issues. Those conditions have not generally changed, and would support a denial of the rezoning and General Plan Amendment today.

Due to its steep slopes, varied topography and existing vegetation, the subject property presents substantial development challenges. The physical features of the property include steep grade changes with significant vegetation. It is highly visible to the surrounding community and has the potential to impact the quality of visual resources in the area. There is currently no existing access into the site, and development will require careful consideration.

The current RM zoning for most of the property already addresses these development concerns by using a site specific analysis to determine density and site design criteria. The RM development review criteria requires development to be located, sited and designed to carefully fit its environment so that its presence is subordinate to the pre-existing character of the site and its surrounding. It addresses the issues of fitting the natural topography, reducing visual impacts and maintaining established vegetation when appropriate. The development must also be designed in a manner that does not contribute to the instability of the parcel or adjoining parcels.

While it is possible that modern engineering and site design can resolve these issues and result in a higher density than that allowed under RM and R-E-/SS-107 zoning, it is within the Board's discretion whether or not to entertain that possibility. As discussed above, there are sizeable development concerns for the property, and the current General Plan land use designation and zoning adequately address those concerns while still providing development potential for the site. These reasons would provide a rational basis to support denial of the application for General Plan amendment and rezoning.

If the Board finds that denial is appropriate, it will be denying the proposed amendments, the application for a subdivision and construction of the 66-unit development. If, on the other hand, the Board decides not to deny the proposed amendments, the next step would be to move forward with the environmental review process. Upon completion of the EIR, the matter would return first to the Planning Commission and then to the Board for further consideration.

## **VISION ALIGNMENT**

Discussion of this project, including the zoning and general plan land use history, would serve the Commitment of Redesign our urban environment to increase vitality and

expand variety and reduce congestion and the associated goal that land use decisions consider transportation and other infrastructure needs as well as impacts on the environment and on surrounding communities. It would also serve the Commitment of Responsive, effective and collaborative government and the related goal that Government decisions are based on careful consideration of future impact, rather than temporary relief or immediate gain.

**FISCAL IMPACT**

There is no fiscal impact.

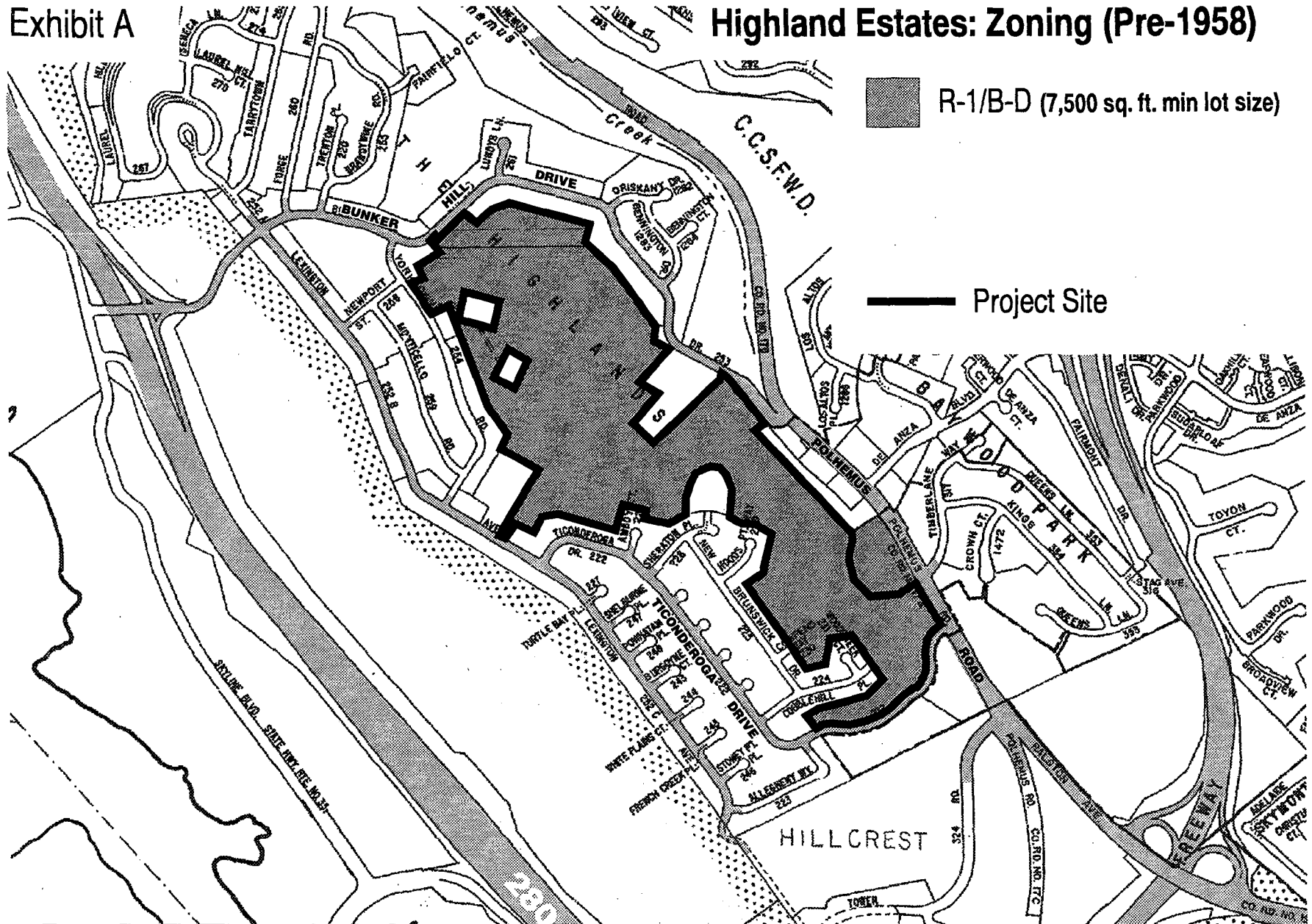
**ATTACHMENTS**

- A. Zoning Map (pre 1958)
- B. Zoning Map (1958-1976)
- C. Zoning Map (1976-Present)
- D. Zoning Map (proposed)
- E. Proposed Development Proposal

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Exhibit A

# Highland Estates: Zoning (Pre-1958)



## San Mateo County Board of Supervisors Meeting

Applicant: James O'Halloran

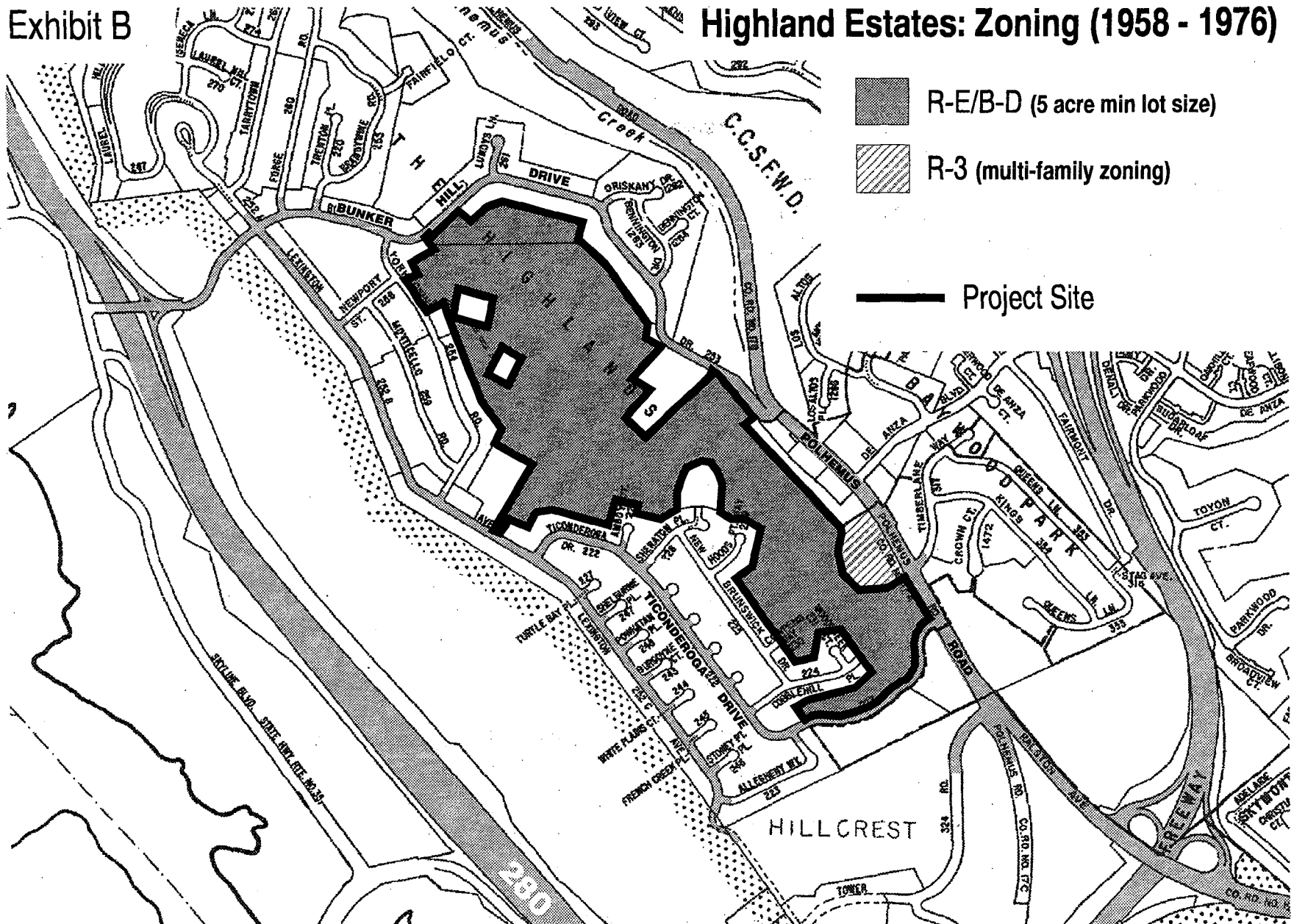
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File Numbers: pln2002-00552



Exhibit B

# Highland Estates: Zoning (1958 - 1976)



## San Mateo County Board of Supervisors Meeting

Applicant: James O'Halloran

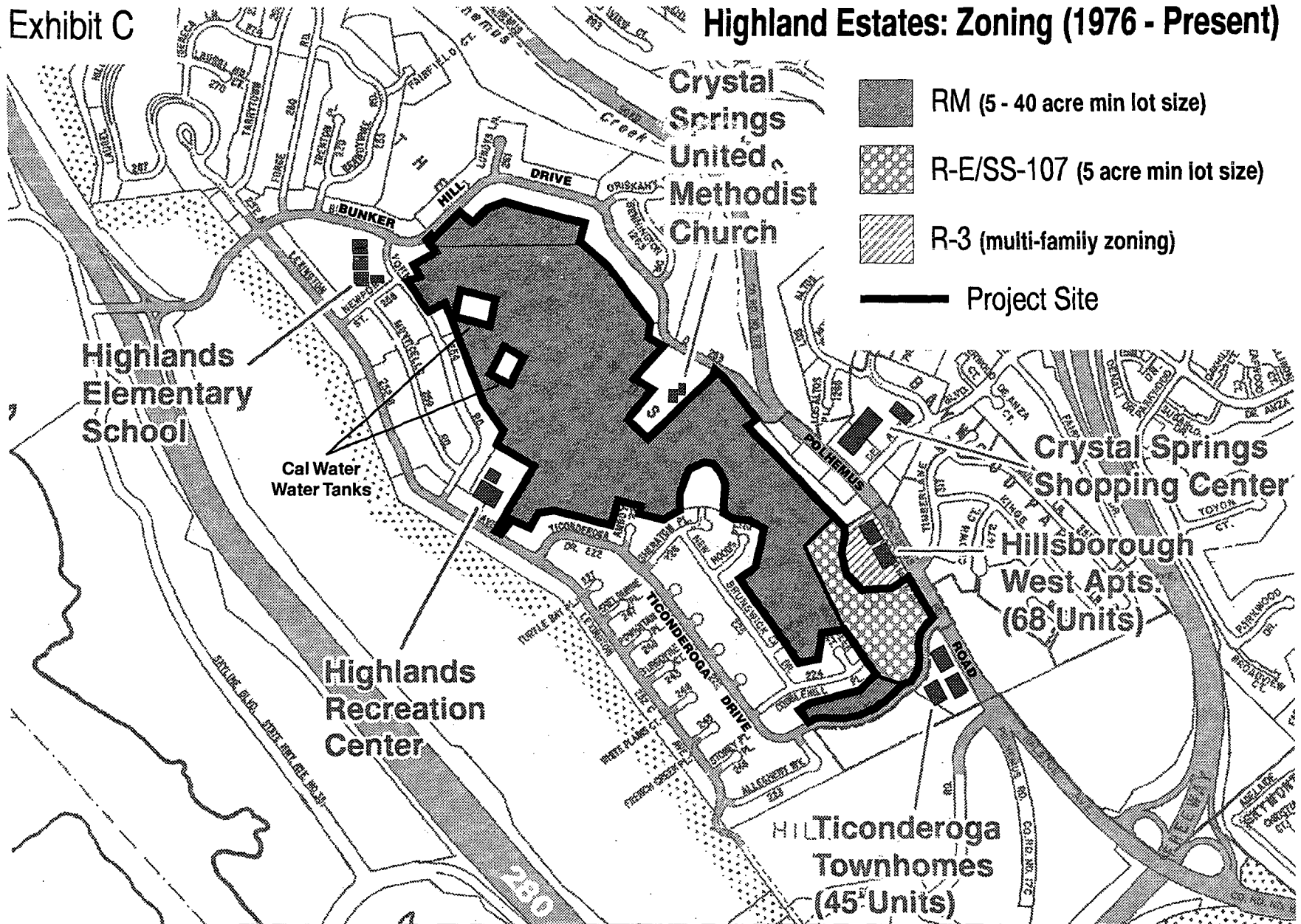
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Attachment: B



Exhibit C

Highland Estates: Zoning (1976 - Present)



San Mateo County Board of Supervisors Meeting

Applicant: James O'Halloran

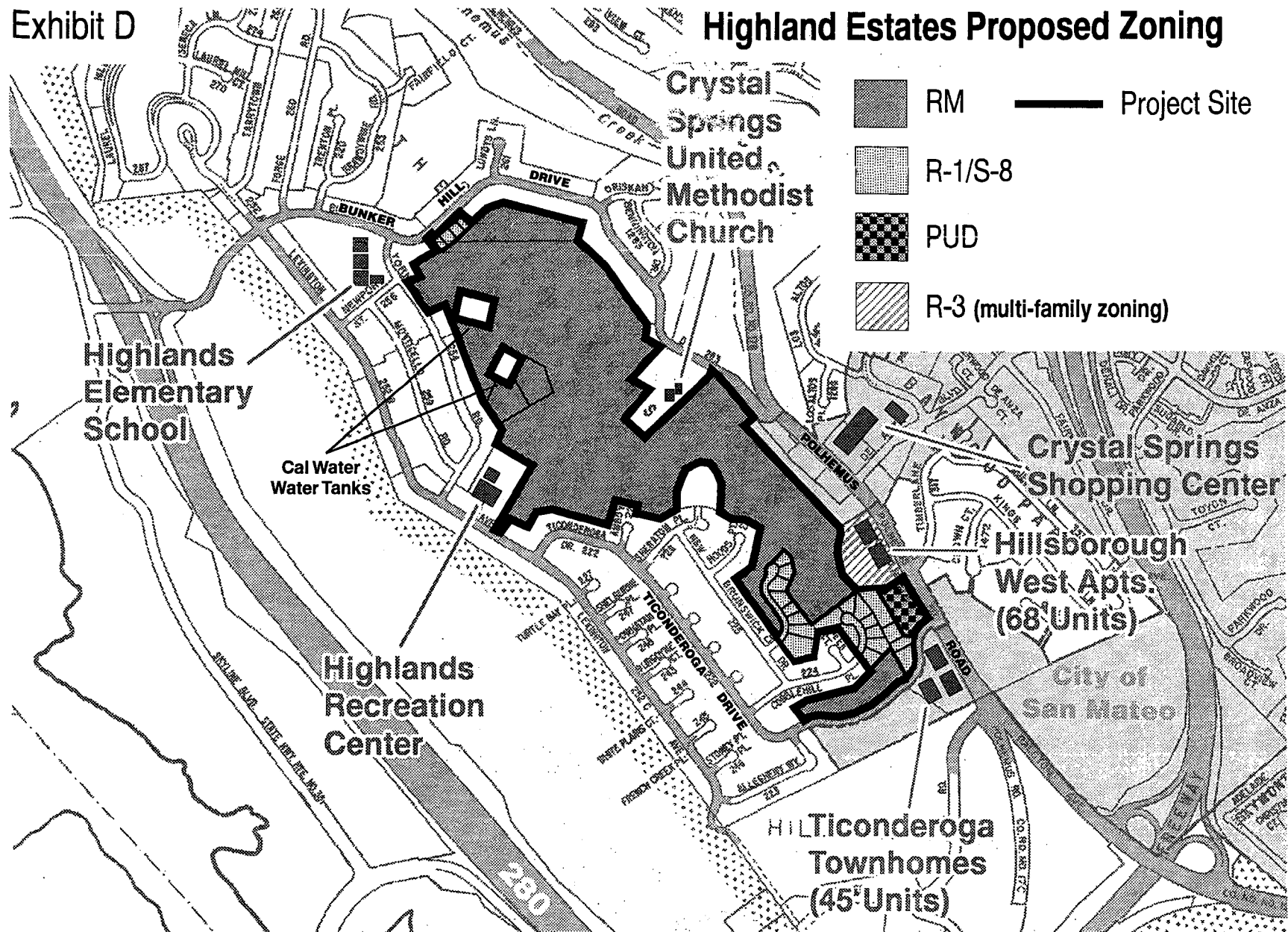
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

File Numbers: pln2002-00552



Exhibit D

# Highland Estates Proposed Zoning



-  RM
-  R-1/S-8
-  PUD
-  R-3 (multi-family zoning)
-  Project Site

## San Mateo County Board of Supervisors Meeting

Applicant: James O'Halloran

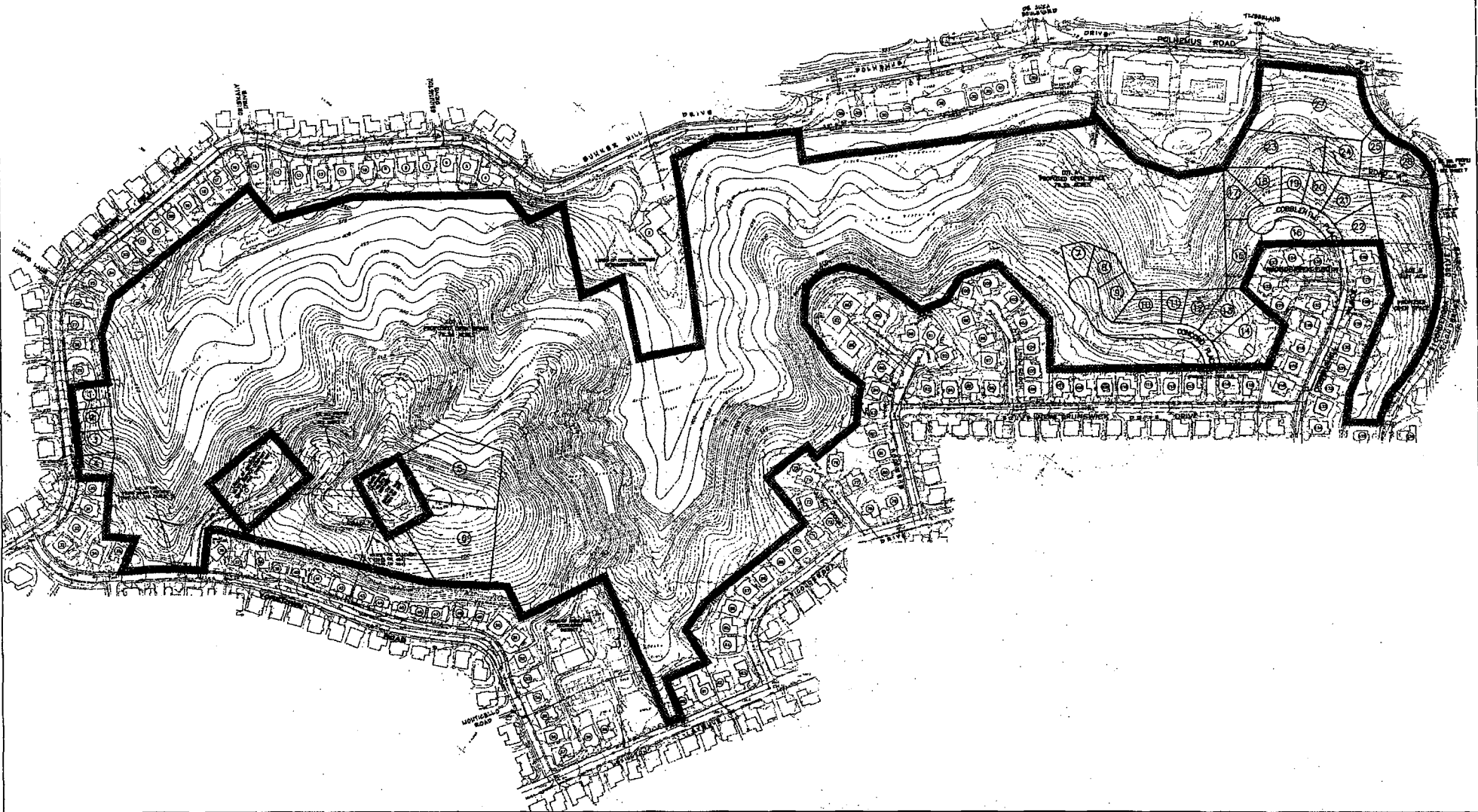
File Numbers: pln2002-00552

Attachment: D



Exhibit E

# Highland Estates Proposed Project Area Map



**San Mateo County Board of Supervisors Meeting**

Applicant: James O'Halloran

Attachment: E

File Numbers: pln2002-00552

