

**MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
MARCH 21, 2005
(APPROVED MAY 2, 2005)**

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Commissioners Michael Badner; Compton Gault; Frank Imhof, Vice Chair; Glenn Kirby; Mike Jacob, Chair; Richard Hancocks and Edith Looney.

OTHERS PRESENT: Chris Bazar, Planning Director; Steven Buckley, Assistant Planning Director; Cindy Horvath, Transportation Planner; Jana Beatty, Senior Planner; Karen Borrmann, Public Works Agency Liaison; Eric Chambliss, County Counsel's Office; Nilma Singh, Recording Secretary.

There were seven people in the audience.

CALL TO ORDER: The Chair called the meeting to order at 1:40 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair noted the order of the agenda and thanked Commissioner Gault for organizing the morning tour.

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **APPROVAL OF PLANNING COMMISSION MINUTES** – March 7, 2005.
2. **CONDITIONAL USE PERMIT, C-4158, REPUBLIC SERVICES – VASCO ROAD LANDFILL - AMENDMENT** – Application to extend the term of the Conditional Use Permit for this facility ("Permit") from 2008 to December 31, 2022; and to formalize permission to continue to conduct waste diversion and materials recycling operations that have been ongoing for a number of years on the site. The Vasco Road Landfill (VRL) (formerly Vasco Road Sanitary Landfill) is an existing permitted landfill in an A (Agriculture) District, located at 4001 North Vasco Road, east side, approximately 1 mile north of Dalton Road, Unincorporated Livermore area, designated as Assessor's Parcel Numbers 99B-4901-2-3; 99B-4926-1-1, 1-2, 2- 4, and 2-5; and 902-6-2-2. (Continued from March 7, 2005; to be continued to April 18, 2005).
3. **SURFACE MINING PERMITS AND RECLAMATION PLANS SMP-38, SMP-39 and SMP-40, RHODES & JAMIESON** – Petition to

make three parcels in Eastern Alameda County available for sand and gravel extraction operations, two of the parcels, SMP-38 and SMP-39 located south of Livermore Airport, SMP-38 close to the Livermore Golf Course, and SMP-39 close to Jack London Boulevard, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 904-0001-007-26, 99B-3661-001-04 and 99-200-002-00. (Continued from January 3, 2005; to be continued to June 20, 2005).

Commissioner Kirby made the motion to approve the Minutes as submitted and Commissioner Badner seconded the motion. Motion passed 7/0. The Commission also unanimously approved the remainder of the Consent Calendar.

REGULAR CALENDAR:

1. **2170TH ZONING UNIT, STEPHEN / KRAUSE** – Petition to reclassify a site containing approximately 27.09 acres from the R-1-B-E (Single Family Residence, 20 acre Minimum Building Site Area) District to a PD (Planned Development) District, to allow a secondary unit, located at 109 Castlewood Drive, west side, approximately 0.7 miles northwest of Fairway Lane, Pleasanton area of unincorporated Alameda County, bearing Assessor's Parcel Number: 0946-4391-028.

Mr. Buckley presented the staff report. In response to Commissioner Badner, he further explained why the project was previously denied. This property was part of a larger subdivision where 20 acre minimum sized lots would only be allowed and no Parcel Map applications be approved in future. Commissioner Kirby felt that the requirements for the secondary unit appear to be prepared for an Agricultural District rather than the R-1 District and, as such, the staff report should reflect this more accurately. Commissioner Imhof said he was concerned with precedent setting. Mr. Buckley pointed out that one of the conditions of the last subdivision was that no further subdivision be allowed.

Public testimony was called for. Frank Patitucci, property owner at 786 View Drive North, thought it was relevant to look at the zoning map, pointing out that this area has been zoned down to 20 acre parcels, area was almost completely built out and the location of the private road which is owned by four property owners. Although he has lived here for ten years and his property abuts the road, he has no access. Both his two lots share one access driveway. His numerous requests for access have been denied by Mr. John Hiene. Mr. Patitucci felt it would be fair to allow access to all properties abutting the road and unfair to grant an approval without resolving this issue.

Tom Rutherford, General Manager, Castlewood County Club, on behalf of the Board of Directors, read his written testimony. The Board has liability concerns and is against any further developments on the hillside. This is a private road which runs through the golf course and was not suitable for heavy usage especially for construction purposes. Other concerns included fire protection, litter control and safety of residents. To-date, the Board has not received any request for access from the Applicant.

Curt Anderson, 33 Golf Road, representing the Castlewood Homeowner's Association, stated that the Association was against this proposal as it will negatively impact the other 170 property owners. An approval will set a precedent and put a burden on fire, sewer and road. The 10 foot wide road will pose safety concerns with increased traffic.

Leo Steffon spoke in support of the proposal. He pointed out that the purpose is solely to allow for a caretaker's unit. He had unsuccessfully tried to contact the General Manager. He assured that all precautions will be taken during the construction period.

Tom Krause, Applicant, explained in detail his health problems adding that the secondary unit would be occupied by someone who would cook and clean for him. The closest neighbor is about 1,500 feet. In response to Commissioner Kirby, he confirmed that he was willing to cover any damages occurring during the construction period and agreed to a related condition of approval.

Public testimony was closed. A discussion followed regarding the lack of insurance/bonding requirement in the prior resolution. The Chair asked if the prior application had a bond/insurance requirement. Staff replied no. Commissioner Hancocks said he was concerned that this proposal was not for public benefit but for the property owner only. Commissioner Kirby asked why this application was taken in as a PD compared to other secondary unit applications without a zone change. Commissioner Looney pointed out that there is a difference between subdivision and a secondary unit. The Chair continued the matter to allow staff to provide copies of the prior action to the Commission before an action is taken.

Matter reconvened. The Chair noted receipt of the previous conditions of approval dated May 28, 2003, which had one less provision than the current. He thought that the reference of the 'home office' in Provision #1 was not related to the secondary unit. Commissioner Imhof questioned the septic system for the new unit and the location of the closest sewer line. Mr. Buckley replied that there would be one system for both dwellings and the closest line was down by View Drive, closer to the development.

Commissioner Looney made the motion to adopt staff's recommendation for an approval. Commissioner Kirby seconded the motion with an additional condition to reflect that the property owner be responsible for all insurance and roadway maintenance due to construction activity through the golf course and on the private roads. Although he supports this approval, he further questioned the use of the PD. Motion carried 5/2 with commissioners Gault and Hancocks voting no.

2. **TENTATIVE PARCEL MAP, PM-8381 – CORBETT / LAMB SURVEYING, INC.,** - Petition to subdivide one parcel into two lots containing approximately 235.50 acres, in an "A" (Agricultural) District, located at 10366 South Flynn Road, north side, approximately 0.51 miles northeast of Patterson Pass Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-1760-001-00. (Continued from February 22 and March 7, 2005).

Mr. Buckley presented the staff report. Commissioner Kirby requested clarification on the Fire Department requirement on Pages 1-2. He thought the State regulation was 100 feet clearance from the property line. Public Works' requirement of 30 feet seems a conflict. Mr. Buckley explained that the distance was based on the fuel type and slope and further read the exact sentence from the Public Works response letter.

Public testimony was called for. Mick Lamb, applicant, concurred with the staff report. He requested clarification on Condition #10 related to roadway improvements and asked if the condition was related to the existing driveway. Requiring design by a civil engineer would be costly. Commissioner Kirby suggested it could be part of the soils report.

Public testimony was closed. Public Works staff confirmed that the condition could read "...qualified engineer." Commissioner Gault made a motion to move staff recommendation and Commissioner Kirby seconded. Motion passed unanimously.

3. **CONDOMINIUM CONVERSION GUIDELINES** – Consideration of the Committee recommendations including input from the Fire Department and Building Inspection Department regarding revisions to the Alameda County Condominium Conversion Guidelines.

Commissioner Kirby said he appreciated the quick and thorough reports from Fire and Building Departments. Commissioner Gault made the motion to adopt the guidelines and Commissioner Imhof seconded. Motion passed unanimously.

STAFF COMMENTS & CORRESPONDENCE: None.

CHAIR'S REPORT: The Chair reminded the Commission that Economic Interest Forms were due April 1, 2005. He announced that he was no longer associated with the Bay Area Rapid Transit District, but was now with the Pacific Merchant Shipping Association.

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: None.

The Chair announced a five-minute recess.

Transportation Subcommittee

Time: Upon Recess of Regular Meeting

- A. Call to Order/Roll Call
- B. Announcements by the Chair - None.
- C. Open Forum - No one requested to be heard under open forum.

D. Regular Calendar

1. **WORKSHOP: TRANSPORTATION AND CIRCULATION ELEMENT** – Scoping workshop and discussion of possible work plan for Committee, including the review of similar elements and like documents prepared by other counties and local jurisdictions.

The Chair announced that he has put together a worksheet for discussion purposes only. The intent is to look at the macro-level of the County-wide transportation plans, investments, and future policy. The Commission recommended inclusion of several other invitees (EBRPD, SFPUC, CVMAC, Redevelopment Agency, San Lorenzo Home Association, ABAG, CCTA, Hayward Airport, Water Transit Authority and others). A discussion followed on the topics of the workshop including future developments to be transit oriented, a county-wide policy, a need for a frame-work, funding resources, transit-oriented housing, levels of service, traffic issues and circulation, non-motorized areas and community expectations. Mr. Bazar pointed out that a framework already exists through the different Plans. Commissioner Kirby thought that the County Bicycle Plan could connect with the local Plans. Commissioner Gault voiced his concerns with traffic problems in the Castro Valley area adding that he supported regional planning. Commissioner Looney also agreed with the regional planning and felt that traffic circulation was another important topic. She asked if an intra-regional group exists. Ms. Horvath said there is Alameda County Congestion Management Agency and Tri-Valley Transportation Commission which should be added to the invitee list.

Ms. Horvath further discussed the lawsuit between the County, City of Tracy, Sierra Club and City of Livermore, which has resulted in a study on the traffic impacts especially for the Altamont Corridor. Another project that is taking a look at this corridor is the BART extension to Greenville Road Study, known as the I-580 Corridor Transit Study.

Commissioner Gault said he supported a yearly discussion by the Commissioners from the five surrounding counties. Commissioner Imhof requested clarification on Transportation Fees. The Chair stated that the next step would be to develop a timeframe for future workshops on this topic.

E. Adjournment

Set Matter (This item will not be heard prior to this time)

Time: 6:00 p.m.

Place: Public Hearing Room
224 W. Winton Avenue

Hayward, California

There were approximately thirty-seven people in the audience.

- A. Call to Order/Roll Call
- B. Announcements by the Chair - The Chair read two letters, one from Commissioner Kirby and the other from County Counsel addressed to the Commission.
- C. Open Forum - No one requested to be heard under open forum.
- D. Regular Calendar
 - 1. **2193rd ZONING UNIT AND TENTATIVE TRACT MAP, TR-7530, ROBERTS/UTAL** –Petition to reclassify a site comprising approximately 8.25 acres from the R-1-SU-RV and R-1-B-E-SU-RV District to the PD (Planned Development) District, to allow subdivision of three parcels into 38 lots for development of single-family homes, located at 4524 Crow Canyon Place, approximately 500 feet south of Crow Canyon Road, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 084C-1068-001, 084C-1068-007, and 084C-1068-008. (Continued from September 7, October 18, November 1 and 15, and December 20, 2004; February 7 and 22, and March 7, 2005).

Ms. Beatty introduced Stanley Fung and Bill Lepere, Public Works Agency; Scott Gregory and Jason Chafin, Lamphier-Gregory, EIR Consultants; Colin Busby, Basin Research Associates and Jeff Monk, Monk & Associates; and presented the staff report.

Mr. Gregory, Principal, Lamphier-Gregory, discussed the EIR, explained that the new chapter of the EIR (March 2005) was compiled as responses to the comments received at the December 20th hearing. The five main issues raised were special status species, riparian vegetation within the project area, cultural resources, historical resources and the need for a bridge, and Mr. Gregory further discussed these issues in detail. Other information included in this document are numerous interim site plans, biological report which is a peer review prepared by Sycamore & Associates, a response to these peer reviews by Zentner & Zentner Associates, illustrations submitted by Terry Preston, technical reports regarding historical and cultural resources and other supplemental information. He requested that the Commission reconsider certification of the EIR including this additional chapter.

Ms. Beatty addressed some of the other issues. Fire Department will make a decision on their requirements at the approval of the Final Map. Meanwhile, staff recommends a condition for Vegetation and Fuel Management Plan as part of the Tract Map approval and Ms. Beatty further read the condition. The project was heard by the PRHC on two occasions and has recommended

the following: a professional archeologist be on site during ground activities, protect large blue gum tree at the proposed bridge site, development setback further from creek to protect Ala-60 site, and formally develop an area as an educational site. In response to these recommendations, staff feels that the mitigation measures in place do protect the archeological features and the Applicants have agreed to protect the large gum tree. Although the Specific Plan does not include the definition of riparian vegetation, it does include the definition of a riparian corridor. Staff feels that the project is consistent with the Specific Plan. Condition #10 for the Tract Map has new language underlined (10.b.) and staff also recommends another condition to reflect that the Biological Resources Protection Zone (BRPZ) be delineated in the Tentative Map, and inclusion of Public Works recommendations as contained in their memo dated March 8, 2005. In response to Commissioner Looney, staff indicated that the Commission had voted 8/3 in favor of the above recommendations.

Ms. Beatty further discussed Chapter 18 of the Final EIR outlining staff's recommendations for the proposed project. Commissioner Kirby noted his concerns regarding defensible space. Staff indicated that prior to Final Map approval, the biologist will review the Fire Department plan as to whether it impacts the BRPZ zone. Conditions in the proposed CC&Rs will also ensure that structures do not intrude into this zone. Commissioner Hancock felt that the impacts could be avoided by project re-design.

Public testimony was called for. Arlene Utal, co-applicant, listed the previous public hearings on the project. Using a power-point presentation, she described the proposed project, current neighborhood and history, showed photographs of the old and new bridge and of the property about forty years ago noting the absence of any trees. Commissioner Looney requested confirmation that the trees were not older than 40 years. Ms. Utal replied yes adding that the older trees are in the creek area and on the subject property.

Linda Bennett, Friends of San Lorenzo Creek, spoke against the project in relation to the impacts associated with the creek. She read and submitted her written testimony. Her main concerns included the bridge, non-conformance with the County Watercourse Ordinance, creek impacts, extensive lot coverage and costly water retention basin and its maintenance; she would not oppose the project if done in an environmentally and regionally sensitive manner. She suggested a condition be added to require the matter be re-heard by this Commission in the event there is a significant grading change.

Frank Goulart, a Hayward resident, in reference to the topography, a gentle slope, noted the cultural significance and suggested that an archeologist be on-site during groundwork in the event of any artifact discoveries. Per Miller's report, this is the most significant Native American in the East Bay with two all-year running creeks, namely Crow Creek and San Lorenzo Creek. He submitted a copy of the relevant portions of the Miller's report.

Julie Machado, 22248 Main Street, said although she is a member of the PRHC, she was not speaking on behalf of the Commission. At the March 3rd PHRC meeting, the Commission had concerns regarding the potential cumulative impacts and she had made the motion that an archeologist be on site during all ground-disturbing activities; the large gum tree be saved and the Ala-60 site be developed as an educational archeological center. Although the EIR only

focuses on the construction impacts, the Commission also had concerns on the impacts by future residents and pets. She urged a denial and submitted her written testimony.

Audrey Lepell said her concern was the riparian habitat which was valuable and should be protected. The definition of this creek fits the Ordinance definition of a watercourse. Her other concern was the creek setback, especially for lots 11, 10, 9, 8 and 7. She further asked for the setback for lots 30 and 31 and urged all to consider saving watercourses and riparian corridors.

Jacqueline Beggs, 17654 Dorson Lane, also spoke on behalf of Marguerite Marlen, 21487 Lake Chabot Road; Daug VanderWeele, 10072 Cull Canyon Road and Sheila McClellan, 3270 Ohlone Way, and discussed the cultural resources of the site. She felt that the EIR was incorrect in stating that the Ala-60 was not a prehistoric site but noted that it was first recognized as an archeological site on both sides of the creek in 1960 by Professor Kearney. The 1978 Caltrans map shows the existence of bedrock mortars on both sides of the creek including the project site. She further discussed cupules, adverse affects, site integrity and protection, public significance and environmental context. Ms. Beggs submitted her written testimony, Mr. Kearney's memo dated January 31, 2005, a copy of the Caltrans Map, and photographs of a bedrock mortar. In response to Commissioner Imhof, she confirmed that the photograph was taken on the Caltrans' property and Ala-60 site is on both sides of the creek and that these materials had been presented to the PRHC.

Verne Beggs said he was also speaking on behalf of Eleanor Jardine, 22467 Queen St; Marie VanderWeele, 10072 Cull Canyon Road and Frank Delfino, 18673 Reamer Road. With the aid of a DVD, he showed photographs of mortar in the creek and bedrock mortars taken from the subject and the Caltrans property noting the non-existence of a buffer zone between the two properties (reflected otherwise in the EIR) but only a common area. This is the most significant site in the Bay Area and qualifies for National and State Register which needs to be protected. He also noted that 4-5 of the proposed homes intrude in the PRBZ zone, a zone that did not exist outside this project. Alternative mitigations are needed and he suggested 120 feet setback from the creek and Caltrans property, fencing, no bridge, limit units to perhaps 18 and an entrance on Veronica. In response to the Chair, he explained that not all of these materials had been presented to the PRHC as some had just been received.

Dick Schneider, Measure D Committee, stated that all involved in Measure D would like to see mixed uses in transit-oriented locations. He read a portion on riparian habitat from the Atlas of Biodiversity of California by Department of Fish and Games. He asked, "What constitutes development?" and read the definition in Measure D.

Janice Delfino, 18673 Reamer Road, felt that the phrase 'BRPZ' has been created to solve the resource concerns on this site. The entire 8.25 acre parcel is the biological zone which cannot be replaced by the Specific Plan for Areas of Environmental Significance. Although questions have been raised regarding storm water discharge since September, 2004, to-date only one location for storm water facility is shown on the site plan which is in the riparian corridor. There is a need for an actual design plan. A storm would mean sediment in the creek.

Howard Beckman, Friends of San Lorenzo Creek, said he was against 'railroading' of this

project and complained that adequate time has not been given to the public to read and understand the complex package. A bad project is defined by unnecessary complex mitigations. Friends of San Lorenzo Creek has not been made a part of the discussions since December 20, 2004. He reiterated Ms. Bennett's testimony and referred to his comments on the DEIR. If approved, it would be against the CV Specific Plan. Mr. Beckman addressed two points: setback and bridge. The setback is designed to protect the riparian corridor, which is already in existence, and apply the Water Course Protection Ordinance. He further read the definition of "development" from the Ordinance. He pointed out that Public Works has made significant waivers per their letter dated March 8, 2005, which he has challenged. In reference to the bridge which is an unacceptable incursion into the creek, there is no environmental analysis of a bridge of this magnitude. There is no mention of the possible impacts of the bridge in the DEIR. He felt that since the bridge will carry sewer lines across the creek, the creek was considered an obstacle to the development. This is not acceptable. He has not seen the written response from the Fire Department regarding the second access.

Paul Kempel, 4560 Crow Canyon Place, said his property is directly north of the subject site. His concerns included increased traffic on Crow Canyon Place for which he suggested the entire east side of Crown Canyon Place painted red and 'No Parking' signs placed; lack of notification; and permanent and recorded easement as part of the Conditions of Approval. Mr. Kempel said he otherwise supported the project.

Wendy Easley, 18572 Cull Canyon Road, requested clarification on Exhibit C, Provisions of Reclassification, 2193rd Zoning Unit, Condition #2. Mr. Bazar explained that this condition was part of all reclassifications and Mr. Chambliss confirmed that any cost of defending a challenge will not be borne by tax-payers.

Terry Preston said she specializes in creeks, has studied this area for seven years and had become involved at the request of Supervisor Miley who also had concerns on the impact on the riparian corridor. She agreed with Mr. Beckman that adequate time has not been given to prepare a detailed response and, as such, has only reviewed Section 8, comments 1 and 2 of the additional chapter of the FEIR. The entire section is scientifically inaccurate and unsupportable. The majority of mitigations are ineffective and inadequate. She wanted the record to reflect that the mitigations that lead to findings in Attachment A cannot be supported by fact or science. The PRBZ zone is fictitious and only drawn to support this project. She asked why Munk & Associates waited until the public had raised concerns to identify the lack of protection of important and sensitive resources. The issue of defensible space has only been raised tonight and staff description is incorrect. This area has been identified as a 'high risk area' by the Fire Department because of the high fuel load and steep slope. At the December 20th meeting, the Commission directed staff to include the community and public scientists' input for the new plan. This was not done and the Minutes do not reflect this directive. This project would have a permanent affect on the quality of life. Another concern was that instead of commending Commissioner Kirby for seeking additional information, he was threatened by the developer, which she felt should not be allowed. This project is not in conformance with any County Plan nor does it protect the watershed. She further discussed the foraging habitat and expressed concerns on illustrations/photographs on the absence of trees. The aerial photos do show trees on site. The Chair asked for her opinion of eucalyptus trees. Ms. Preston said they have a high oil

content.

Diana Hanna, resident of Cull Canyon, read and submitted her written testimony. Since permission had been obtained for the site visit, she felt that at the December 20th meeting, the statement of trespassing was an attack. She agreed that the Commission's directive had not been followed. She also complained of inadequate time to look at all the documents and urged a denial noting that she was not opposed to the project at this site but the access.

Francois Koutchouk, 6161 E. Castro Valley Blvd, pointed out that the photograph showing the lack of trees displayed by the developer shows only a very small portion of the entire property and is misleading. Large eucalyptus trees are unsafe as highly inflammable and branches tend to fall over. This is a green area which needs to be protected. He also urged a denial.

Bence Gerber, 6700 Sunnyslope, pointed out that the audience cares about the community, including the creek and environment, and the developers care about profit. He recommended a denial.

Vadim Pokotylo, 20008 Gem Court, said his property line is on the bank of the creek. His complaints included lack of notification and overall public participation, and non-availability of documents. He asked how the 'public interest', which is mentioned regularly in the staff report, is determined. Although CVMAC had recommended redesigning the project, it has not changed much. Mr. Pokotylo felt that the creek and topography was an after-thought.

Deborah Scherrer representing Palomares Canyon Homeowners Association, stated that this is a badly designed project with many mitigations. She asked how this project would benefit the County.

Cheryl Miraglia, Five Canyons, read and submitted her written testimony. Her concern was the number of homes. Although similar projects that were in violation of several Plans have been approved in the Five Canyons area, she urged denial of this project.

Philip Gordon, property owner at 1922 Hillsdale Street, said he had presented his testimony at the CVMAC meeting also. His two issues were logistics and specifics. Logistics as to keep the air clean. He read Chapter 13.12.31 of the Water Course Protection Ordinance. Using the overhead, he pointed out the trees that would be saved, indicating that they were insufficient.

Ms. Utal, in rebuttal, pointed out that the project would bring 32 infill homes, employment, tax increments and revenue/benefits to the County. Using an aerial photograph, she outlined the neighborhood, the project, location of the creek, pointed out the huge untouched area in the south larger than the project site. In response to the Commission, Ms. Utal indicated that the price range for the new homes would be between \$700,000 to \$750,000; the reason for rezoning was that a PD zoning would allow different lot sizes; all utility lines will be suspended underneath the bridge which will withstand earthquakes and storm water details have been submitted to Public Works.

Colin Busby, archeologist, provided the archeological history and background on the freeway

widening. Basin Research Associates was hired by Caltrans in 1982-83 for data recovery. He disagreed that the site extends to the subdivision and referenced the 1978 and 1979 maps. No artifacts were found on the other side of the creek, on the subject property and no mortars were found in the creek area either. He further explained Section 106 which is applicable only to Federal projects. The Caltrans property is on the National Registrar for information purposes only and is not the most important site in the Bay Area although materials were found, measured and recorded. Mr. Busby, at the request of Commissioner Looney, explained the mitigation work completed on the materials found and if found in future. He confirmed that the above information had been provided to the PRHC. Ms. Utal added that Ms. Dee Roberts, the property owner, who has lived on the property for 70 years, has not made any archeological finds. She agreed to an additional condition that if in the future an artifact is found, it would be turned in to the appropriate agency or consult Mr. Busby. Mr. Bazar confirmed that Mr. Busby is the County's archeologist consultant for this project.

The Chair announced a ten-minute break.

Meeting reconvened at 9:20 p.m. Mr. Gregory stated that the DEIR did include a discussion on environmental impacts related to a specifically defined riparian and oak woodland areas at the request of the Commission at the last meeting for a broader definition of the biological resources on site consistent with the Specific Plan for Areas of Environmental Significance. He further read the related portion from this Plan and confirmed that the term Biological Resources Protection Zone (BRPZ) was created for this project.

Jeff Monk explained that the project biologist indicates that the riparian corridor is limited to the riparian vegetation but not the species associated with oak woodland. Staff's argument is that riparian corridor should not be limited exclusively to riparian species. He explained the following in detail: the riparian corridor, species, habitats, vegetation, woodland canopy, BRPZ and definitions/practices and usage of the word 'protection'. Commissioner Kirby requested further clarification on the word 'protection'. Mr. Monk explained that the line is to protect the creek channel and the buffer zone is to protect the biological resources in the creek. Removal of any vegetation/tree behind that line would affect the desirability and use by wildlife species. In response to Commissioner Badner, he indicated that the protection zone extends to the edge of the developed area but does not have a 'hard' setback. All of the trees in the creek channel and corridor will be saved. In reference to the bridge, he explained that a CEQA approval of this project does not permit a bridge. A U.S. Army Corps, and Fish and Game permits have to be obtained. At the request of the Commission, he provided information on eucalyptus and the blue gum trees. Mr. Gregory described the history of the blue gum trees/forest adding that the large blue gum tree at the base of the proposed bridge could have been an offshoot of a separate forest around 1870.

The Chair requested clarification on the difference between the mitigation measures stated on Page 89 of the EIR and the staff report. Mr. Gregory replied that the mitigation measures would include avoidance, minimization and reduction of impacts, restoration and compensation. Since avoidance is not feasible, other approaches/measures have been identified for construction and grading activities for bridge abutments, storm drains, clean water facility and internal loop road. A second type of impacts has been identified as minor encroachments into the BRPZ, a result of

which Lot #8 could be eliminated or compensated by restoration and replacement plan. Significant impact to the BRPZ has been identified for Lots 9 and 10 and the recommendation is also avoidance, redesign or compensate. Under the Riparian Woodland Restoration and Replacement Plan, there would be a 10:1 replacement ratio for riparian corridor and 2:1 ratio for oak trees. Commissioner Kirby felt that there is a need to protect the zone and not replace, and perhaps add a 30 foot setback/buffer from the zone. Mr. Bazar pointed out Page 6 of the staff report; the need to consider the definition of the word 'development'. Commissioner Hancocks pointed out that the Commission has to respond to the community also regarding mitigation concerns. Commissioner Imhof suggested a park on the Caltrans property. Mr. Bazar explained that the County had no jurisdiction over the Caltrans' property pointing out Condition #54 which, perhaps, could be tightened and PRHC's recommendation for an interpretive center.

A discussion followed regarding the proposed water retention basin, a mechanism to control costs to the future HOA, monitoring and maintenance by the County, and liability issues; red-stripping of the curb on Crow Canyon Place; and the location of a fence between Boundary Creek and Caltrans property.

Mr. Bazar noted that if the Commission concludes that the definition of development and BRPZ should only affect structures and not grading, it would impact Lots 9 and 10; but if it affects all structures and grading, Lots 8, 9, 10, 11, 31 and 31 will be impacted. He also pointed out that the custom lot, #32, lies entirely in the oak woodland area and the BRPZ. In response to Commissioner Looney, he confirmed that the road is also considered development but did not conflict with the BRPZ line as it was exempted in the Public Works watercourse permit, similar to the water quality feature and minor road work within the site. A discussion followed on the re-certification of the EIR.

Commissioner Hancocks made the motion for re-certification of the EIR including chapter 18. Commissioner Imhof seconded the motion. Commissioner Kirby indicated that although the EIR had been certified initially, much information has come forth with many issues that still need to be resolved and he could not make the findings. He felt that it was premature to re-certify the EIR and voted against the motion. Mr. Bazar clarified that the Commission would be recommending re-certification only, and that the Board of Supervisors would certify the EIR.

Commissioner Kirby made a substitute motion that with the exception of the road, there be no impact on the BRPZ by either structures or grading, and there be 30 foot minimum defensible space between the edge of the BRPZ and the first structure as defined in chapter 18-1. Commissioner Hancocks seconded the motion. A discussion followed regarding the 30 foot setback. Although the Applicants indicate that the 32 units is consistent with the zoning, Commissioner Kirby challenged whether or not the zoning is appropriate for this project after eliminating the portion that is not developable. Perhaps the number of units could be reduced. Motion failed $\frac{3}{4}$, with Commissioners Badner, Gault, Imhof, Jacob dissenting.

The Chair made a substitute motion including a definition for development including all structures and grading consistent with Measure D. Commissioner Kirby seconded. Motion passed unanimously.

Regarding the certification of the EIR including Chapters 18-1 and 18-2, the Chair requested clarification. Mr. Bazar explained that Chapter 18 has a range of options that identify impact mitigations. Commissioner Hancock pointed out that mitigation is required due to project design rather than site constraints. The Chair felt that clarification was needed on restoration and replacement as required by mitigation measure 6-1. Mr. Gregory, using the over-head, explained DEIR, Appendix C and the 10:1 tree replacement program in detail. Commissioner Kirby re-stated his concern for the BRPZ and the importance of a buffer zone. Commissioner Looney asked if the Commission had an option to recommend elimination of two lots and approve replacement plan for the remaining lots. Mr. Gregory replied yes further explaining Mitigation Measures 6-1 and 6-3 and suggested rewriting 6-1 as part of the Chapter 18 Mitigation Measures to provide additional clarity.

Motion for adoption of Mitigation Measure 18-1 was passed unanimously.

Regarding Mitigation Measure 18-2a, Mr. Gregory confirmed that tree at the base of the proposed bridge would be removed. Motion for approval carried 4/3 with Commissioners Hancock, Kirby and Looney dissenting.

18-2b – Grading and construction for the storm drain outflow; adoption of mitigation measure consistent with Mitigation Measure 6-1. Motion for adoption carried 6/1 with Commissioner Kirby dissenting.

Motion for adoption of Mitigation Measure 18-2c for the clean water facility passed unanimously.

Motion for adoption of Mitigation Measure 18-2d for the loop road carried 6/1 with Commissioner Kirby dissenting.

The Commission voted unanimously on the substitute motion to be included in the previous motion for the certification and definition of development and mitigation measures including 18-1, 18-2a, b, c & d.

Regarding Mitigation Measure 18-2e. Mr. Gregory discussed design solutions for lots 11, 8 and 10. Commissioner Hancock said he was concerned with 'what would be done later' and Commissioner Gault said he supported redesigning such that they did not encroach into the zone at all. Commissioner Kirby made a motion not to specify the lot numbers but to amend 18-2.e. to read "...should fully avoid impact of grading and structure on home sites to avoid the BRPZ"; to avoid all encroachments, including grading and construction; retain only sub-paragraph e with elimination of lots 1, 8, 11, 30, 31 with no ability for compensation in paragraph 2. This motion referenced 18-1. Commissioner Looney seconded the motion. She suggested including e(i) and modification of f(iii) to fully avoid encroaching. At the request of staff for clarification, the Chair summarized the motion: adopt 18-2e without referencing the lots and the word "minor", inclusion of e(i), replacing e(ii) with f(iii) deleting the words "...or reduce..." and adopting f(i) and (ii). Mr. Bazar requested clarification of f(i) and (ii). Commissioner Kirby confirmed that his motion did not include f(i) and (ii). but only f(i). Motion carried 5/2 with Commissioners Badner and Imhof dissenting.

Commissioner Gault made the motion approve all measures agreed above and mitigation measures 18-1 and 18-2. Commissioner Imhof seconded. Motion passed unanimously.

A discussion followed on the PRHC's recommendations and Caltrans involvement. The Commission agreed on encouraging Caltrans to either fence their property or perhaps sell to HARD for park purposes. Motion to adopt MM 18-3a carried 5/2 with Commissioners Kirby and Looney dissenting; adoption for MM 18-3b and MM 18-3c passed unanimously. Mr. Bazar suggested replacing the word 'adequate' with 'appropriate' in MM 18-4 and the Commission voted unanimously on adoption of this measure with the above change.

In reference to the PRHC's recommendation #2, to save the Blue Gum tree at the base of the proposed bridge, the Commission voted 1/6 with Hancocks in support of the recommendation. Motion failed. The fourth PRHC recommendation was moved for non-adoption by the Chair, seconded by Commissioner Imhof. The Commission voted unanimously for non-adoption.

The Chair made the motion to recommend re-certification of the EIR as modified with the definition of development including grading and construction, with Mitigation Measures 18-1 as proposed; 18-2e, 18-2f as modified, 18-3a, 18-3b, 18-3c, 18-4 as proposed. Motion carried 6/1 with Commissioner Kirby dissenting.

The Chair announced a recess.

Meeting reconvened at 11:45 p.m. In reference to Condition #2, Mr. Buckley indicated that the refinements to the Final Map will be directed to the Planning Director. Conditions 21 and 22 would be conformed to reflect the above EIR modifications and Condition 54 to reflect replacement of the word 'adequate' with 'appropriate'. A discussion followed on different sign options by Caltrans and/or the Applicants; the fence location and policy, and insurance plan for defensible space. The Chair made the motion to include 'No Trespassing Sign'; and landscape and perimeter fencing plans not to extend beyond creek setback line. Commissioner Imhof seconded the motion. Commissioner Badner expressed liability concerns and recommended fencing on the property line. Commissioner Imhof withdrew his second. The Chair amended his motion to include perimeter fencing plans without any further clarifications, as recommended by staff (Applicant to submit perimeter fencing plan in detail) and landscaping plan with 'No Trespassing Signs'. Due to a lack of second, the Chair re-amended his motion to include perimeter fencing plan details per Planning Director and Public Works approval. Commissioner Badner seconded the motion. Commissioner Kirby pointed out that per the Building Department, a fence is considered a structure. Commissioner Gault concurred with Commissioner Badner regarding liability issues and locating the fence on the property line. The Chair withdrew his motion. He made a substitute motion to include the perimeter fencing be placed on the property line and not be intrusive into the BRPZ. Commissioner Imhof recommended a see-through fence upon which Commissioner Gault amended his motion to reflect this. Commissioner Badner seconded the original motion. Commissioner Kirby felt that this was contradictive and Commissioner Hancocks felt that it was entirely different from the proposal, he was unsure of the property line and did not wish to intrude into the BRPZ. Commissioner Gault re-amended his motion and moved staff recommendation for TR-7530.

Commissioner Imhof seconded. Motion carried 4/3 with Commissioners Kirby, Hancocks and Looney dissenting.

Motion on Condition #62 carried 4/3 with Commissioners Hancocks, Kirby and Looney dissenting.

In reference to Exhibit C, Mr. Buckley noted the incorporation of condition #10 as #14. Mrs. Utal requested language to address creek maintenance. Commissioner Looney suggested including Friends of the San Lorenzo Creek for information. Mr. Bazar replied that the common creek areas would be maintained by the home association, perhaps as Condition 10-j. The Chair recommended deleting the words "...and fences,..." from 10-i. The Chair also recommended to include staff's suggested conditions regarding a Vegetation Management/Fuel Management Plan, BRPZ delineation on the Tentative Map, and the incorporation of PWA's March 8, 2005 interdepartmental memo. Motion to adopt carried 6/1 with Commissioner Kirby voting no.

CHAIR'S REPORT: The Chair read the Resolution for Mr. Chambliss.

ADJOURNMENT: There being no further business, Commissioner Gault moved to adjourn the meeting at 12:40 a.m. in Mr. Chambliss' honor. Commissioner Kirby seconded the motion. The motion was carried 7/0.

CHRIS BAZAR, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY