

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
DECEMBER 20, 2004
(APPROVED FEBRUARY 22, 2005)

REGULAR MEETING:

The meeting was held at the hour of 1:30 p.m. at Public Works Auditorium, 399 Elmhurst Street, Hayward, California.

MEMBERS PRESENT: Commissioners Compton Gault; Richard Hancocks; Frank Imhof, Vice Chair; Mike Jacob, Chair; Glenn Kirby; Lena Tam; and Ario Ysit.

OTHERS PRESENT: James Sorensen, Agency Director; Steven Buckley, Assistant Planning Director; Sandi Rivera, Assistant Planning Director; Jana Beatty, Senior Planner; Bruce Jensen, Senior Planner; Louis Andrade, Planner III; Rodrigo Orduna, Contract Planner; Diamera Bach, Clean Water Division; Bill Lepere, Public Works Agency; Eric Chambliss, County Counsel's Office; Nilma Singh, Recording Secretary.

There were approximately 76 people in the audience.

CALL TO ORDER: The Chair called the meeting to order at 1:50 p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair announced that Regular Calendar item #5 will be heard as the first and #6 as the second item followed by item #1.

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.

Howard Beckman, San Lorenzo resident, asked why two very controversial items have been placed on an afternoon meeting agenda instead of an evening meeting to allow an opportunity for all interested parties to attend. The Chair further explained that the Commission was trying to conclude as many items as possible before the end of the year and also before the end of term for two Commissioners. Open Forum was continued without objection from the Commission to later in the agenda to provide for acknowledgement of outgoing Commissioners.

CONSENT CALENDAR:

1. **APPROVAL OF PLANNING COMMISSION MINUTES** – November 15, 2004 and December 6, 2004.
2. **RMC PACIFIC MATERIALS/GRANITE CONSTRUCTION COMPANY** – To consider the matter of the asphalt batch plant recently constructed and operated by Granite Construction Company, located on the site of (and operated as accessory to) the existing Eliot Quarry operated by RMC Pacific Materials

(Permittee), regulated under Alameda County Quarry Permit Q-1 and Surface Mining Permit and Reclamation Plan SMP-23. This asphalt batch plant is located on the Q-1/SMP-23 site in the Livermore-Amador Valley in unincorporated Alameda County, approximately 0.6 mile south of Stanley Boulevard, approximately 500 feet southeast of Shadow Cliffs Regional Recreation Area, and 1,800 feet northeast of the existing northwest-southeast portion of Vineyard Avenue in the City of Pleasanton. (Continued from September 2, October 18 and December 6, 2004; to be continued to January 18, 2005).

3. **LA VISTA QUARRY PERMIT EXTENSION PROJECT - SURFACE MINING PERMIT SMP-41, DUMBARTON QUARRY ASSOCIATES, INC.**
- Petition to extend the period of operation at the La Vista Quarry by twenty (20) years beyond the termination date of the existing permit, to the year 2028, and modify the mining and reclamation plan to include further excavation below and into the base of the floor of the existing quarry site, including continued mining, production and sale of aggregate, recycling of construction materials, and production and sale of asphaltic concrete. The existing asphalt concrete plant would also be modernized and upgraded, and operations could be conducted up to 24 hours per day. The project site is located on the western slope of the hills east of the City of Hayward, approximately 700 feet east of the intersection of Mission Boulevard and Tennyson Road, in the unincorporated area of Alameda County. (Continued from October 4 and December 6, 2004; to be continued to March 7, 2005).

4. **DC-157 – VARIANCE IMPLEMENTATION AND EXPIRATION –**
Planning Director-initiated request for Planning Commission determination regarding interpretation and reconciliation of Zoning Ordinance provisions related to Variance applications that were approved prior to the adoption of an ordinance amendment requiring implementation within a three year period, and the meaning of “in effect” and “implemented”. (Continued indefinitely).

Commissioner Tam made the motion to approve the November 15, 2004 Minutes as submitted; Commissioner Kirby seconded the motion.

Motion carried 7/0.

Commissioner Tam made the motion to approve the December 6, 2004 Minutes as submitted; Commissioner Gault seconded the motion. Commissioner Kirby noted a correction in the list of attendees, as he was present for the field trip but not for the meeting.

Motion carried 5/0/2; Commissioners Kirby and Hancocks abstained.

REGULAR CALENDAR:

5. **ALAMEDA COUNTY SHERIFF'S DEPARTMENT - CONSIDERATION OF DETERMINATION OF GENERAL PLAN CONFORMANCE FOR THE ALAMEDA COUNTY LAW ENFORCEMENT COMPLEX (LEC) AND ANIMAL SHELTER.** The project would include the demolition of older unused structures, grading and construction of approximately 202,000 square feet on four levels at the LEC and 12,000 to 15,000 square feet at the Animal Shelter, located at 2100 and 2700 Fairmont Drive, San Leandro area of unincorporated Alameda County, bearing Assessor's Parcel designations: 080A-0153-007-03 and 080A-0153-008-00.

Mr. Jensen presented the staff report stating that the Draft EIR for the project had been circulated for public review, and pointed out, with the aid of the overhead projector, the important landmarks of the area, and introduced Lt. Roger Power of the County Sheriff's Office.

Public testimony was called for.

Lt. Power emphasized the importance of this project noting that the project was long over-due. The current facility is over-crowded and grossly inadequate as it had not been designed for use by a law enforcement agency. The animal shelter currently located at the new site was also inadequate and needs to be replaced. The Chair asked if there has been any response from the community. Lt. Power replied that the President of Hillcrest Knolls Home Association has indicated support of the project. There have been two public hearings, including on the EIR, and the Fairmont Master Plan has had several meetings without a complaint. Commissioners Ysitt and Gault both agreed that a new facility was needed and it was a good location. Commissioner Tam concurred and asked what the current site will be used for once vacated. In response, Lt. Power introduced Mr. David Speer of General Services Agency (GSA), to answer the question.

Mr. Speer, Property Manager, indicated that GSA has considered several options, including possible highway commercial uses. He has also been working with Sandi Rivera of the Planning Department on the inclusion of the Fairmont Master Plan and in the Eden Area General Plan. Commissioner Tam asked if a separate General Plan conformance report would be required for future development at the site of the existing substation. Mr. Jensen explained that it was not part of the Sheriff's LEC project description, so a discretionary approval with probable environmental analysis would be completed, depending on the new use proposed.

Public testimony was closed.

The Chair noted that Section 5.5 of the EIR mentions alternative sites and since the Commission has to look at these alternative locations, he requested additional details. Commissioner Kirby made the motion for a continuance to February 7, 2005, pending completion of the Final EIR; Commissioner Imhof seconded the motion.

Motion carried 7/0.

6. **HOUSING ELEMENT IMPLEMENTATION MEASURES** – Status report regarding required modifications to the Zoning Ordinance pursuant to the Alameda County Housing Element, adopted October 2, 2003.

Mr. Andrade presented the staff report.

Public testimony was called for.

Howard Beckman, a San Lorenzo resident, said that he was surprised to see this item on the agenda and urged that the matter be discussed thoroughly in the community. Such modifications were fundamental for the quality of life of the area. He felt that the unincorporated areas were unfairly targeted for density increases.

Public testimony was closed.

The Chair agreed that a public review process was needed adding that Commissioner Hancocks was also involved in the process. He requested a timeline and clarification on the Commission's role. Ms. Rivera replied that the community will have an opportunity to comment on the proposed revisions and environmental review as they are carried forward for consideration. The purpose of today's hearing was to provide a status report on the time frame for those zoning code amendments required as a result of the Housing Element. Some of the amendments that do not require a lot of environmental work could be developed fully and, as such, the completion date could be the first quarter of 2005; others would be subject to more environmental review and could be completed by the end of the first half of the year.

Commissioner Ysit noted the absence of any correspondence from Linda Gardner, HCD Director, and whether HCD was conducting other hearings on the matter. Ms. Rivera replied that she was actively involved and that the Planning Commission was the decision-making body and was the proper forum for taking public testimony. Commissioner Hancocks agreed with Mr. Beckman adding that Cherryland and San Lorenzo have a higher density than other areas, and that commercial development was also needed in these areas. Commissioner Kirby felt that these amendments were evenly distributed in the urban unincorporated areas, and that the County had to balance open space preservation in some parts of the County with the provision of housing and utilizing urban areas more efficiently.

The Chair requested a status meeting in April with the staff report to reflect work completed to-date and those pending, noting that there may also be some aspects of the Housing Element implementation program that would come before the Commission sooner. Commissioner Kirby made the motion for a continuance to the first meeting in April, 2005. Commissioner Ysit seconded the motion.

Motion carried 7/0.

1. **2190th ZONING UNIT - MOHLER** - Application to rezone the subject property to a PD (Planned Development with an Agriculture-Cultivated Agriculture base zone) Zoning District, so as to maintain all the development rights and restrictions in the A-CA district, except that operation of a heliport (personal helicopter landing and take-off from a helipad) only as described herein, is Permitted, on a 122 acre property within an "A-CA" (Agricultural, Cultivated Agriculture) District, located at 7490 Mines Road, east side, 2.2 miles south of Tesla Road, South Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099A-2420-004-24. (Continued from June 6, July 19, August 16, October 18 and November 15, 2004).

Mr. Orduna presented the staff report.

Commissioner Tam asked if rezoning could occur first before the use is included under the Williamson Act. Staff explained that the Williamson Act contract will need to be amended to include the proposed use. Commissioner Imhof said he was aware of two other similar helipads and thought that, as such, there should be a set of conditions for all helipads. Commissioner Ysitt added that one was located in Sunol with restricted flights. Staff pointed out that the property in Sunol is located in an Agricultural District, which allows a flight strip as a Conditional Use. In Cultivated Agricultural districts, flight strips that are accessory or incidental to a permitted or conditional use are not allowed. Because the subject use is secondary to the primary residential use of the property, the flight strip is not allowed in this zoning district without reclassification to PD.

Commissioner Kirby stated that while in the last public hearing, the Commission had discussed rezoning to the Agriculture District as an option, he was not sure now if this would be practical and that such an approach could be harmful to the integrity of the South Livermore Plan. Mr. Orduna pointed out that the Applicant would like to retain the current zoning as a base-zone in order to maintain opportunities for increased density if vineyards or orchards could be developed on the property.

One option would be to require the Applicant to apply for a Conditional Use Permit as an implementation mechanism for the rezoning, so as to work out the operational details. A discussion followed regarding the effects of rezoning, whether the helicopter use was an urban or a rural use, and an agricultural or a commercial use. Staff pointed out that the helipad was used for commuting and land surveying.

Commissioner Hancocks said he could not make the connection between the zoning and the wishes of the applicant. Commissioner Ysitt said he did not support rezoning to a Planned Development district, which could set a precedent. Instead, he supported a Conditional Use Permit with a periodic review which would ensure some control as it would be tied with the applicant and not with the land and will provide an opportunity for input from the surrounding neighbors.

The Chair indicated that there was some confusion on what the Commission would be acting on. He felt that the staff report, although well written, was confusing. Staff explained that this

application was to legalize the helicopter activity, which is currently not permitted in Cultivated Agricultural zoning, and the staff report presented several options and threshold decisions for the Planning Commission to consider.

Public testimony was called for.

William Mohler, applicant, in response to Commissioner Tam, said that he had not yet applied for the heliport to be included under the Williamson Act contract. Currently, he was landing on his property in the middle of a 122-acre area and did not rise to the level of qualifying as a heliport. He had attended the City of Livermore Council meeting last Monday when the Council recommended against the application, but thought there was some confusion in the City staff's letter about whether the Council had found it to be an urban use, but had voted that it is incompatible with the agricultural use of surrounding areas. He stated that the use was not business related although he occasionally used it to fly over his construction sites for inspection. He primarily uses the helicopter for recreation, and feels that he should not be required to give up any general rights existing within the A-CA zoning of this property for generational benefits. However, he cannot plant vineyards now because there is inadequate well water; no water even to raise cattle. As such, his property should not have been included in the South Livermore Area Plan that created the A-CA zoning. There was a similar private airport on Greenville Road. Mr. Mohler requested that the Commission's action be based on facts pointing out that there were no noise complaints from neighbors before the public hearing process. In response to Commissioner Kirby, he re-stated that the property was at the far corner of the South Livermore Valley Area Plan, and could be more appropriately zoned as Agricultural. Commissioner Ysitt pointed out that the approval of the helipad on Greenville Road was a legal non-conforming use, tied with the owner and not the property. Commissioner Tam asked the applicant if he considers the helipad facilitates as an agricultural site. Mr. Mohler replied that he did not believe it was not presently used for agriculture, but could be, and was not an urban use at all.

Steve Stewart, City of Livermore Planning Department, stated that the property was located outside of Livermore's southern-most urban growth boundary and the City opposes urban uses beyond the Urban Grown Boundary. On December 13, the City Council voted in opposition, stating that this was an inappropriate use since it neither promotes the wine region nor preserves the rural and scenic qualities. An approval would set a precedent. Commissioner Tam asked if there were other helipads within the City. Mr. Stewart replied no, adding that the flight strip on Greenville Road was approved by the County. Commissioner Tam expressed concern that heliports were not allowed in urban areas due to land use conflicts as well.

Mr. Mohler's son, property owner at 7386 Mines Road, noted the following: most agencies do not have objections; it was possible to use the helicopter for agricultural use; the land was not suited for orchards/vineyards due to inadequate water supply in the area; and, since the pad was not visible, one could not tell of its existence and thus it was incidental to the residential use of the property.

Bob Baultzerr, urged that the Commission recommend denial as it would be a misuse of the PD process to allow a use that is not otherwise allowed, the use was against the South Livermore Valley Area Plan, and the Applicant was in violation of the Williamson Act. The applicant had

not obtained a building permit from the County for the pad. He felt that an approval would be too much of an accommodation for the Applicant. The other site on Greenville Road was grandfathered in but will expire when the property is sold and, as such, had no relevance to this case. An emergency helicopter could land in any open space so there is no public need for the proposed landing site.

Another neighbor discussed the impacts on the surrounding properties, such as noise which was louder than normal aircrafts that fly over the area, and the noise in the canyon was a qualitative impact as well as quantitative. He urged the Commission to consider these issues as he felt that they were not being adequately addressed.

Alvin Foote, Mines Road resident, pointed out that the Applicant could travel to Livermore airport in a very short time and should not need to park his helicopter at his residence. An emergency helicopter can easily land in any open space and this pad does not benefit the public.

Howard Beckman, a San Lorenzo resident, stated that this was an example of on-going concern related to land use decisions in the County, and Applicants filing to legalize their operations. He asked why the Applicant was being offered a PD rezoning option. Mr. Beckman thought this was a special privilege and further read the related section of the Ordinance on Cultivated Agriculture. A helipad is an incompatible use and an approval will set an irreversible precedent and perhaps result in an increase in this use elsewhere. The FAA does not put limitations on these pads and when state and federal agencies review such applications, they only look from their perspective, so the County needs to act at the local level to control the use.

John Pitts, 6200 Mines Road, in opposition, stated that an approval would be against the South Livermore Valley Area Plan and detrimental to other properties under identical zoning. He would like to see the wine industry developed and this would be a compromise and would set a precedent. Other concerns were noise and invasion of privacy. The Livermore City Council also had similar noise concerns. This is a canyon where noise echoes. He also mentioned a related article in the December 2nd Tri-Valley Herald. Mr. Pitts urged a denial.

Ray Rosa, Vice-President of Friends of the Vineyards, read and submitted a letter from Friends of the Vineyards in opposition. In response to Commissioner Kirby, he replied that he did not believe it mattered that the property was at the edge of the South Livermore Plan area

Lynn and Joan Seppala, 7911 Mines Road, spoke in opposition. Mr. Seppala read his letter dated December 6 pointing out that most neighbors oppose the project since many are negatively affected. He felt that if the Sheriff's Department indicates that the helipad was not necessary for emergency response, the application should be denied. Mrs. Joan Seppala added that there has been one emergency landing in the Applicant's pasture near Mines Road, not at the helipad. The helipad location is a long way from Mines Road for emergency crews to land at the pads and access the road or other possible accident sites in South Livermore. In reference to noise, she said it causes stress and anxiety. The Planned Development District findings cannot be made, and the project would erode the A-CA zoning and South Livermore Plan. She also urged a denial.

Diana Hanna, 10142 Cull Canyon Road, Castro Valley, said that although she did not live in this area, she supported Mrs. Seppala on the noise issue. She also lives in a canyon where they practice helicopter landing and noise is a problem. The individual property owner's preference can't justify a public need.

Duane Sunnarborg, 6588 Mines Road, said he had also signed the petition. He was concerned that an approval would set a precedent within the South Livermore Valley Area Plan. His property enjoys a general lack of traffic noise. But over five occasions in the last six months, he has heard the helicopter noise. He had been unaware of the existence of this private pad, but now understands the source of the noise and felt that an approval would undermine the SLVAP, so he urged a denial.

Public testimony was closed.

Commissioner Hancocks said that it was hard to justify that public interest would be served by this rezoning and he was also concerned that an approval for a rezoning would be for continuing a use that was in violation or not allowed. He asked staff to remind all of the intent of a PD District. Mr. Orduna read the related section of the ordinance. Commissioner Kirby pointed out that the intent of the Planned Development district is to strengthen a project that is otherwise consistent with the General Plan and Specific Plan. He would be amenable to a rezoning to the A District, with a Conditional Use Permit required.

Commissioner Hancocks made the motion to accept the Negative Declaration but deny the rezoning application for a Planned Development District. Commissioner Kirby seconded the motion.

Motion carried 7/0.

OPEN FORUM:

The Chair reopened Open Forum to provide an opportunity for recognition of Commissioners whose terms would be ending on December 31, 2004.

Nancy Van Huffel, League of Women Voters for the Eden Area, thanked Commissioner Tam for her work and dedication, and read and presented her proclamation.

Commissioner Imhof, on behalf of Supervisor Haggery, presented Commissioner Ysita a certificate for eleven years of service.

The Chair announced a break at 4:00 p.m. The meeting reconvened at 4:10.

2. **TENTATIVE TRACT MAP, TR-7580 – HEYER DEVELOPMENT, LLC** – Petition to subdivide one parcel into six lots, in an R-S-CSU-RV (Suburban Residence with Secondary Unit, Recreational Vehicle) District, located at 4261 Heyer Avenue, south side, corner of Beverly Place, Castro Valley area of

unincorporated Alameda County, bearing County Assessor's designation: 084C-0750-009-00.

Mr. Buckley presented the staff report adding that Castro Valley Municipal Advisory Council has recommended an approval and suggested landscaping in response to the privacy concerns for the rear neighbor.

Public testimony was called for. Steve Phillips, Managing Director, Heyer Development, said he was available to answer any questions. In response to the Chair, he indicated that they had met with the neighbors who had some concerns regarding shared usage of a neighboring access road, and although monetary compensation has been offered, no constructive response has been received to-date on this offer, and so the road would not be shared and a new roadway would be constructed on the project site.

Public testimony was closed.

A discussion followed on Condition #9 regarding the fence between the properties to ensure that it conformed to code. Commissioner Jacob suggested amending Condition #7 and #9 to allow for possible shared access of Beverly Place if an agreement could be reached. Commissioner Tam made a motion to approve staff recommendation with Condition #25 to include standard language related to draught tolerant landscaping. Commissioner Gault seconded the motion.

Motion carried 7/0.

3. **ZONING UNIT, ZU-2199 and TENTATIVE TRACT MAP, TR-7584 – NEWPORT AVALON INVESTORS, LLC** – Petition to reclassify from a PD (Planned Development) District to another PD (Planned Development) District, to allow the subdivision of one site into 10 parcels, located at 255 Happy Valley road, south side, approximately 125 feet east of Pleasanton-Sunol Road, Pleasanton area of unincorporated Alameda County, bearing County Assessor's designation: 0949-0010-001-07.

Mr. Buckley presented the staff report noting the recommendation for a denial. The Chair noted receipt of the Applicant's letter requesting a continuance. Commissioner Ysit recommended that the continuance be heard at an evening meeting.

Public testimony was called for.

Nick Chapman, Applicant, said that there were errors in the staff report and apologized for his late continuance request. He would like to further meet with staff and discuss some of the issues/concerns. In addition, he appreciated the opportunity to hear comments/concerns from the public and agreed to an evening meeting, perhaps in February, to allow time to explore the density issue and possible affordable housing for the site, as well as resolve the water and sewer issues and clarify errors from the staff report.

Kevin Close, property owner at 871 Sycamore Road, concurred with staff's denial recommendation. His main concerns were density, lot sizes and septic tank issues and he noted the existence of a moratorium on septic tanks in the area.

Vanessa Kawahai, 871 Sycamore Road, stated she had submitted a letter to the Commission. Her concern was sewage disposal, as stated in the staff report, since approval would be required by the Regional Water Quality Control Board but she indicated that as of Friday, the Board had not heard of this application. She was surprised that an EIR has not been required, especially since the City of Pleasanton's Happy Valley EIR did not anticipate a density of this magnitude and another developer in this area had been required to do an environmental study. Her other concern was the proposed street name, "Bird Lane". There was another such street name, although differently spelled, off Happy Valley Road, which Ms. Kawahai felt would have an affect on emergency response.

Bud Barlow, 6723 Alisal Street, said he would like to retain this area as rural and, if approved there will be a precedent for other developments. Clarification was needed on septic tank issues and seismic studies. His other concerns were potential traffic problems and the precedent for other developments in future.

Mr. Chapman, in rebuttal, pointed out that he was willing to work with the neighbors to clarify miscommunications. He pointed out that any growth is controlled by Measure D and that he was within the City's Urban Growth Boundary. Regarding the street name, he clarified that on the Final Map, the name is Ostrich Feather Lane. Commissioner Kirby asked if the request for a continuance was to provide clarity with staff and neighbors but not to change the project. Mr. Chapman replied that it was also to allow for possible project modifications. Commissioner Tam requested specificity on changes to the water and sewer systems since there were fundamental public health and safety issues/concerns. Mr. Chapman replied that perhaps he could request a representative from Environmental Health to answer those questions. The Chair asked if he has had communicated with the City of Pleasanton. Mr. Chapman answered yes, adding that he would like to explore service from their sewer system. Commissioner Gault concurred with Commissioner Kirby that a continuance be granted only if there would be significant changes to the project.

Public testimony was closed.

Commissioner Ysitt made the motion to continue the matter to the evening meeting in February (the 7th); Commissioner Kirby seconded the motion.

Motion carried 7/0.

4. **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 November 15, 2004).

Ms. Beatty presented the staff report and outlined the proposed changes to the project. Some of the changes were as follows: 32 homes were now being proposed; the amount of grading and retaining walls have been scaled back; a new Exhibit C and new conditions have been added and Condition #25 has new language underlined. Public Works Grading was still reviewing this plan and staff was available to answer any question. Conditions 52 and 53 were added for building and landscaping.

Commissioner Tam asked if the Castro Valley MAC has reviewed the application with the above modifications since they had recommended denial of the first project. Staff replied no. Commissioner Imhof asked if the County could view the project as a density bonus for preserving the habitat. Mr. Sorensen explained that there is a provision in law for bonus as long as it is affordable housing. This project provides single family homes that complements the neighborhood and market. He did not think that the developer was looking for a bonus under those terms.

The Chair asked if there had been a presentation on the Final EIR and, if not, could the Commission hear more about the EIR and alternative plans that were evaluated.

Scott Gregory, Principal with Lamphier-Gregory, presented the EIR, stating that it had been prepared to evaluate the original project, adding that the Draft EIR had 50 mitigation measures and Alternate #2 was looked at to reduce the scale of the project similar to the revised project. Alternative #3 (No Bridge) was judged to be infeasible because two points of access were required. Twenty-six letters were received during the DEIR public review period and a response to each was prepared. A Final EIR was prepared in November 2004. Since then the developers have continued to refine the project resulting in 33 homes with no buildings within the creek bed, but some encroachments into the watercourse setback area. The Final EIR, an informational document that identifies environmental facts, also has a monitoring program that outlines actions and timing for the measures which would be incorporated into any final project design if adopted by the County.

Commissioner Jacob asked if the grading would be acceptable in the woodland area, which may extend beyond the creek setback line. A discussion followed on Commissioner Imhof's suggestion of considering the project as a density bonus. Commissioner Kirby pointed out that the basic zoning under the Ordinance provides for 29 units and asked if the remaining units

could be considered a bonus. He also asked if this project is in conformance with the General Plan. Staff explained that the General Plan allows a variety of residential density and if rezoned to PD, it would be consistent. Commissioner Hancock felt that a rezoning would result in a difference in density with the surrounding areas. Mr. Sorensen disagreed adding that there could be smaller and/or larger square foot lots and the site plan could be considered as clustering because there were large areas of the creek that were not being developed. Commissioner Hancock pointed out that clustering could lead to more units than what the current zoning would allow. Mr. Sorensen replied that open space was being provided. Commissioner Jacob asked that Alternative 2 be illustrated, and asked about the impetus for the consultant's memo regarding the biological resource evaluations. Mr. Gregory responded that the memo was in response to a request from the Agency Director.

Public testimony was called for.

Arlene Utal stated that the landowner, Dee Roberts, who has lived on the property for 70 years, has had property stolen twice last week and had to call the police for trespassing. The opportunity to visit the site was only during the Draft EIR review period. She further explained that the site plan was designed in order to separate from the rear neighbors and property owners on Veronica, so a loop road is being proposed with the house fronts facing the neighbors to the north and landscaping as a buffer. Alternative 1 and 2 provided no public benefits or open area. The revised plan is superior with many improvements including mitigations and two open areas that would be owned and maintained by a Homeowners' Association. Ms. Utal further showed and discussed comparisons in detail and introduced the project biologist and engineer. Commissioner Kirby requested clarification on the retaining wall. Ms. Utal said that although the retaining wall was twelve feet along the north side of the property, it could be reduced further as part of the final grading plan.

Terry Preston, Wildlife Ecologist, on behalf of numerous neighbors, spoke against the project. She stated that her testimony was meant to fill in information gaps and to express her concern regarding the flow of information from staff and developer. She handed a document to the Commissioners outlining her concerns. She further read the CEQA legislative intent and portions from the Specific Plan in reference to the watercourses adding that this project was not in compliance with CEQA. Ms. Preston submitted and discussed her written testimony in detail which included riparian wildlife corridors; importance of keeping riparian oak woodland intact; statement from Department of Fish & Game; responses from regulatory agencies and the EIR. She had visited the site with permission for three hours and found five different endangered species. She asked why the Sycamore report was not included in the Final EIR and stressed her concern about information made available to the public. Commissioner Kirby thought that Graphic C did not accurately show this property and the Chair asked if the picture of the woodland in the DEIR was accurate. Ms. Preston replied no and further discussed the delineation line. A discussion followed including the grading impacts and 3:1 tree replacement. Ms. Preston noted that grading extends to the oak woodland. Commissioner Kirby asked about whether mitigation would be appropriate. Ms. Preston replied that restoration will be very difficult, so there was a need to keep development out of the canopy, and protection of the creek was very important.

Commissioner Tam asked staff if the twenty foot setback was adequate. Diamera Bach, Clean Water Division, read the related section of the Ordinance on the setback requirement adding that 20 feet would be the minimum. The revised plan encroaches into the setback and was not in conformance with the County standards. Commissioner Hancocks said he was concerned that the revised plans indicate the creek setback line within a few feet of the proposed buildings and some side and rear yards were in the setback. He asked about the intent of the ordinance, and noted that indirect impacts were not addressed in the Final EIR.

Bill Lepere, Public Works Agency, provided clarification on Ms. Bach's testimony. He felt that the site plan could be improved, and that mitigation could be considered.

Diana Hanna, property owner at 10142 Cull Canyon Road, asked how 100 year old trees will be replaced with new trees. She challenged the Final EIR stating that the Urban Creeks Council and recent legislation addressed the need for oak mitigation. She also asked about the site's historical context and archaeological setting. She urged a denial, restating that it is a historical site.

Jacqueline Kurtz-Beggs, property owner at 17654 Dorson Lane, Castro Valley and a member of the historical society, said she was concerned with the local history and the lack of information in the EIR and the existence of bedrock mortars in the area. Professor George Miller has declared this a historical site. In 1800, trees on this property were part of a dense blue gum forest and the first in size to be called a forest. She asked if this had been looked into and how many trees will be removed and/or saved. She urged that the history and archaeology of the site be addressed further, including the possibility of an Indian burial site.

Sheila K. McClellan, 3270 Ohlone Way, an environmentalist, pointed out that she had two concerns. This site was not properly documented for archaeological resources, and this had been a significant camp site for tribal Alhona Indians. Large mortars are located along the creek and other Indian artifacts have been found. Ms. McClellan submitted a photograph of the forest canopy adding that it was probably 500 years old.

Howard Beckman, Friends of San Lorenzo Creek, also spoke against the project, stating that this was his worst nightmare. He agreed with the prior speakers regarding the DEIR, stating that the project would be against policy and regulations. The creek needs to be looked at as a system. He also complained that no member of the Friends of San Lorenzo Creek has been provided with the staff report. He did not support any revision to the project that has been negotiated between Supervisor Miley, the developer and the Planning Department adding that no individual should make the decision regarding the creek. Better visualization is needed of the creek in the EIR. One issue was the management of wild habitat on a private property. Another concern was the future public access to the creek.

Kendra White, 11490 Cull Canyon Road, speaking for Dennis Waespi, a Sierra Club representative, said he concurs with CVMAC's recommendation for a denial and also supports

Terry Preston. She also spoke against the project on behalf of many neighbors from whom she had written authorization.

Philip Gordon, Ohlone Audubon Society, agreed with Ms. Preston and further discussed the goals of the Society, especially related to wildlife. A site visit has revealed several major discrepancies which otherwise have been discounted. In addition, Mr. Gordon listed species that were not mentioned in the Final EIR. He agreed to saving the trees and thought the project revisions were heading in the right direction.

Frank Delfino, 18673 Reamer Road, stated that the bird population in this area will decline and it was important to retain the area as is to keep the birds. He also urged a denial.

Ms. Utal introduced the project biologist, John Zentner. She complained that on Saturday, Commissioner Kirby visited the site and had introduced Ms. Preston as a friend. She said she was very disappointed with Commissioner Kirby and was 'shocked' that he had deceived her in order to get someone onto the property.

John Zentner, Project Biologist, felt that there was a 'blurring' of terms. There was a distinction between riparian corridor and Oak woodland. The Final EIR shows the distinction and there are two different vegetation zones, and these zones had been agreed upon with the Public Works Agency at the start of the site evaluation process. Commissioner Kirby noted that the margin of riparian edge is steep and the woodland area is flat. Mr. Zentner agreed, adding that Fish and Game also looks at what is occurring on the banks. The revised project would preserve more of the woodland area. Commissioner Kirby, stated that grading will affect the areas up to the top of slope. Mr. Zentner noted that the affect of the mitigation measures will be to reduce the impact to less than significant.

Public testimony was closed.

Mr. Lepere pointed out that the revised plan shows different boundaries of riparian corridor and creek setback, which was reflected in the EIR. He further highlighted the areas of development that perhaps could be pulled back more. The proposed conditions of approval state that the Applicant will continue to work with Public Works to limit work in the creek bed. Lots 5-9 will require mitigation since the banks are unstable. Most of the grading could be outside the creek bed. The Chair asked how much grading would be required on the rear of the lots to maintain a 2:1 slope. Mr. Lepere replied that the Applicant has pulled the grading to the side and all work will be done with a permit so it would ultimately be designed to be safe. Commissioner Kirby asked if there have been any changes in the runoff filtration system as discussed at the last hearing. Mr. Lepere said that he could not comment since he has not previously seen the revised map.

In reference to the boundaries of the riparian corridor which extends further into the hills based on the trees and their growth, Commissioner Tam asked if the 20 foot setback was adequate and the types of variations for the 2:1 slope. Mr. Gregory pointed out Page 60 of the Final EIR which illustrates a typical cross section and further explained Figure 14.4. The service of a

biologist was retained to peer view the previous report. He noted that there were mitigation measures to reduce the impacts.

Commissioner Hancocks requested clarification on encroachment of Oak woodland and the Chair asked if an over-lay of the oak woodlands line has been done. Mr. Gregory said an overlay was done by the biologist, and discussed Page 6-41 from the DEIR and restoration planting.

The Chair made a motion to move staff recommendation with the removal of lots 1, 30, 31, and 32; amendment to Condition 31 to reflect that Public Works will look at Appendix C regarding setbacks and mitigation. Commissioner Kirby stated that he was concerned that the project could be approved in some form, but that more guidance was needed, since there would still be impacts with the rear yards for lots 5 through 11, and he felt that there should be another response from the applicant. Commissioner Hancocks felt that although the item could be continued for another hearing, unless the Applicant had no desire to revise the project, in which case the Commission should deny the application. Commissioner Imhof seconded the motion. Commissioner Kirby questioned the content of Appendix C. The Chair indicated that he wanted it to read the same as Condition #13 with the rewording of the last sentence. Commissioners Gault, Hancocks, Kirby and Tam voted no; Commissioners Jacob, Imhof and Ysit voted yes.

Motion failed by a vote of 3 to 4.

Commissioner Hancocks made a motion to certify the EIR. Commissioner Imhof seconded the motion.

Motion carried 7/0.

Commissioner Hancocks made a motion to deny the PD and Tract Map as presented because they were too dense and did not respond to the environmental constraints. Commissioner Kirby seconded the motion. Commissioners Gault, Imhof, Tam, Ysit and the Chair voted against the motion.

Motioned failed by a vote of 2 to 5.

Commissioner Tam made a motion to continue the matter to allow an opportunity for the Applicant to look at the density concerns and the adequacy of clean water filtration, grading, and erosion control. Commissioner Kirby seconded the motion. The Chair asked for a timeline and Commissioner Tam suggested an evening meeting in January, 2005.

Commissioner Tam added that more respect should be given to the riparian corridor and Commissioner Kirby re-stated his density concerns. He was not opposed to having more units than what the zoning allows but was opposed to having more units than what the environmental constraints would allow. He stated that the oak woodland was now the key consideration, and recommended redesigning the project so that it didn't require as much mitigation, and for the Applicant to re-present a viable project. Commissioner Imhof asked if staff has explored

subterranean parking. Mr. Sorensen replied no, adding that density was not an issue except that it pushes and encroaches into the sensitive areas.

Commissioner Hancocks pointed out that the Commission's job was not to design the project but to act on what is presented. It did not make sense to encroach in many different locations, and the project should be designed to conform to the ordinance. Mr. Sorensen explained that the impact of the setback into the creek is likely to be minor and instead much of the testimony has been regarding the oak woodland. Commissioner Gault recommended that Public Works and the developer discuss water filtration issues and Commissioner Tam recommended that the developer discuss the project with the Friends of San Lorenzo Creek.

Commissioner Kirby stated that he was disappointed that the Commissioner was not moving forward but didn't want their action to be perceived as arbitrary, and that the setback and canopy line should be used as guidelines. Commissioner Gault said he was very concerned with the trespassing without permission. While stating that he needed clarification on riparian corridor encroachment, he also pointed out that the Commission has made only one site visit. Commissioner Ysit suggested that the Commission should conduct another site visit.

Motion for a continuance passed unanimously.

STAFF COMMENTS & CORRESPONDENCE: None.

CHAIR'S REPORT: None.

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: In response to the Chair, Mr. Buckley said that the new meeting room will be available by mid-February.

ADJOURNMENT: There being no further business, Commissioner Gault moved to adjourn the meeting at 7:40 p.m. in the honor of Commissioners Tam and Ysit. Commissioner Imhof seconded the motion. The motion carried 7/0.

CHRIS BAZAR, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY