

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
SEPTEMBER 2, 2008
(Approved October 6, 2009)

FIELD TRIP:

MEMBERS PRESENT: Commissioners Frank Imhof; Mike Jacob, Vice-Chair; Glenn Kirby; and Kathie Ready.

MEMBERS EXCUSED: Commissioners Ken Carbone, Chair; Alane Loisel and Richard Rhodes.

OTHERS PRESENT: Howard Lee, Planner

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:

1. **BIO-SWALES** ~ Site Visit to existing Bio-Swales in East County to view their functionality.

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; Glenn Kirby; Alane Loisel; Kathie Ready and Richard Rhodes.

OTHERS PRESENT: Albert Lopez, Planning Director; Jana Beatty, Senior Planner; Rodrigo Orduña, Senior Planner; Brian Washington, County Counsel's Office; Nilma Singh, Recording Secretary.

There were approximately eleven people in the audience.

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

ANNOUNCEMENTS BY THE CHAIR: *None*

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 Commission Minutes** – August 4, 2008 ~ *Continued*
2. **GENERAL PLAN CONFORMANCE REPORT ~ PROPOSED SIPHONS SEISMIC UPGRADE. THE PROJECT SCOPE OF WORK INCLUDES SEISMIC UPGRADE OF THREE EXISTING SIPHON, CONSTRUCTION OF A FOURTH; NEW RETAINING WALLS; NEW ACCESS ROADS; IMPROVEMENTS TO EXISTING ACCESS ROADS; RETROFIT OF TWO EXISTING BRIDGES; TWO CONTROL BUILDINGS; TWO FACILITY STORAGE BUILDINGS; AND NEW TUNNEL-OVERFLOW PIPE**
~ Request by the San Francisco Public Utilities Commission for General Plan Conformance Report under Government Section 65402 for the water facility seismic upgrade in the Sunol Valley, on the northern section of 36,000 acres of Alameda Creek Watershed on property owned land by SFPUC. The proposed site is located on Calaveras Road, roughly two miles south from the I-680 and Calaveras Road interchange, Assessor's Parcel Numbers: 096-080-004-00, 096-008-006-02, 096-080-007-00, 096-080-00, 096-009-00, 096-375-011-05, and 096-375-015-00. The office address is 5555 Calaveras Road. **Staff Planner: Carole Kajita**

This item was reopened for public testimony. Stan Garcia, 6501 Calaveras Road, Sunol, stated his appreciation that dust will be kept at a minimum.

3. **INFORMATIONAL REPORT ON CHANGES TO PLANNING DEPARTMENT APPLICATION REVIEW PROCESSES**
Staff Planner: Gerry Wallace

In reference to Item #3, Commissioner Jacob thanked staff for the up-date and the description. *Commissioner Loisel made the motion to approve the Consent Calendar and Commissioner Imhof seconded. Motion carried unanimously.*

REGULAR CALENDAR:

1. **STUDY SESSION ON MARIJUANA CULTIVATION IN UNINCORPORATED COUNTY AREAS** ~ Presentation by the Sheriff's Department.

Deputy Paul Liskey, Sheriff's Department, provided a powerpoint presentation on his staff report and a video presentation on Medical Marijuana Dispensary Ordinance and

discussed the following: Proposition 215, Compassionate Use Act; Medical Marijuana Ordinance, permit selection and approval of three permits as a result of a lottery (We Are Hemp, The Garden of Eden and Compassionate Collective Alameda County); reported crimes since Marijuana Ordinance went into effect; related article in Castro Valley Forum dated July 2, 2008; Compliance Inspections, Violations at the Dispensaries; Legalities of Dispensaries; Ramifications of Proposition 215; Environmental Impacts; Costs of Eradication; Indoor marijuana and electricity theft and fires; and dispensary demographics. In reference to the Attorney General's news release, Deputy Liskey said that although broad, it is a step in the right direction.

The Chair thanked him for his presentation.

2. **PROPOSED ZONING REGULATION AMENDMENTS RELATING TO NOTICES OF PUBLIC HEARING AND FILING OF APPEALS** – To consider the amendment of Chapter 8 of Title 16 of the Alameda County Ordinance Code, the Subdivision Ordinance of Alameda County, and to Chapters 18 and 54 of Title 17 of the Alameda County Ordinance Code, the Zoning Ordinance of Alameda County, and other sections as appropriate to change the requirements for notices of public hearings by the Planning Director, Board of Zoning Adjustments, Planning Commission and Board of Supervisors on variances, conditional use permits, site development reviews, subdivisions, and rezonings by expanding the radius of properties to which notice must be mailed, expanding the base to which notices must be mailed to include residents as well as property owners, eliminating the requirement to post notices in the vicinity of the property, and requiring the applicant to post a notice on the property, and to allow an appellant to file an appeal at the Planning Department offices as well as at the Board of Supervisors offices.

Staff Planner: Rodrigo Orduña

Mr. Orduña presented the staff report. Commissioner Kirby noted the change of location for filing of appeals. In reference to applicant contact information in Attachment D, Commissioner Jacob asked if there were any privacy concerns, mostly for private owners. Staff explained that contact information is public after an application is filed and perhaps the sign could have some other type of contact information for questions instead of phone numbers.

Public testimony was called for. Diana Hanna, a Cull Canyon Road resident, stated that the public notices on poles are helpful when driving, especially in the agricultural areas.

Public testimony was closed. Commissioner Kirby recommended that signs be highly-visible and the Chair recommended inclusion of an email address and/or a project website. *Commissioner Loisel made a motion to approve staff recommendation with the above modification and Commissioner Imhof seconded. Motion carried unanimously.*

3. **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. (Continued from July 4, 2008)
Staff Planner: Jana Beatty

Ms. Beatty noted receipt of the County Counsel memo dated September 2, 2008, in response to the Commission's liability concerns raised at the last meeting and a letter from Carol Rice, Wildland Resource Management dated August 26, 2008, copies of which have been distributed to the Commission. All, the Fire Department, Biologist Consultant, Geoff Monk and County Counsel, concur with the findings. The Commission has also received copies of a matrix prepared by John Zentner, Project Biologist, which compares the FHMP to the Biological Restoration Plan. She announced that copies of all the above documents are available for public in the rear of the hearing room. A letter was received from the applicants this afternoon along with a letter from GDI Insurance Company stating that they would have no concerns insuring these homes; a copy of this letter is available upon request. Bonnie Terra, Fire Department is also available to answer any questions regarding the approval and implementation of the FHMP along with Carol Rice, Geoff Monk, County Biologist, John Zentner, Project Biologist and the Deputy Fire Chief.

Public testimony was called for. Jody Culver, 6633 Crow Canyon Road, said she was very concerned with this development. Twenty-one homes instead of 28 would have resolved the issue of encroachment into the creek buffer zone. She thought that the planting of natives as outlined in the Plan is not realistic and further read City of San Ramon Ordinance regarding creek setback. She did not understand how and why the Department of Fish & Game recommendations were being ignored. The Chair pointed out that this hearing is based on the FHMP. Ms. Culver felt that this project is devastating to the natural landscaping to make it fire safe.

Diana Hanna, on behalf of Sierra Club and a resident of Crow Canyon Road, stated that her concern is the 5 feet defensible space and fire hazard issues. The former CV General Plan mapped this area as high fire zone per Fire Department and the current Draft Plan, page 361, also states this area is a very high fire zone per Fire Department. Although re-mapped, the public is not aware and continues to use the Plans that are available. Although not in writing, both the former Fire Chief and Fire Marshall Bohman had stated that this is a high fire zone and a 100 feet defensible space is required. She expressed concern with precedent setting. Both the moratorium and the Task Force were formed because of this and another similar project. Ms. Hanna requested a copy of the insurance letter from staff and further read and re-submitted a letter from Fidelity National Insurance Company which states that 13 insurance companies require a minimum of 200-500 feet defensible space.

Roxann Lewis, 17750 Madison Avenue, Castro Valley, said she is a current member of the San Lorenzo Creek Taskforce established by the BOS in part because of this project. She agreed with Commissioner Kirby that the size of the structures be reduced to provide the required defensible space in this high fire zone.

John Zentner, Project Biologist, stated that in response to the Commission's request at the last meeting, this matrix was prepared to summarize the FHMP and the Biological Restoration Plan; and further explained the difference--within the oak woodland area, there will be selective clearing of branches less than three inches high on non new established plants up to eight feet. Although included in the BRP, it is not done; and mowing is reflected in the BRP. Mr. Zentner requested that, per the Regional Water Board's recommendation, a map for maintenance by the landscape contractor and installation of placards on the line between the two areas be included in the Plan.

Carol Rice noted that the fire safety issue has been addressed several ways--the FHMP has ignition-resistance construction; every building is sprinkled with non-flammable roofs and sidings; maintenance required by both Plans constitute the defensible space; and ongoing maintenance by HOA. She also noted the GDI Insurance Company letter. In response to the Chair, Ms. Rice explained that 'fire protection class 2' is based on an ISO rating. A discussion ensued regarding this rating and insurance company requirement/criteria.

Mr. Zentner pointed out an error on the 2nd page under Restoration and Enhancement: Riparian Woodland Zone #d. "maintenance of the pedestrian trail, bench and non-structural creek overlook as proposed" which should have been deleted.

Public testimony was closed. Commissioner Kirby stated his appreciation for County Counsel's response. His two remaining concerns included the 5 feet defensive space including the sentence at the bottom of page 2 "...defensible space need not extend beyond property lines of the homes..." as there is no County or State five feet defensible space requirement and the only exception for existing structures. This exception cannot be used to create new parcels. Conflicting testimonies have been submitted regarding fire insurance. Another concern was exemptions made for defensible space in areas of environmental significance and precedent setting.

Commissioner Jacob also stated his appreciation for County Counsel's letter and noted that the conditions approved by this Commission were stricter than the State requirements. The restoration and enhancement section of the riparian woodland zone is not entirely consistent of what the Commission had approved. He asked if the HOA will be able to enforce the maintenance provisions.

Ms. Terra, Fire Marshal, pointed out that the HOA will enforce and report back to staff and the Fire Department who will make a site visit to confirm and document. This Plan is now considered as a future standard for fire communities. Commissioner Jacob asked if the homes were at a higher risk because of the maintenance standards or would they be safer with the additional space and maintenance provided by the homeowners and

requested an up-date on the benefits of de-vegetation of non-native trees and replacement with native species. Ms. Terra replied that the homes would be safer under the Plan and its guided maintenance and further described the benefits. Commissioner Rhodes asked for the trade-offs between biological ecology and the defensible space and Ms. Terra said that there were no negative tradeoffs. A discussion followed regarding a creek ordinance, formation of the Creek Task Form and future applications providing less than 30 feet defensible space.

Commissioner Kirby made the motion to uphold the appeal and Commissioner Rhodes seconded. Motion failed 3/4 with Commissioners Imhof, Jacob, Loisel and Ready dissenting. Commissioner Loisel made a substitute motion to deny the appeal and Commissioner Imhof seconded. Substitute motion failed 3/4 with Commissioners Carbone, Kirby, Ready and Rhodes dissenting.

Ms. Ready stated that she did not understand the ramifications of the various motions, and asked Staff to clarify.

Commissioner Kirby made a motion to uphold the appeal and Commissioner Carbone seconded. Motion carried 4/3 with Commissioners Imhof, Jacob and Loisel dissenting.

STAFF COMMENTS & CORRESPONDENCE: *None.*

CHAIRS REPORT: The Chair reminded the Commission of the upcoming annual CCPCA Conference in Bakersfield, October 24-25th.

COMMISSION ANNOUNCEMENT, COMMENTS AND REPORTS: *None*

ADJOURNMENT: *There being no further business, Commissioner Jacob moved to adjourn the meeting at 8:00 p.m. Commissioner Loisel seconded the motion. The motion was carried 7/0.*

ALBERT LOPEZ, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY