

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
MAY 15, 2006
(APPROVED JUNE 5, 2006)

REGULAR MEETING: 1:30 p.m.

MEMBERS PRESENT: Commissioners Ken Carbone; Richard Hancocks; Frank Imhof, Chair; Mike Jacob; Glenn Kirby, Vice Chair; Alane Loisel and Edith Looney.

OTHERS PRESENT: Chris Bazar, Planning Director, Gerry Wallace; Alex Amoroso, Assistant Planning Director; Karen Borrmann and Arthur Valderrama, Public Works Agency Liaison; Gary Moore, Grading Department; Brian Washington, County Counsel's Office; Nilma Singh, Recording Secretary.

There were approximately twenty-seven people in the audience.

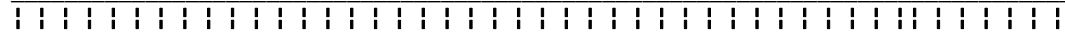
CALL TO ORDER: The Chair called the meeting to order at 1:35 p.m.

ANNOUNCEMENTS BY THE CHAIR:

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** ~ April 17 and May 1, 2006. Commissioner Kirby made the motion to approve April 17th Minutes as submitted and Commissioner Carbone seconded. Motion carried 6/1 with Commissioner Jacob abstaining.



REGULAR CALENDAR:

1. **MORATORIUM CREEKSIDE DEVELOPMENT** ~ Referral from Board of Supervisors regarding adoption of an interim ordinance precluding creekside development in the unincorporated area of the County.

Mr. Bazar presented the staff report. Commissioner Carbone felt that some projects that have been approved by this Commission were not according to the Specific Plan for Areas of Environmental Significance. Mr. Bazar said that although definitionally it was not current and mapping was not available, it is part of the General Plan and ROSA. Commissioner Kirby thought that there was a fairly good consistent definition on page 8 which could be used in future instead of amendments to the General Plan. He encouraged staff to check other jurisdictions. This Plan has two broad categories, the riparian areas and Scenic Corridors which would require clarity if applying project by project. Commissioner Looney asked if an EIR had been prepared.

Public testimony was called for. Howard Beckman, representing Friends of San Lorenzo Creek, said he opposed an emergency moratorium which he felt was in a 'hurried-up mode', to deal with fundamental problem that requires a long-term process. In June last year, Friends of San Lorenzo Creek recommended a Public Task Force and a proposal for a long term orderly process to correct the neglect to creeks. In September, a detailed proposal was submitted, a copy of which was submitted to this Commission and a copy posted on their website. If approved, this moratorium would be against this process. The Board of Supervisors could use a preliminary definition to develop a long-term moratorium. In response to Commissioner Jacob, he confirmed that he would not oppose a long term two year moratorium.

Bob Glover representing Home Builders Association stated that they also oppose an emergency moratorium because of lack of public participation. The Association feels that the moratorium should not affect the entire county but restricted areas only such as creekside developments; setback requirements should be consistent with the Water Course Ordinance which establishes 20 feet from the creek bank; it should only affect the natural and semi-natural creeks which, as contained in the staff report, will relieve the legal concerns on the prohibition of multi-family housing developments; CEQA does apply and, at least, a Initial Study should be prepared if not a full EIR and an approval would cause the County to be not in compliance with its Housing Element. He felt that this process has been moved rather quickly and they did not receive a notification until late last week and without all the attachments. Mr. Glover suggested that a meeting be scheduled before the next Planning Commission meeting between staff, the public and those affected to discuss issues/concerns and to have a better understanding. Since the staff report indicates that the Specific Plan for Areas of Environmental Significance has not been satisfactorily implemented since its adoption in 1977, he recommended that the County look at the reasons prior to moving with the emergency moratorium.

Bruce Thompson, 36 year property owner at 4345 Heyer Avenue, said his property borders the Castro Valley creek. If an approval is granted with a 50 feet setback requirement, he will not

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have any buildable land left; it would not change the environmental considerations of this area; fish and wildlife habitat will not change; homes built close to the creek will maintain the weed and fire hazards and provide additional revenue to the County.

Mark Crawford, 3832 Somerset Avenue, said he was not opposed to providing greater creek protection but was against taking private property without due process. His opposition was based on the May 4th Moratorium, as a result of which, many property owners have lost significant reduction in property values which was unfair. He urged not to extend the moratorium but to allow additional exploration.

David Houts, Zone 7 of Alameda County Flood Control & Water Conservation District, said that since this moratorium will impact their flood control management, he requested all related documents and attachments for review.

Diana Hanna, Chair, Bay Creeks Coalition, pointed out that the Specific Plan for Areas of Environmental Significance is the law and process pointing out that Page 8 does discuss the riparian corridors.

Tim Fiebig said he lives on a creek and would like to build a pool. But with the moratorium and its 50 feet setback requirement, he cannot build his pool. He urged the Commission to consider the homeowners who want to build other structures.

John Aufdermaur, 17580 Madison Avenue, said that he was against any moratorium on development near creeks that affects property owners' rights. The County already has numerous policies and regulations for creek development projects. He has purchased four other developable parcels on Madison Avenue and is willing to follow all regulations to protect the creek. He felt that reasonable developments should be allowed.

James Martin, a Palomares Road resident, said he was also against this broad moratorium which places restrictions on his property.

Art Walton, 34548 Palomares Road, stated that his two wells are within the 50 feet setback requirement. Since his property borders two creeks, Stony Brook in the front and a smaller one on the north side, it is difficult to stay out of the 50 feet setback requirement. His well-shed is in need of repair. He opposed any moratorium, especially an emergency moratorium and felt that it would impact the individual homeowners.

Connie Deets, 18413 Madison Avenue, felt that creeks are a forgotten element and hoped that an emergency moratorium can perhaps start the process for the next generation. The existing Specific Plan has been ignored.

Carl Renowitzky stated that he bought his property at 6537 East Castro Valley Blvd last year to build a single family home. If approved, he will lose all and, as such, opposed an emergency moratorium and urged the Commission to consider the homeowners.

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Keith Simas pointed out that a number of lives will be affected by this moratorium. Homeowners living near creeks take care of the creeks and he also urged the Commission to take them into consideration.

Matt Turner, 2756 Grove Way, felt that the Specific Plan has been ignored; many are unaware of it and not enforced other than in Sunol. There are some mapped areas as the maps on the County web-site shows the location of the riparian corridor in the Boundary Creek area. The setbacks and space need to be looked at project by project. He opposed any moratorium that would affect existing structures. Erosion is occurring because of poor planning and the existing Plan needs to be followed.

Public testimony was closed. Mr. Bazar pointed out the 45-day time constraint. Commissioner Loisel said her concern was the affect on the current home owners, especially those who need to rebuild or repair. She also requested clarification on the change from 20 feet setback to 50 feet noting #1 under Policies on page 8 of the Plan. Mr. Bazar replied that BOS was not trying to address the above issues and noted Karen Borrmann’s memo. He also agreed the clarity was needed. The moratorium will delay development but is not permanent.

Commissioner Kirby felt that perhaps the Water Course Protection Ordinance needs to be looked at. If this Commission is to recommend extension of the existing moratorium, then specificity is needed on parcels that are already developed. He felt that the moratorium will mainly affect larger parcels that have not been subdivided or future rezoning; the setbacks would apply in areas where there is no riparian corridor; further discussion is needed on whether Public Works should be exempt from the Water Course Ordinance especially for flood control and maintenance; and if a Public Works project is exempt to any extent, then perhaps the exemption should be extended to Zone 7. On the BOS direction for pipeline projects, Commissioner Kirby requested clarification as to whether or not it included all projects. Mr. Bazar agreed that further clarification was needed and suggested that the list of applications received could be expanded further.

Commissioner Jacob felt that there was a need to define the term ‘development applications’ in the ordinance; requested a memo from County Counsel regarding regulatory issues and with an explanation on what the implications of the change would be; and there is a need for the timing of the moratorium tied to the delivery of the policy decision.

Commissioner Carbone concurred with Commissioner Kirby regarding exemptions; there is a need for a setback formula. He was not sure if a moratorium was the answer. Commissioner Looney said she appreciated Ms. Borrmann’s memo which was informative and requested a copy of the EIR. Commissioner Hancocks felt that the definition of a watercourse was important.

The Chair stated that he would like to see a response from California Fish & Game and Department of Fish & Wildlife and other surrounding jurisdictions. Mr. Bazar noted the response from Regional Water Quality Control Board adding that staff could continue with the research. Commissioner Looney asked if the Commission could recommend a Task Force instead of a moratorium. Mr. Bazar replied yes. Commissioner Carbone asked if the Specific

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Plan could be applied to previous applications/projects with a creek to see if there is a value to this Plan (when applied) before moving with the moratorium recommendation. Mr. Bazar indicated that staff will make an assessment noting that the Plan does not have defensible space guidelines. Commissioner Jacob made the motion for a continuance and Commissioner Kirby seconded.

STAFF COMMENTS & CORRESPONDENCE: None.

CHAIR'S REPORT: None.

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: None.

ADJOURNMENT: There being no further business, Commissioner Jacob moved to adjourn the meeting at 8:10 p.m. Commissioner Kirby seconded the motion. The motion was carried 7/0.

CHRIS BAZAR, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY