

**MINUTES OF MEETING  
ALAMEDA COUNTY PLANNING COMMISSION  
AUGUST 4, 2008  
(Approved October 6, 2008)**

**FIELD TRIP ~ Cancelled**

**Green Building Committee Meeting**

Time: 5:00 p.m.  
Place: 224 W. Winton Avenue, Room 111  
Hayward, California

1. Discussion of Green Building Committee future agendas, priority setting and calendar.

**REGULAR MEETING: 6:00 p.m.**

**MEMBERS PRESENT:** Commissioners Ken Carbone, Chair; Frank Imhof; Mike Jacob, Vice-Chair; and Glenn Kirby.

**MEMBERS EXCUSED:** Commissioners Loisel, Ready and Rhodes.

**OTHERS PRESENT:** Chris Bazar, Agency Director; Albert Lopez, Planning Director; Jana Beatty, Senior Planner; Bill Lepere, Public Works Agency Liaison; Brian Washington, County Counsel's Office; Nilma Singh, Recording Secretary.

There were approximately thirty-seven people in the audience.

**CALL TO ORDER:** The Chair called the meeting to order at 6:00 p.m.

**ANNOUNCEMENTS BY THE CHAIR:** The Chair noted that today's hearing is only to take public comments for item #2 on the Fire Management Plan and for item #3 on the DEIR.

**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.

Mark Cohen, Attorney, said he has previously raised the issue of direct access to the Commissioners to provide documents and email address for communication. It is difficult for the public to provide pertinent information/comments to the Commission and/or Counsel a few days before a meeting for review. There is a need for a public discussion for a better system and, as such, requested that this matter be agendized.

**CONSENT CALENDAR:**

1. Approval of Commission Minutes ~ July 21, 2008. *With two typo corrections, Commissioner Kirby made the motion for the approval of the Minutes as submitted and Commissioner Jacob seconded. Motion carried unanimously, 4/0.*

**REGULAR CALENDAR:**

1. **PLANNING COMMISSION DETERMINATION, D-162, RHL DESIGN** ~ Planning Director-initiated Determination as to whether the demolition and reconstruction of a nonconforming restaurant drive-through located at 1620 Strobridge Avenue (McDonald's), east side, approximately 200 feet south of Castro Valley Boulevard, Castro Valley area of unincorporated Alameda County, bearing Assessor's Parcel Numbers: 084A-0007-022-00, 084A-0007-023-02 and 084A-0007-023-03, is authorized under various provisions of the Alameda County Zoning Ordinance. **Staff Planner: Jana Beatty**

Ms. Beatty presented the staff report.

Public testimony was called for. Drew Bardet, representing McDonald's Corporation, stated that he had not been involved with the project initially. There were two issues/concerns with the project: the use and the design. He discussed the re-design as approved by CVMAC adding that currently he is working with staff and Redevelopment Agency. The Chair explained that the Commission had not been concerned with the proposal but with the way it was presented. Commissioner Kirby added that the Commission had difficulty with the determination without a project at the last meeting.

Public testimony was closed. Commissioner Jacob noted that originally his concern was the expansion of a use (the drive-through) which was not compatible with Castro Valley General Plan. Although he still had concerns, Commissioner Jacob said he will support an approval based on the unanimous approval by CVMAC. *He made the motion for an approval and Commissioner Kirby seconded. Motion carried unanimously, 4/0, with Commissioners Loisel, Ready and Rhodes excused.*

2. **APPEAL OF SIERRA CLUB OF THE ALAMEDA COUNTY'S APPROVAL OF THE FIRE HAZARD MANAGEMENT PLAN** for a development proposal known as the Boundary Creek Project, ZU-2193 and TR-7530, 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-1068-001-00, 084C-1068-007-00 and 084C-1068-008-00. **Staff Planner: Jana Beatty**

Ms. Beatty presented the staff report and introduced Geoff Monk, County Biological Consultant; Sheldon Gilbert, Fire Chief; and Bonnie Terra, Fire Marshall. Mr. Monk discussed the establishment of the BRPZ and provided an explanation for his statement:

“.....should not be any impact to the BRPZ from the development...”. Chief Gilbert introduced Chief Bradley and Battalion Chief Martin, Cal Fire. Due to the concerns that this was a very high fire severity zone, many site visits were made and based on the Bates Fire Rating System, the area was given a low fire hazard rating, validated by Cal Fire who came with an even lower rating. To validate this rating, a comprehensive Fire Hazard Management Plan (FHMP) was proposed and agreed to. A draft Plan was distributed with an extended review period and all comments received were included in the Final. Commissioner Imhof asked if a RDM study was included. Carol Rice, Wildland Resource Management, explained that this study is usually for dry grass.

Public testimony was called for. Diana Hanna, representing Sierra Club, clarified that they were not opposed to the project but the close proximity of the homes, 1-11, to the riparian area, due to both its protection and the safety of the homeowners and perhaps a liability to the County. All Plans, i.e. the CV General Plan, Fire Hazard Management Plan (page 4) state that this is a very high fire risk. She further read a May 7, 2004 CDF news release which requires establishment of 30 feet minimum, 100-300 feet on hillside, defensible space. Senate Bill 1369 adopted January 2005 also states defensible space of 100 feet. New parcels will be created with only 5 feet defensible space. Although Cal Fire has now given a low fire hazard rating, she asked for the new designation. Insurance companies are requesting 200-300 feet of defensible space. Many groups are also opposed to the project for various reasons but all are concerned with the riparian corridor. Ms. Hanna re-iterated her concern for the proposed 5 feet defensible space, especially houses 1-11. Commissioner Jacob asked if she thought the sentence on page 18, “..in no case shall the defensible space extend into the riparian zone” was inaccurate. Ms. Hanna replied yes and that her concern was based on the map which shows that the line is drawn within 5 feet and agreed that significant negative impacts will occur because of the way the defensible space enters the riparian zone; and although there will be replacement of non-native trees, there will be mowing and limbing of trees. Regarding the impacts to the RPZ, Commissioner Kirby noted that there were similar requirements on page 18 as on page 20 for open space including the BRPZ. As such, he has concerns regarding the 5 feet defensible space.

Sondra Yellen, 10166 Cull Canyon, discussed the fire insurance issue. She further described her property, house, the surrounding space/area/trees and access. Her fire insurance (\$700) was cancelled a year ago due to the defensible space issues--a requirement of 400 feet. She now has a new insurance at \$6,127 which requires a 200 feet clearance. The insurance company for this project will require more clearance from the riparian area than allowed in Fire Hazard Management Plan.

Mark Armstrong, on behalf of Boundary Creek Homes, stated that the Conditions of Approval has a requirement that the FHMP shall not have any significant impact on the riparian corridor. The two plans are compatible and develop a hazard provision for on-going maintenance and monitoring by the Fire Department and both an ecologist and a forester to provide an annual report to both Fire and Planning Departments. Fire insurance is not a concern as this is a low fire hazard area with a well-designed plan for fire protection. In response to Commissioner Kirby, he confirmed that there is a

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distinction between the riparian corridor and the BRPZ in terms of vegetation; the zone is being fully protected and the FHM element creates no significant impact.

John Zentner, Biologist, explained that the riparian zone has two parts: trees near the creek with low fire hazard and the oak/willow riparian zone (also containing non-natives) which is a fire hazard. There is a restoration program (restoring creek system and replacing non-native with natives) along with the FHMP resulting in low fire-hazard mature riparian system. Commissioner Kirby expressed his concerns with the distinction between the definition of defensible space and the open space including the BRPZ. Mr. Zentner agreed that there are similarities and provided further explanation.

Public testimony was closed. Commissioner Kirby asked if, with the new designations, there is a corresponding defensible space requirement. Chief Gilbert yes, in the Government Codes 11.84 and 82 which recommends 100 feet defensible space and further provided a brief review of the definitions adding that Code 51182 has a provision that allows for customized fire management plan in lieu of a 100 feet defensible space in environmentally sensitive areas including riparian zones. He pointed out that they were neither pro nor anti project development but only to assure that this is a fire safe community. Commissioner Kirby expressed concern that when this plan facilitates the creation of new parcels with buildings sited in areas where otherwise not possible, there will be problems for the homeowners, i.e. insurance, management problems and also a liability issue. His other concern was the loss of the habitat value. Although there is a provisions on page 7 of the Resource Plan, there is no indication as to who will provide the management: HOA or a non-profit organization, such as Friends of the San Lorenzo Creek. Staff replied that Mr. Armstrong has been working on the conservation easement.

Public testimony was reopened. Mr. Armstrong indicated that it would not be Friends of the San Lorenzo Creek. Instead it will be the County and he further provided an explanation. Public testimony was closed.

Commissioner Kirby re-iterated his concerns that by allowing this plan to justify a 5 feet defensible space is a serious issue and a County liability. In response to Commissioner Jacob, Ms. Terra explained that the Plan was presented to the State Fire Marshall and Chief Gilbert added that under the State statute, although not allowed in environmental sensitive areas, there is an exemption if there is a management plan. He would not have signed the Plan if it was a liability and Mr. Washington confirmed that there is no additional liability, even if homeowners are unable to find fire insurance. Commissioner Jacob pointed out that the Commission had initially requested that the eucalyptus trees in the riparian corridor be removed and replaced by 10:1 ratio to improve the corridor and maintain the best creek environment and endangered species. He asked the Chief if with conjunction of Plan and the condition on page 23 which reads: "...California native trees/shrubs that are alive shall not be removed or pruned in the riparian zone..." adds higher fire risk to the project. Chief Gilbert replied no. Although not specific to any trees/shrubs, he further explained that during the initial visit, there was not an extensive fire behavior concern in the riparian zone because of the lushness and greenery. Any restoration will reduce the fire risk. A comprehensive integrated Fire Management Plan is

the model for the future for interfaced development. The Chair asked if all the exemptions will create a precedent to other creek/riparian-related projects. County Counsel replied no. Mr. Bazar added that the CV and Eden General Plans both deal extensively with the creek related issues; the new Draft Plans also deal with the issue differently; the Creek Moratorium which has expired and the formation of the Creek Task Force.

*Commissioner Kirby made the motion to up-hold the appeal. Commissioner Jacob made a substitute motion to deny the appeal and Commissioner Imhof seconded. Motion failed 2/2 with the Chair and Commissioner Carbone dissenting.* He was in support of the FHMP outside of Appendix A but not how it is being applied to this project with the 5 feet defensible space being justified because the structures are 5 feet from the property line. He would support the substitute motion if there was a 30 feet defensible space requirement or a reduction in the footprint of the houses. Commissioner Imhof pointed out that the area will be restored and maintained, and asked the Chair if he was aware of this. The Chair responded yes.

Commissioner Jacob recommended a continuance and Mr. Bazar agreed, to allow a full Commission decision. The Chair asked if it will be beneficial to the area if the creek is restored and maintained or left in its existing condition. Mr. Monk explained that there will be a greater threat to California native species in allowing the present vegetation to continue to colonize the area and there will be a temporary loss of habitat use until native vegetation is established and mature. Mr. Zentner concurred adding that although the creek is in a better condition than most others, there is a threat. In response to Commissioner Imhof, he replied that the Regional Water Board maintenance period is 10 years. Commissioner Kirby stated that he still has setback concerns and requested clarification regarding the exemptions and the use of these exemptions in future. Commissioner Carbone said he had similar concerns regarding future use of these exemptions. Mr. Bazar explained that the new Plans along with the Creek Task Force will provide creek protection at a different and higher level. Chief Gilbert discussed the two exemptions: environmental sensitivity and fire resistance and indicated that it will not set a precedent.

*Commissioner Jacob made a motion for a continuance to September and requested a memo from County Counsel on the preemption of state statute, specific exemption language, and copies of the Biological Resource Plan to make comparison between the Appendix and the Plan. Commissioner Kirby seconded. Motion carried unanimously, 4/0 with Commissioners Ready, Loisel and Rhodes excused.*

The Chair announced a break.

3. **ZU-2248, ALTAMONT MOTORSPORTS PARK – *Public Comment Hearing on the DEIR*** ~ Petition to rezone from the ‘A’ (Agricultural) District to a P-D (Planned Development) District, to regulate the continued operation of the Altamont Motorsports Park., located at 17001 Midway Road, east side, approximately 2,200 feet south of Highway I-

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580, unincorporated Midway area, bearing Assessor's Parcel Number: 099B-7675-005-07. **Staff Planner: Jana Beatty**

Ms. Beatty presented the staff report, reminded the public to submit their comments in writing to allow inclusion in the Final EIR and announced the following: the County is transitioning consultants and, as such, the consultants who worked on the DEIR are not available today but a representative from Lamphier-Gregory, the new consultant, is available; and, the public comment period for the DEIR has been extended to September 8<sup>th</sup>, notices of which will be mailed out to all interested parties.

Public testimony was called for. Jon Harvey, representing Sierra Club Tri-Valley Group, pointed out that the rezoning of agricultural land to Planned Development is inconsistent to the ECAP and Measure D. The club can only support the 2.7.2 no project/closure alternative and he requested an additional alternative of some level of clean-up if the rezoning is denied.

James McNeely, 499 Midway Road, said he was disappointed that some substantial facts are not included in the DEIR, namely, the improvements made in 2006 with/without permits which include grading/filling, electrical work, and stadium lights. Some of the photographs are dated incorrectly. He felt that the buildings should be re-inspected by independent qualified engineer. The status-quo option is not an option. Regarding signage, he felt that the sign should not be visible on the edge of Mountain House. There is kit fox habitat on the other side of the freeway, an area that has been purchased for mitigation property, which he felt should also be addressed. Noise level is also a concern--83db should be considered instead of 95.

Jaime McNeely stated that since there are many errors, she will submit her comments in writing. An economic analysis was totally omitted in the DEIR--the cost of project vs. benefit, tax revenue for the County; benefit for the Tracy area, the financial institution/investors involved; and proof that funding is available to move forward with this project including the mitigations.

Janis Turner, 749 Hazel Street, stated her support for 2.72-no project/closure alternative. The rezoning to a Planned Development is inconsistent with Measure D. She expressed green house gas emission concerns with the increase of participants and traffic noting that the DEIR indicates no possible significant mitigation for the green house gas and traffic affects and air quality. Another concern was the complex biological control mitigation follow-ups.

Mark Cohen, attorney representing Mark and Karin Rivard and Community for a Better Altamont, felt that the Commission needs to know why the consultants were fired and if it impacts the credibility of this document, the DEIR. He pointed out the following errors in the DEIR: there are not three tracks but two; the facility has not been in continuous operation since 1963 as there has been a total of 15 years when it has been non-operational and/or there has been no permit; omits the reference to the 1972 BOS ban of

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tracks from the 'A' District; and its inconsistency with Measure D. Detailed written comments will be submitted.

Karin Rivard, 17011 Midway Road, noted the following: since 1963, this facility has been closed for over a total of 15 years; although the proposal is for an increase from a one-day week operation to 7 days and the DEIR acknowledges the existence of federally protected wetlands and several endangered species on site, it indicates no significant impact in most areas analyzed; project is inconsistent with ECAP and Measure D; Fish and Wildlife Services and Fish & Games were not consulted; this request is for an expansion of a use, not a continued use which does not qualify for another CUP or rezoning and based on the 1972 BOS ruling, the only alternative is for 'no project' alternative; the DEIR is inconsistent; original conditions of approval have not been complied with; all requirements with time frames should be completed before an approval is granted and she was unsure of how any conditions could be enforced.

Norman Phillips, 16950 Midway Road, also noted that the DEIR indicates three racetracks. He confirmed that when he had been running the tracks, there were only two tracks, a ½ and a ¼ mile tracks and, as such, it cannot be considered as a continued use. Most of the descriptions contained in the DEIR indicate an expansion, i.e. the two temporary caretaker units are reflected as two permanent modular homes, installation of a new drag strip, an increase to a 7-day operation, increased parking, type of racing, RV site...etc. The DEIR does not mention any oil separation system from the infill drains to the catch basin into the creek; disposal of hazardous materials, and mentions a baseline of 6,150 attendees which is not true; there has been, the most, 1,000 attendees. Since the prior CUP requirements have not been fulfilled, Mr. Phillips asked what assurance was there that the conditions in the EIR would be fulfilled.

Mark Rivard, 17011 Midway Road, stated that the DEIR contradicts many other existing County documents and contains many misinterpretations, exaggerations and wrong information: the 90 feet high stadium lighting with no regard to the neighbors, illegal grading and tracks added without permits.

Rob Gould, 16903 Midway Road, stated that he concurred with all the previous speakers and the concerns noted. He also agreed with Mr. Harvey that the site should be closed down.

Victoria Corona, 16965 Midway Road, said that she opposes the approval of the rezoning as it would be a violation of the ECAP and Measure D. Although an expansion to a 7-day operation will increase the noise, tracks, shops, the use of the illuminated signs, the DEIR states no significant impacts as a result. She felt that this DEIR does not adequately address the environmental impacts. An approval will result in a severe impact on air quality, noise, traffic, wild life safety and public services. The applicants are trying to use the expansion (increased operation, buildings, paving/grading) appear as the baseline although no permits were obtained.

Roberto Valencia, 16777 Midway Road, stated that he had been aware of the existence of the track and its one-day operation when he bought his property in 1998. With the activities as described in the DEIR, Mr. Valencia expressed doubts that he and his neighbors will be able to continue with their current quality of life.

Public testimony was closed. In response to Commissioner Imhof, staff explained that the Principal of Impact Sciences who had worked on the DEIR resigned and having no other principal contacts, Lamphier-Gregory is now the new consultants. Commissioner Kirby said that since the DEIR does not adequately address the existing conditions, he recommended that perhaps the project description/overview and the entitlement history reflect the numerous non-permitted activities including the construction, grading, electrical work, any of which should have also triggered a ceqa work; the existing conditions be evaluated for potential ceqa impacts on activities that occurred illegally; under Project Objectives 3.2, the first bullet to read: "To allow for the continued use of AMP in accordance with and limited to all the provisions of 1996 CUP"; and regarding the air quality issues, there are new State legislations and models to mitigate and offset through carbon credits.

In reference to the number of tracks, Commissioner Jacob noted that Figure 3.0-1 does not include the x track, the off-rd track or the north eastern embankment; discussed Section 4.1 regarding signage: a one sign alternative would be feasible and since the facility is visible from the freeway, an appropriate location should be proposed; encouraged consultant to make distinction between the locations in the Bay Area Air Quality Management District and San Joaquin Air Basin. He felt that another analysis is needed based on the San Joaquin Valley standards for Section 4.3-1-3 re Attainment Levels and Table 4.3-3 re Particulate Matter to be analyzed based on the Federal standards; Sections 4.3.2.1.1, 4.3.7, 4.3.8 and 4.3.9 to be looked under the San Joaquin Ambient Air Quality standards; green house gas section and the thresholds of significance for the San Joaquin Valley APCD. He disagreed with the accuracy of Section 4.3.3.2.6.1.1 (page 3.45). In reference to Section 4.3.3.2.2.7 (page 4.3-48) there is no analysis of the conclusion and he further recommended that Table 4.3-35 be used for comparison. He also expressed concern with Tables 4.3-30 thru 4.3-34 (Operational Emissions), specifically the comparison between Tables 4.3.30 and .31 as 4.3.31 does not reflect the PM thresholds which he thought was inaccurate. Commissioner Jacob also requested that the TCMs (regarding carpooling and encouragement of employer-based trip reduction programs) be considered as an alternative as it is not included in the mitigation measures for Sections 4.3 or 4.15; recommended a thorough analysis of all mitigation measures AQ-1 thru 3 with regards to what the actual mitigation is and have options for additional mitigation of solar for the signs for the caretakers homes; clarification of "25 percent" as stated in AQ-2; a discussion on GHG off-sets money-source for specific mitigation vs. specific electrical input in reference to the caretaker's unit signs and feasibility of having a specific kilowater megawatt component; an analysis on Section 4.8-1 re drainage as there is no mention of a containment from the pit area. He expressed concern regarding the circulation transportation and traffic due to the lack of analysis of Grant Line Road and Mountain House Road, which is neither signaled nor

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safe; and recommended that the San Joaquin Valley APCD be specifically referenced in the conclusions regarding the air quality.

*The Chair re-announced that the public comment period has been extended to September 8<sup>th</sup>, 2008.*

**STAFF COMMENTS & CORRESPONDENCE:** Mr. Lopez announced that staff was working on the Commission requests from the last meeting--staff will be able to provide a monthly report on on-going activities on applications that the Commission has acted on. A draft staff report cover sheet has been distributed to staff for feedbacks.

**CHAIRS REPORT:** *None.*

**COMMISSION ANNOUNCEMENT, COMMENTS AND REPORTS:** *None.*

**ADJOURNMENT:** *There being no further business, Commissioner Kirby moved to adjourn the meeting at 9:05 p.m. Commissioner Imhof seconded the motion. The motion was carried 4/0.*

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**ALBERT LOPEZ, SECRETARY**  
**COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY**