

**MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
DECEMBER 4, 2006
(APPROVED JANUARY 8, 2007)**

FIELD TRIP:

The Commission convened at 224 W. Winton Avenue, Room 111, Hayward, California, at the hour of 1:30 p.m., and adjourned to the field to visit the following properties:

MEMBERS PRESENT: Glenn Kirby, Chair; Commissioner Kathie Ready.

MEMBERS EXCUSED: Ken Carbone, Vice-Chair; Commissioners Richard Hancocks, Frank Imhof, Alane Loisel, and Mike Jacob.

OTHERS PRESENT: Steven Buckley, Assistant Planning Director.

1. **CONDITIONAL USE PERMIT, C-8515 - SEVENTH STEP FOUNDATION, INC.**, ~ Application to allow expansion of a Residential Care Facility from 24 to 34 beds, in a R-S-SU (Suburban Residence, Secondary Unit) District, located at 475 Medford Avenue, south side, approximately 100 feet east of the intersection with Haviland Avenue, Cherryland area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 429-0019-002-00 and 429-0019-026-02.
2. **ZU-2243 & PM-9134 - WALIA** ~ Petition to rezone one site from the R-S-SU (Suburban Residence, Secondary Unit) District, to a P-D (Planned Development) District, to allow subdivision for an existing four-plex on the second parcel, located at 20325 Concord Avenue, west side, approximately 350 feet north of Medford Avenue, Cherryland area of unincorporated Alameda County, bearing Assessor's Parcel Number: 414-0036-058-00.
3. **ZONING UNIT, ZU-2242 and TENTATIVE PARCEL MAP, PM-9255 - KHAN** ~ Petition to reclassify from the R-S-D-20 (Suburban Residence, 2,000 square feet Minimum Building Site Area per dwelling unit) District, to a P-D (Planned Development) District, so as to allow three single family detached dwellings on individual lots of less than 5,000 square feet and site-specific development standards, located at 1630-159th Avenue, southeast side, approximately 100 feet north of Marcella Street, Ashland area of unincorporated Alameda County, bearing Assessor's Parcel Number: 080-0051-001-14.

REGULAR MEETING: 6:00 p.m.

MEMBERS PRESENT: Glenn Kirby, Chair; Commissioners Richard Hancocks; Frank Imhof; Mike Jacob; Alane Loisel; and Kathie Ready.

MEMBERS EXCUSED: Ken Carbone, Vice-Chair.

OTHERS PRESENT: James Sorensen, Community Development Director; Chris Bazar, Planning Director; Jana Beatty, Senior Planner; Cindy Horvath, Transportation Planner; Karen Borrman, Public Works Agency Liaison; Brian Washington, County Counsel's Office; Yvonne Bea Grundy, Recording Secretary.

There were approximately 35 people in the audience.

CALL TO ORDER: The Chair called the meeting to order at 6:15 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair made no announcements.

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 - November 6 and 20, 2006.**
2. **ZONING UNIT, ZU-2230th and PARCEL MAP, PM-8910 – LAMB SURVEYING INC./CAMPBELL** ~ Petition to reclassify one parcel from R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 acre Minimum Building Site Area) District to a P-D (Planned Development, allowing one acre parcels) District, and to allow subdivision of one lot into four parcels, located at 1365 Hilliker Place, east side, corner south of Las Positas Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099-0015-026-06. (Continued from January 23, February 21, April 3, 17, May 1, June 5, July 17, August 21 and October 16, 2006; continued to January 16, 2007).
3. **ZONING UNIT, ZU-2231 and PARCEL MAP, PM-8909 – LAMB SURVEYING, INC./WATERMAN** ~ Petition to reclassify one parcel from R-1-L-B-E (Single Family Residence, Limited Agricultural Uses, 5 acre Minimum Building Site Area) District to P-D (Planned Development) District, and to allow subdivision of one lot into four parcels, located at 1339 Hilliker Place, east side, approximately 320 feet south of Las Positas Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099-0015-025-04. (Continued from January 23, February 21, April 3 and 17, May 1, June 5, August 21 and October 16, 2006; to be continued to January 16, 2007).
4. **ZU-2243 & PM-9134 - WALIA** ~ Petition to rezone one site from the R-S-SU (Suburban Residence, Secondary Unit) District, to a P-D (Planned Development) District, to allow subdivision for an existing four-plex on the second parcel, located at 20325 Concord Avenue, west side, approximately 350 feet north of Medford Avenue, Cherryland area of unincorporated Alameda County, bearing Assessor's Parcel Number: 414-0036-058-00. (To be continued to December 18, 2006).
5. **ZONING UNIT, ZU-2240 and SITE DEVELOPMENT REVIEW, S-2078 -**

CHRISTENSEN ~ Petition to reclassify one 5.73 acre parcel from the R-1-L-B-E (Single Family Residence, Limited Agriculture, 5 acre Minimum Building Site Area, 300 feet Median Lot Width, 30 feet Front Yard) District to the P-D (Planned Development) District, to allow construction of a secondary unit, located at 753 Kilkare Road, east side, approximately one mile north of Foothill Road, unincorporated Sunol area of Alameda County, bearing Assessor's Parcel Number: 096-0210-002-04. (Continued from November 6 and 20, 2006; to be continued to December 18, 2006).

6. **ZONING UNIT, ZU-2202 and TENTATIVE PARCEL MAP, PM-8560 - HOPSON** ~ Petition to reclassify two parcels totaling 1.96 acres from the R-1 (Single Family Residence) and R-1-B-E (Single Family Residence, one acre per 1976th Zoning Unit) Districts to the R-1-B-E District (allowing for a 30,000 square foot Minimum Building Site Area for parcels 2 & 3), and to allow subdivision of one site into three lots with the existing dwelling to remain, located at 22750 Valley View Drive, east side, approximately 850 feet north of Kelly Street, Hayward area of unincorporated Alameda County, bearing County Assessor's Parcel Numbers: 417-0140-028-00 and 417-0151-001-00. (Continued from April 18, 2005, February 6, April 3, May 1, June 19, July 17, August 21 and October 16, 2006; to be continued to April 16, 2007).

Commissioner Hancock motioned to accept the Consent Calendar as submitted.

Commissioner Loisel seconded the motion. Motion carried 6/0. Vice Chair Carbone was excused.

REGULAR CALENDAR:

1. **EDEN PLAN DEIR** – The Eden Area General Plan Draft EIR has been released for public review. Staff and consultants will present findings and take comments from the Commission and members of the public.

Staff announced that this was the second public meeting on this item. The first was held at the San Lorenzo Community Center. The public comment period for the Draft EIR closes this Friday, December 8, 2006. The Final EIR will be brought back to the Planning Commission, the Transportation/Planning Committee of the Board meeting, and the Unincorporated Services Committee of the Board meeting. The Final EIR is scheduled for release in February of 2007. Board of Supervisors hearings will be held in March and April of 2007.

The presentation focused on the four significant impacts that cannot be dramatically reduced, including traffic on freeways, the busy intersections at Via Alamitos, Mission Boulevard and Blossom Way, and overall air quality. Regarding air quality, the Association of Bay Area Governments is working on an area wide plan. Updates to the County plan that affect the Eden Area will be incorporated into the final Eden Plan EIR. Public testimony was opened.

Charlie Cameron testified that he submitted several comments to staff regarding errors contained in the current draft of the Eden Plan EIR. He only received a current version prior to the meeting. He urged staff to make corrections and update the Draft with current information. Public testimony was closed.

Commissioner Ready asked staff if all comments made at prior meetings and submitted letters would be incorporated in the final EIR. Staff confirmed they would. Commissioner Jacob noted that transit bonds

are under consideration in Sacramento. Staff should incorporate specific guidelines into the Final EIR. This will ensure that the County is prepared to apply for State grant funds as soon as they are available.

2. **CONDITIONAL USE PERMIT, C-8465, SMITH / VINEYARD MEMORIAL CEMETERY** ~ Application to allow a cemetery and related uses and structures to be developed on a portion of a 110-acre site, in an (Agricultural) District, located on North Livermore Avenue, west side, approximately $\frac{1}{2}$ mile north of U.S. Highway 50, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 903-0008-004-01. (Continued from July 17, September 18 and November 6, 2006).

Staff Member Jana Beatty gave an overview of the application. The proposal is to have a cemetery, including a mortuary, mausoleum, and supporting facilities on a 110-acre site. The application has come before the Commission several times during the CEQA review periods, and most recently at the Commission's November 6, 2006 meeting. The Commission voted 5/2 on November 6th to continue the hearing to provide additional time for the City of Livermore to review comment documents. The City of Livermore has responded with written comments.

Several Commissioners also requested clarification at the November 6th meeting as to the definitions of "infrastructure" and "community facility" as they apply to a cemetery. County Counsel has issued a memo concluding the Planning Commission has an adequate basis upon which to conclude the Vineyard Memorial Cemetery is consistent with the General Plan. An argument has been made that a cemetery is not listed under the definition of community facility within the Alameda County Zoning Ordinance. A plain reading of the ordinance includes churches, schools, colleges, outdoor recreational facilities, nurseries and news paper distribution centers. The General Plan does not explicitly define the term "community facilities". However the General Plan does contain a subsection that utilizes the term "community facility". The use of the term open ended, with the examples given for community facilities phrased as "including" various items, but not limiting facilities to those terms. Given the community function that cemeteries play in society, the role government plays in operating and regulating cemeteries, and the open space orientation of cemeteries, a reasonable person could conclude that a cemetery would be a community facility. One of the concerns cited by the City of Livermore was the classification of a cemetery as a community facility. Staff and County Counsel believe the issue has been adequately addressed.

New technical information has been submitted since the November 6th meeting from Berlogar Geotechnical Consultants regarding water yields on the proposed site. At build out, projected water needs would be approximately 125 acre feet per year with an average flow of 98 gallons per minute. A well, 400 feet in depth would yield provide more than 98 gallons per minute. However, two wells are recommended. Documentation has also been provided from Terry Vassy. Mr. Vassy is an Assistant Professor at Cal Poly San Luis Obispo in the Agriculture/Horticulture Unit, and specializes in turf, grasses and golf course management. Different types of turf can impact water use. The projected water consumption can therefore be reduced up to 30%.

The staff report has been revised with proposed changes to mitigation measures and conditions of approval. An additional change is recommended to Condition #1, so that the project Phasing Plan is to be approved by the Planning Director. Changes are recommended to Condition #19 regarding water usage, and Condition #20 regarding the hours of operation, so that the mortuary standard hours of operation can extend past sunset. The new proposed hours are 7 a.m. to 11 p.m. with the exception of an overnight vigil or a wake. In the Mitigation Measures, proposed changes in Measure WQ-5 have been made as a result of public and Commission concern about sustainable safe yields for the site. This measure has now been

tightened. It is now in compliance with Policy 253 of ECAP (East County Area Plan) which states that the sustainable safe yield of a well is determined prior to approval of a project. That has been interpreted by some that this should take place during the entitlement process of the application. Historically this has been done at a later stage of the process as there are many approval stages of a project. In this mitigation measure the testing will be done prior to issuance of a grading permit. Physical testing using a scientifically accepted method shall be employed. Zone 7 is comfortable with the changes in language allowing the Planning Director final approval, under the conditions that there is a qualified peer review. Zone 7 has volunteered to comment on the methodology.

In conclusion staff recommended approval of the entire project. Conditions and Mitigation Measures have been tightened to address the concerns previously expressed. The environmental consultant, Doug Herring was present to answer additional questions.

The Chair clarified that although the memo created by County Counsel stated the project was consistent with the General Plan, ultimately the Planning Commission can review the case that is laid out and come to a different conclusion. Public testimony was opened.

The applicant, Mr. Smith said he was in agreement with the changes proposed by staff. He also agreed with the Chair's statement that the Planning Commission would make the ultimate decision regarding General Plan consistency. Since the last meeting Mr. Smith has learned from turf experts how to save a considerable amount of water in the proposed operation by the use and watering of turf. He assured the Commission that he would not build the cemetery unless the facility is functional and there is an adequate supply of water. Water experts and a traffic engineer were also present to answer questions.

The Chair asked the applicant why the condition for a sub-surface irrigation system, Condition #19 had been altered. Although not an expert he thought the condition reasonable, and understood the system could save approximately 30% of estimated water usage. The applicant told the Commission that a sub-surface system would have to be placed 18 inches underground with a minimum three foot spacing. In a cemetery setting there are underground vaults that may need to excavated, so the sub-surface method is not practical. Additional methods were sought. One would monitor the cemetery with a computerized weather station. Through monitoring, water usage would be more efficient. Mr. Adolph Martinelli, a member of the applicant team added that the November memo submitted by Mr. Herring details the proposed turf and technology. The Chair then asked the applicant if he had seen a recent news article about the Holy Sepulture Cemetery in Hayward. The cemetery would like to plant chardonnay grapes to use for sacrament wine. Another newspaper article alluded to a newspaper story the applicant had plans to partner with the Catholic Diocese. Mr. Smith said he was not aware of the Holy Sepulture's plans. He has a vineyard business on a 2,000 acre parcel in Lodi, and is familiar with the wine making process. Preliminary discussions have taken place with several people. The Catholic Diocese is one. However no agreements or commitments have been made with anyone top operate the proposed cemetery.

Mr. Fred Osborne from the City of Livermore Planning Department thanked staff for keeping them informed on the project. Mr. Osborne stated that the City continued to oppose the project. He reviewed points made in a prior letter. The City of Livermore does not believe the quality and availability of water will be sufficient. Water availability, especially during a drought, has not been satisfactorily addressed. The use proposed is not identified and consistent with ECAP policy in the area. Also, the use proposed may not be compatible with agricultural use in the area. The second concern is with the development plan, specifically the number of proposed residences. Development standards in the East County Area Plan, and zoning ordinance Section 17.52.180 states, a primary and secondary residence are permitted. No use or accessory use shall exceed that of any use that is permitted in the District. This District only allows a primary and secondary residence. The applicant proposes three residences which is incompatible

with standards. Third, there is an issue with the Urban Growth Boundary development requirements. In addition, it does not appear that 40 acres is sufficient for the cemetery. In either case the cemetery is not consistent with the agricultural uses in the area. It is also inconsistent with the City's policy. Height allowances exceed the maximum for the urban growth limit boundary of 30 feet. There are also inconsistencies with allowable floor area outlined in the Urban Growth Boundary policy. Mr. Osborne made himself available to answer questions.

Mr. Tom Reitter acknowledged that he is a Member of the Livermore City Counsel. However, regarding the application, he was speaking on his own behalf. Mr. Reitter said he found it hard to believe the claim that the applicant can get one foot of water per acre, per year. Based on what he knew about North Livermore he did not believe there was enough ground water to grow crops and grapes. If there is not a sustainable water source, it would be necessary to import. Mr. Reitter wanted the applicant to explain what traffic impacts would occur, or what effect there would be from a pipeline to import water. He believed the staff definition of infrastructure was a stretch. He was also concerned that Section #13 of the ECAP Policy was being violated. The facility would serve the needs of people outside of East County in Stockton, Brentwood, etc. In addition, if the Catholic Church gets involved, the proposed cemetery may not remain non-denominational. This fact could possibly impact public support. Mr. Tom Reitter asked the Commission to deny the application.

Ms. Gene King from Livermore said her comments focused on land use, the need, and water. She pointed out that land in the area is designated for large parcel agricultural. ECAP and Measure D designate it as such and the designation should be retained. A crematorium, a mausoleum and three residences do not qualify as an agricultural use. The use is urban, and should remain in an urban area. Ms. King believed a cemetery would qualify as agricultural; however, the proposed project as currently designed would not. ECAP requires that there is an actual need for development. A new facility is not needed as there is sufficient space already in the East County. Two crematoriums exist in Livermore. One at Rose Lawn and one at Callahan, and they include a mausoleum memorial garden. The facilities have been in operation since 1911 and are at half capacity and can operate for another 50 years. St. Michaels Cemetery is three-quarters full and can grow for another 10 to 20 years. Rose Lawn Cemetery built in 1865 is only half full and can operate for another 50 years. It is not Alameda County's responsibility to provide cemetery space for Tracy, Sacramento and Stockton. Regarding water, the area is agricultural and water should be used for that use. If a cemetery is put in it should not be irrigated.

Mr. Bob Weber from Livermore reviewed a letter from Berlogar Geotechnical, submitted in July of 2006. Although the information may be somewhat outdated he thought it pertinent. He questioned the flow rate of 78 gallons per minute and if the rate was peak, or average. It would require a sustained rate of 24 hours a day, 365 days per year to achieve 126 acre feet per year. Actual usage patterns are not constant. There is no ability to store water pumped in the winter for use in the summer above ground. It is implied that the flow rate would have to exceed 78 gallons to meet demand. Peak usage during the summer months has not been evaluated. Although Measure D allows cemeteries, the overall scope of the project goes beyond burial. This is the Wal-Mart of the burial business, beyond the scope of Measure D. The large business is unsuited to the area. A large facility would put Agricultural uses in question and not serve the public. The Commission has ample grounds to deny the permit based on the following points: The large, decidedly business nature of the plan is unsuitable for a region that the County is obligated to defend by policy from the intrusion of non-agricultural business. The area in question is dedicated to large parcel agriculture. The proposed business does not qualify as infrastructure under any concept of public, community or public service facility. Therefore the plan is in violation of the 2 acre maximum for contiguous development for non-infrastructure. The issue of the ability of the aquifer to deliver the required peak water demand to a non-agricultural use has not been resolved. The issue of retaining suitable water reserves for future legitimate agricultural uses is unresolved as well. Together these

reasons give the Commission a comfortable and conscionable basis for denying the permit.

Mr. Tom O'Neill, a philosophy teacher from Livermore, addressed the Commission. He was concerned about the bio-ethics of the project. In 2050, demographers estimate there may be 9 billion people on the Earth. Agricultural land is shrinking as the population is growing. California is a great agricultural center. A question has been raised if agricultural land retention is a government responsibility. Mr. O'Neill believed it was eminently appropriate, as it is a fact that land and water will be necessary to sustain and feed people. The City of Livermore is doing what it can to retain the northern agricultural ribbon. Mr. O'Neill told the Commission it would be terrible to squander the opportunity to retain and develop the land for agriculture, and asked for their assistance in the endeavor.

Ms. Nancy Bunkhead, an area resident, told the Commission she was concerned about water usage, especially during drought conditions. If water that is meant for all properties to use is depleted, the applicant is in a financial position to truck in water, but Ms. Bunkhead cannot afford to truck in water for her animals. She then distributed material to the Commission regarding trees on the property. Information regarding the trees was obtained from Gary Drummond, a Historian that lives in the City of Livermore. The trees are 117 years old. The City of Livermore does protect trees that have trunks that are six inches or more in diameter. She also asked the opinion of Inta Brainerd, the Alameda County arborist who believes the trees should be saved. The Architect for the project who stated the trees are diseased is from Texas or Los Angeles, and not familiar with the area. The Black Locust trees smell wonderful, and are not diseased. There is a period of the year during which the trees are not in bloom but white blossoms appear during spring. Ms. Bunkhead believed the trees made a dramatic statement as seen driving into Livermore. There is a distance of 100 to 150 feet between some of the trees. To propose the removal of up to 40 trees and replace them with grape vines will not have the same effect. Grapes do not like clay soil. She understands the wrong soil can cause root rot, and nematodes. The applicant has grapes in another area where the soil is suitable for grape growth. Grass is needed in this area because during the summer months the soil dries and cracks up to 2 and 3 feet. The area is suited for dry land farming. The trees are located in the county right of way which is protected by the County. The trees are a part of Livermore History. In 1889 a local newspaper donated them to anyone who would plant them. They should not be removed now. The applicant has 2,000 acres of grapes at another location. People from the local area familiar with the history should be consulted, not people from the outside. Water usage should also be considered. Ms. Nancy Bunkhead told the Commission water usage will have a direct impact on her property as she lives three-quarters of a mile away.

Ms. Lona McCallister submitted a letter in reference to the application. She believed as a result of the many issues that have not been addressed the application should be denied based on the following: Measure D and ECAP require that any project prior to approval in the North Livermore area identify an adequate, permanent source of water. Each time the staff report has been updated the applicant has changed the location. The November report says the wells will be drilled in the Cayetano Basin. The second staff report states the Tassajra Formation will be the location of the water source. The next report says the Cayetano Basin again. The most recent report has the location crossed out. The constant changes do not inspire trust in the public process. The most recent Berlogar report makes a comparison to wells in the area, and then compares them to wells quite a distance away. The Berlogar report states that the data used by Zone 7 is outdated. The 1974, DWR- Bulletin - 118 Report states that water sources are inadequate. The Berlogar report only proves that an adequate source of water has not been identified. Water testing should be done by an unbiased source before the project is approved so the public can be assured information is reliable. In addition, the law requires that the verified water supply be viable for 25 years. In addition the source for the project must not violate anyone's existing legal right to use their water, interfere with yield of surrounding wells, or contaminate them. Measure D Policy - 236, states the County can approve projects only when a water source has been clearly identified to support and sustain

the development, even in drought. Measure D Policy - 301, states that an adequate and permanent water supply shall be deemed valid if a contract exists with an irrigation district, water agency or the City of Livermore. A water expert could also testify that an adequate and permanent water supply exists. However ground water shall not be regarded as an adequate supply, if its use would violate anyone's legal right to water. The applicant states that if the project exceeds safe, sustainable yields, water will be imported. They also state they will contract with Zone 7 and the City of Livermore to bring in recycled water. Detailed information regarding water importation is not in the Berlogar report. Studies that identify the impact of recycled water to the soil, ground water basin, existing creeks, and wells have not been performed. The project says large amounts of water equivalent to the requirement of 426 homes will be used. The project states the use is serving an agricultural area but it does not meet ECAP requirements. The project is not in compliance with CEQA, in that adequate studies have not been made. A full EIR should be required prior to approval. Ms. McCallister respectfully requested that the application be denied or at least postponed until adequate studies have been completed.

Mr. Bob Baltzer of Livermore spoke on behalf of the Friends of Livermore. Mr. Baltzer said in addition to all of the water issues Ms. McCallister raised, clarification was needed regarding the six wells mentioned in the Berlogar report. The report data apparently uses peak flows. There is no verification that the flow rates are sustained rates. The wells are also widely scattered. Three are said to be from the Tassajara Formation and two are located in the Cayetano. The third is the main water basin at the foot of Collier Canyon. The proposed grape vines are to be supported by the flow from this source. The water flow quoted by Zone 7 is at a rate of 24 hours a day 365 days per year to achieve that many feet per acre. None of the wells is pumped in that manner. The only well that may be possibly capable of that operation is the Stanley well located in the Cayetano Basin. Mr. Baltzer said his understanding is that when Mr. Stanley irrigates, the neighbors that live on the north side of Livermore notice a drop in their wells immediately. As a result Mr. Stanley does not use his well often. The information is anecdotal, however Mr. Baltzer thought prior testimony and comments from the City of Livermore were accurate. As a result the Commission had the discretion to decide the use is not an allowable one. Regarding the Catholic Church and their possible involvement in the cemetery project Mr. Baltzer said he had received word that the proposed high school in Livermore had been put on hold to divert monies to a cathedral in Oakland. He did not know if that information had an impact on the City of Livermore's lack of support for the cemetery project.

Ms. Alice Quinn submitted a letter to the Commission. Mr. David Quinn testified before the Commission. Mr. Quinn thought this application was an example of why a public citizen might wonder about the impact of energy of resources on how decisions are made. Mr. Quinn and residents of North Livermore do not understand why the Commission would consider a project that the City of Livermore would not consider, as a result of Measure D. The County should not consider the project either. People are frustrated that the County and other public organizations are heading in divergent directions. This project is being led by developers and does not deserve to be approved. Public testimony was closed.

Commissioner questions and comments were called for.

Commissioner Loisel asked:

- Would the issuance of a grading permit be contingent upon the identification of an adequate water source/supply
- What documentation is required to verify there will be no adverse affect to neighboring wells and residents

Staff confirmed that a grading permit would only be issued after the Planning Director has approved that

a satisfactorily proven water source has been identified. This issuance is also subject to a peer review by Zone 7. Planning Director, Chris Bazar added that Mitigation Measure WQ-5 details that provision, including performance requirements. Mr. Doug Herring added that Mitigation Measure WQ-6 details the process regarding documentation of the affect to existing well users and surrounding wells.

Commissioner Jacob asked:

- Is in an Agricultural District the only district that designates a cemetery use

Commissioner Jacob expanded on a prior discussion with Commissioner Carbone. If the only zoning District that allows cemetery use is large parcel agricultural, it would be hard to make an argument for General Plan inconsistency. This is the only District that allows a cemetery use. He acknowledged that there is a lot to rectify pertaining to Measure D and ordinance policy. However, if an informed decision is to be made within the entire context of the Zoning Ordinance and not just definition sections, it is appropriate to discuss whether this type of development is allowed and what the appropriate mitigation measures are. Commissioner Jacob appreciated the County Counsel letter. He believed at the current juncture, discussion should focus on mitigation measures as opposed to the validity of discussion of the project.

Commissioner Ready's questions were as follows:

- Why was the Cayetano Sub Basin crossed out in Mitigation Measure, MWQ-5
- Is all of the information in the Mitigated Negative Declaration accurate as a result

Mr. Doug Herring acknowledged that the specific Cayetano Sub Basin research was done in 2005. To his recollection, information regarding Cayetano was obtained from Zone 7, confirmed with maps also obtained from Zone 7. When the Berlogar analysis was released this year, information about Tassajara was introduced. Response to comment documents were then revised to reflect the new information. Any reference to Cayetano at this juncture is a possible oversight with the exception of the western portion of the property. This western area is within the Cayetano Basin. The actual project site, within the eastern portion overlies a small section of the Tassajara Basin. Mr. Berlogar is present, and can also answer questions. The Mitigated Negative Declaration has been corrected within the comment responses. The negative declaration is not official until adopted by the Planning Commission. The document is adopted in its entirety along with the responses to comments document. Commissioner Ready said the Commission had been inundated with new paper work. There are questions that have not been resolved in her opinion regarding water. She acknowledged that she was not extremely knowledgeable regarding soil. The soil on her property is clay. Based on experience with her lawn, it takes a lot of water to maintain green grass. She believed a cemetery is a lovely idea but she wished the project could be done with City water. This would be an ideal situation and not require additional well drilling or risk the depletion of existing wells. At some point all of us will die and need a place to rest. More importantly the farmers need water for their agricultural uses. Generally they are not wealthy nor do they have an alternate water supply. Commissioner Ready thought the proposal could potentially benefit residents in the area; what bothered her was the proposed removal of trees.

Commissioner Hancocks noted that he gave considerable testimony at the last hearing. Water usage can cut both ways. There could possibly be an overdraft of water wells. A person that purchases land for agricultural use can dig a well without a permit. A farmer can also choose a variety of crops that require various amounts of water. The idea of watering turf may leave some in the agricultural field aghast but that is part of what goes with the territory with cemeteries in this area. Most dry cemeteries are located in the Central Valley. Stakeholders on each side of the discussion have different expectations.

Commissioner Imhoff asked Mr. Berlogar:

- Will the storm water captured in the proposed drain system be re-used
- Will the usage of the water be limited to percolation

Mr. Berlogar confirmed the water would be for percolation. Specific ways to recycle storm water will be incorporated into the water supply plan. Commissioner Imhoff strongly urged Mr. Berlogar to follow through on storm water recycling.

The Chair stated first and foremost the Commission should protect agricultural land. This is the charge of Measure D and ECAP. However, the only place a cemetery is allowed is within this District. Given that a cemetery is an allowed use he would support a straight forward cemetery. The Chair was troubled with the application, regarding the classification of the project as infrastructure. He did not agree with the classification as such. The project did not meet the intent of Measure D as infrastructure. Neither did it meet the specifics of Measure D regarding a community facility or infrastructure. As a result if the Commission does find that the project meets the definition of infrastructure, that infrastructure should support the primary use of the Agricultural Zoning. The Chair further clarified that he could only support the project if it can be demonstrated to support Agricultural uses. Although he could support a cemetery use, he did not support the application. Given the proposed amount of water use in this particular application with in all of its characteristics he believed the use detrimental. The cemetery itself would not be a detriment but the use of water would. The primary use would require an undeterminable amount of water. The project could also have a long term affect on water for the area. He was pleased that staff had modified conditions so a permanent and sustainable water supply should be identified and quantified before grading. The Chair proposed that structures should be limited to a 2 acre envelope and did not support a third house on the property. Nor should the size of the project exceed the 2 acre building envelope. The Chair was also concerned that the facility may not remain a public use but become a religious one if run by the Catholic Church. Conditions should be added to prevent this from occurring. The Chair closed and said he could only support the use as a public cemetery based on his interpretation of Measure D.

Commissioner Loisel noted the fact that a cemetery is only allowed in the Agricultural District. The applicant has attempted to resolve water issues which include verification that the water supply will not be adversely affected. Additional facts may need to be presented. The Commission cannot make findings based on speculation. If it is determined that WQ-5 and WQ-6 address the water issues the fact remains the Livermore area is within the Alameda County as a whole. Burial needs of the entire County should be considered.

Chair Kirby motioned that the project was inconsistent with Measure D and did not meet the definition of infrastructure. Commissioner Ready seconded the motion. Commissioner Imhof asked for clarification regarding the memo prepared by County Counsel, which determined the project fit within Measure D. Counsel responded that in looking at the General Plan in its entirety, the Commission had broad discretion in its determination of infrastructure. The Commission also has broad discretion in making General Plan findings. Within that discretion the Commission can determine the project is consistent with Measure D. The Chair responded that although the Commission has the discretion to determine that the proposed Vineyard Memorial Cemetery complies with the General Plan, conversely the Commission is not compelled to do so.

The roll call vote for the Chair's motion that the application is not consistent with Measure D was as follows:

Commissioner Imhof, No the application is consistent with Measure D

Commissioner Loisel, No the application is consistent with Measure D

Commissioner: Hancocks, No, the application is consistent with Measure D

Chair Kirby: Yes, the application is inconsistent with Measure D

Vice Chair: Carbone: Absent

Commissioner: Ready, Yes, the application is inconsistent with Measure D

Commissioner: Jacob, No, the application is consistent with Measure D.

The motion that the project was inconsistent with Measure D and did not meet the definition of infrastructure failed 2/4.

Commissioner Jacob presented a new motion to uphold the staff recommendation of approval with amendments to Mitigation Measures as recommended by staff. Changes shall be made to the authorization language in Paragraph #1, to the building permit language in paragraph #15, to the construction language in paragraph #16, and to the performance standards in paragraphs #19, #20, and #23. Commissioner Imhof seconded the motion.

Commissioner Hancocks asked that there be discussion on the proposed motion regarding clarification of the trees in the county right of way:

- Is the conditional use permit limited only to the trees on private property?
- Are there plans to remove heritage trees even though the County does not have an actual definition of “heritage trees”?

Commissioner Jacob asked staff if it would be appropriate to make a condition requiring the final landscape plan retain and maintain trees in the County right of way, if determined healthy. Staff agreed that the locust trees were attractive. The concept is feasible but recommended the condition be based on the Public Works Agency’s arborist determination of tree health. This would resolve the ongoing debate.

Adolph Martinelli interjected and told the Commission the applicant was happy to save as many trees as possible. However there may be a sight distance safety issue. The travel way is very narrow and goes up a grade, then into a curve. Stopping at the project entry can be dangerous. Traffic Engineering approved a design to mitigate this possibility by removing a portion of the trees that are in proximity to the entrance. In response Commissioner Imhof recommended that any trees removed be replaced at a ratio of 6:1. Commissioner Jacob then clarified that the modification to his motion was that the Planning Director shall have final approval of the Landscaping Plan. Trees in the county right of way proven not to be diseased shall remain, and be incorporated into the Landscape Plan. Any trees in the county right of way that must be removed for traffic safety shall be replaced at a ratio of 6:1, a 36 inch size box or larger. Planning Director, Chris Bazar posed a friendly amendment. A traffic engineer will also have to advise staff as to the location of replacement trees. The amendment was accepted; however, the Commission acknowledged that the intent was that replacement happen in the same area to the extent possible.

The Chair then recommended further discussion on the proposed third residence. The Chair's

recommendation was to limit the project to one primary residence and one secondary dwelling. Commissioner Loisel asked staff if the third residence was in conformance with Measure D. Staff responded that there is a residence, a secondary unit, and caretakers unit. Staff interpretation based on the functions of the structures is that they are Measure D compliant. Commissioner Loisel said she agreed with the Chair. The number of residences should be a maximum of two.

Chair Kirby made a substitute motion that the number of residences in the application be reduced from three to a maximum of two. Commissioner Ready seconded the motion. Commissioners, Loisel, Hancocks, Imhof and Jacob were not in favor of limiting the number of residences to a maximum of two. The motion failed 2/4. Vice Chair Carbone was absent.

The Chair returned to the original motion, which was to uphold the staff recommendation of approval with changes to the conditions of approval as noted by staff, the Commission-sponsored changes regarding trees in the public right of way, and the proposed revisions to mitigation measures. Commissioner Ready asked if a condition regarding public use of the cemetery vs. a dedicated religious use should be considered. Commissioner Imhof cautioned that it would be difficult for the County to continually regulate a business. Staff said at minimum the concept would need to be explored by Counsel. For example a private power plant was recently considered infrastructure in East County. There is not an actual precedence confirming this is the interpretation of Measure D. The Chair stated for the record that, although information regarding the Catholic Church's involvement in the project was anecdotal, there is a valid concern. If at a future point a public use ceases to be public that use may not prove to meet a County wide need.

Community Development Agency Director James Sorensen offered a comment based on his experience in the mortuary business. If the Catholic Church did get involved, which it does not appear at this time they are, the Church does not restrict who can be buried at a Catholic Cemetery. Burial is open to the public. Mr. Sorensen also revisited the discussion of the tree allay. He was not sure that a total of up to 200 replacement trees in addition to the 40 existing locust trees slated to remain would fit in the location. Mr. Sorensen recommended the Planning Director be able to review tree placement with the assistance of a landscape architect and/or arborist as to spacing and the appropriate type of tree. Commissioner Imhof responded and clarified that the replacement should closely replicate what is presently on North Livermore Avenue. Commissioner Jacob further added that the intent was to replicate what was in the County right of way. In keeping with that, the Planning Director would have discretion in approving the overall landscaping plan for the project, as well in determining the final design and placement of the replacement trees.

Commissioner Hancocks called for the question. The Chair restated the motion, as follows: Commissioner Jacob motioned to uphold the staff recommendation of approval with amendments to mitigation measures as recommended by staff. Changes shall be made to the authorization language in Paragraph #1, to the building permit language in paragraph #15, to the construction language in paragraph #16, and to the performance standards in paragraphs #19, #20, and #23. The Planning Director will have final approval of the landscape plan incorporating the replacement of trees in the public right based on Commission recommendations.

The roll call on the motion was as follows:

Commissioner Imhof: Yes, in favor of the motion.

Commissioner Loisel: Yes, in favor of the motion.

Commissioner: Hancocks: Yes, in favor of the motion.

Chair Kirby: Was not in favor of the motion.

Vice Chair: Carbone: Absent.

Commissioner: Ready: Yes, in favor of the motion.

Commissioner: Jacob: Yes, in favor of the motion.

The vote to uphold the staff recommendation of approval with modifications passed 5/1.

STAFF COMMENTS & CORRESPONDENCE:

CHAIR'S REPORT: No Chair's Report was submitted.

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS:

The Chair asked staff for information regarding the required Ethics Training for Public Officials. County Counsel distributed a memo outlining the three study options. Commissioner Loisel confirmed she had completed her training online. The course was very user friendly.

Commissioner Imhof asked staff to confirm the meeting dates for January, 2007 as there was a possibility he may not be available for some of the proposed dates. He also presented the option of holding one meeting in January. Staff said they would review the tentative agendas. However they believed several items had been continued to January dates. A decision and vote can be made at the next meeting.

ADJOURNMENT: There being no further business Commissioner Imhof moved to adjourn the meeting at 8:00 p.m. Commissioner Loisel seconded the motion. The motion was carried 6/0. Vice Chair Carbone was absent.

**CHRIS BAZAR, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY**