

**CASTRO VALLEY MUNICIPAL ADVISORY COUNCIL  
MINUTES FOR November 8, 2004**

(Approved as submitted December 13, 2004)

- A. CALL TO ORDER:** The Chair called the meeting to order at 6:30 p.m.

**Councilmembers present:** Andy Frank, Chair; Dean Nielsen, Vice Chair; Councilmembers Ineda Adesanya, Ken Carbone, Karla Goodbody, Jeff Moore, and Carol Sugimura.

**Councilmembers excused:** None

**Staff present:** Tona Henninger, Steve Buckley, Jana Beatty, Andy Young, Bob Swanson and Maria Elena Marquez.

There were approximately 15 people in the audience.

- B. APPROVAL OF MINUTES: September 13, 2004 and October 25, 2004 to be continued to the next meeting, December 13, 2004.**

- C. PUBLIC ANNOUNCEMENTS:**

There will be a Redevelopment CAC meeting on Wednesday, November 10<sup>th</sup>, at Canyon Junior Middle School, at 6:30 p.m.

- D. REGULAR CALENDAR**

The Chair announced a change in the order of the agenda, Item 1 will be Item 2, and Item 2 will be Item 1. Since the Applicant for V-11882 – Greves, failed to appear at the hearing, the Council will proceed with Item 1.

- 1. ZONING UNIT, ZU-2193, 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 Districts to the PD (Planned Development) District and Tract Map 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, unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Numbers: 084C-1068-001, 084C-1068-007, and 084C-1068-008.

Mr. Buckley presented the staff report. He stated that the Planning Commission had also conducted a prior meeting a couple of weeks ago, following the completion of the comment period on the DEIR but prior to publication of the FEIR. The FEIR has now been completed, and is available for the Planning Commission prior to their meeting next week, where they may take action on the project. The FEIR provides responses to each comment presented on the Draft including agency letters, public testimony, letters from

neighbors and other interested persons. The FEIR also explains the revised project as it has been proposed by the Applicant. The revised project has a few key features including elimination of retaining walls, adjustment of the grading plan to eliminate development areas beyond the riparian corridor along Crow Creek, and removing one of the home sites for a water quality treatment feature for the development. As such, the applicant has begun to incorporate the mitigation measures recommended in the FEIR. Fig. 14-4 in the FEIR shows the setback for the Watercourse Protection Ordinance as opposed to the riparian boundary line. Several areas of grading, several homes, and a portion of the road will be subject to the granting of an exemption by the Director of Public Works. There was previously a question about trees, and there is a revised figure in the FEIR that shows the creek including all of the trees on the site and the number of trees that will be removed and saved as a result of the project. So, the revised project saves more trees than the original number of 263 trees in original report. The revised project also incorporates another recommendation of the EIR, to work with the slopes of terrain and eliminate some retaining walls by providing split pad foundations. There also will be a conservation easement for the common lots that includes the creek.

Applicant Mark Pringle, a home builder, said he has been working with Ms. Utal in this project, and will try to answer questions the Council might have as the Utals are not available to attend the meeting.

Ms. Adesanya asked a question related to the retaining walls, specifically if it were possible to excavate underneath the house if it were on a split pad foundation in order to provide extra rooms.

Ms. Carbone asked what would keep a homeowner from adding a retaining wall into the creek setback.

Mr. Pringle said that the future homeowners will be subject to all of the rules regarding the riparian area and the watercourse setbacks.

Public testimony was called for.

Diana Hanna, resident at 10142 Cull Canyon Road, asked why the FEIR was not circulated for public review. Mr. Buckley said that the requirements are that the EIR be circulated at least 10 days before an action on the project. Although the Council's recommendation could be interpreted as an action, the Planning Commission will be the first body to take a formal action on the project. Ms. Hannah read a letter dated October 18, 2004, that was sent to Steve Buckley from the Urban Creeks Council of California (letter entered into the record). She also read a letter dated November 8, 2004, that she sent to the MAC members (letter entered into the record). She stated that she would be able to pack the chamber with opponents, but asked most people not to come tonight. She is asking that this project not be classified as PD. Every letter on the NOP was in opposition to the project. Do not cut any heritage trees. The Dept. of Fish and Game says that a 100 year old tree's trunk is 20 to 28 inches. She asked that the applicant not put in a bridge. Also, mosquito abatement has not even been discussed. She feels that

Mrs. Roberts and the developer are entitled to make money out of this, but asked that the corridor be protected.

Terry Preston, resident at 25305 Second Street, said she did not have a chance to look at the FEIR. She hopes that the Council does not make a decision tonight. She has lived in Castro Valley for 29 years and knows this area very well. She has a Master Degree in Ecology. She was asked to review the EIR. The EIR states that Alameda County explains the limits of the riparian zone. The consultants did not refer to the 1977 Specific Plan for Areas of Environmental Significance. Her major concern is that the legal document supersedes the EIR. Specific areas of environmental significance include all riparian vegetation and oak woodlands, including oaks, sycamores and buckeye. She said she is very confused, she has looked at it and it is inaccurate, she thinks it needs to be redone. This area is part of the watershed preservation and that it needs to be kept healthy. With this 27 year old document around, how did this EIR get this way? In this EIR there are a number of significant errors. She visited the site recently and detected several special status species. The EIR states almost all of the species do not exist on the site. She detected seven special status species and observed a number of them in the riparian zone. She is also concerned about the No Project Alternative that will allow for a maximum number of homes. The specific plan supersedes zoning. Based on her review, she recommends against the EIR. She said she has not been allowed on the site and needed to do so to provide accurate information. She is concerned that a recommendation may be made without adequate time to review the FEIR for comment.

Philip Gordon, resident at 1922 Hillsdale Street, Hayward, said that he lived on Mira Loma for many years and now lives in Hayward. He represents the Ohlone Audubon Society, and is concerned with this project. The Ohlone Audubon Society position is based on the facts derived from current and historic information, which are based on observation, investigation and research. A letter dated November 7, 2004 was sent to Steve Buckley, and the letter was entered into the record. Please see copy of letter and report from the Ohlone Audubon Society.

Janice Delfino, resident at 18673 Reamer Road, Castro Valley, said she is still concerned about the storm water system and the commonly accepted standard for storm water systems in this County is 1200 square feet of treatment area per acre of impervious area. The proposed developed area is 5.5 acres, so the 1,800 sq. ft. treatment area proposed by the developer at the last meeting is not sufficient to accommodate this project development. The MAC should not accept this 1,800 sq. ft. system. The storm water plan has not been submitted or referred to the agency that has a final say on the storm water system proposal. She said she does not have a copy of the FEIR. She thinks that when plans are changed, there should be an addendum or supplemental EIR. She suggested that the project have a reduced density, and if density is reduced there is no need for a bridge, which could be a serious impact to Crow Creek and its inhabitants. Mitigation for loss of riparian habitat could not compensate the loss of the trees. She thinks that the developer should purchase riparian habitat elsewhere; that would be mitigation. She questioned how MAC can take action tonight on the FEIR and asked if the Council had a

chance to review it. Long time Castro Valley residents are concerned for their trees and their creeks.

Frank Delfino, resident at 18673 Reamer Road, Castro Valley, asked to defer a decision tonight until everybody can read the FEIR.

Dennis Waespi, resident at 4118 Arcadian Drive, Castro Valley, represents the Southern Alameda County Regional Group of the Sierra Club. The Sierra Club is taking action on this matter and they are looking to it very closely. The specific plan for environmental significance and the Fairview area specific plan required protection of the riparian corridor and preservation of wildlife habitat for certain species. He said that this project will destroy sensitive habitat that is essential to maintain biological diversity that is required by the specific plan. The independent biologist concluded that the site is utilized by a number of species. He recommends denial of the EIR.

Mr. Frank asked Mr. Waespi if he has been physically on the site. Mr. Waespi said no. Mr. Frank asked Mr. Waespi if he had reviewed the EIR. Mr. Waespi said no. Ms. Adesanya asked Mr. Waespi if he was aware that an EIR was being circulated. Mr. Waespi said no.

Mr. Nielsen asked if, as far as the riparian area is concerned, do you have a feel for particularly houses 9, 10, 11, 12 and 13. He asked if it is established by the County where the riparian area is.

Mr. Buckley referred to a figure in the FEIR page 15-75 and tried to explain definitions and parameters. It is subject to Engineering's jurisdiction to determine the riparian area which includes certain types of species. He briefly described each one of the areas.

Mr. Frank asked Mr. Buckley if he found the geographical area beyond the riparian area, woodlands and above, the oak trees to be in question. Hypothetically, assuming there are woodlands on the site, do you incorporate additional areas of woodland by the same type of species or do you differentiate?

Mr. Buckley said that it depends on the amount of water present, whether they would be termed riparian, and they are of a different habitat type. They still can be protected, but those trees are not part of the riparian area.

Mr. Nielsen said that he is concerned about the heavy vegetation in that area, the riparian area is very short of that steep bank and said that he does not understand why the riparian area is not extended beyond those areas. The bank is still very severe, very overgrown, there are a lot of trees in that area. Mr. Buckley said it is an interpretation of a biologist.

Mr. Frank asked if there is a standard of review for the riparian area? Mr. Buckley said he could not respond specifically because there was not a biologist available at the meeting, but in terms of the Specific Plan, it actually is not specific, it just says riparian corridors will be established.

Mr. Scott Gregory, project Consultant, said that the riparian corridor is mapped in the EIR. It's based not only on the species composition in the riparian area but also the water dependence and topography.

Mr. Frank asked how long is the period of time spent on the site. Mr. Gregory said the team of biologists spent 3 or 4 weeks. Ms. Goodbody asked how long is the biological survey. Mr. Gregory said it takes months. It is being reviewed by other biologists and by the County. Ms. Adesanya asked how many biologists participated and who were they. Mr. Gregory responded that it included consultants for the applicant, County and EIR, including Zentner & Zentner, Sycamore, and Monk & Associates.

Mr. Nielsen said the oak woodland could be considered an environmentally sensitive area, and he thinks several of these lots (9, 10, 11, 12, 13) include a bank that is very severe, and are going to impact the area because of the type of vegetation, so the Council needs to know what to expect where there are animal impacts as well.

Mr. Gregory said there while has been discussion about the definition of the boundary between the riparian and the oak woodland, there is another boundary shown in the DEIR that shows the outer boundary of the oak woodland, and impacts to riparian and to oak woodland are considered impact significant impacts and mitigation measures are proposed for both, with a preservation plan required to replace the lost trees.

Mr. Nielsen said that at the end of lot 9 there are oaks inland from that line that are of significant size. He said a better job needs to be done as far as looking at the site. It will have tremendous impact on the creek.

Mr. Frank asked Mr. Waespi if EBRPD has experienced any impacts on wildlife and proximity to borders. Mr. Waespi said that development was there before EBRPD took over as the park.

Mr. Moore asked if issues came up from the biologists regarding sensitive species. Mr. Gregory said that during the course of the surveys there are number of sensitive species in the general vicinity.

Public testimony continued. Vadim Pokotylo, a Castro Valley resident, said he attended the previous meeting and people are emotional. He said that the FEIR is thick, and there was not enough time to read it. The no bridge alternative should be further investigated and the need for the bridge should be justified. The alternative section of the EIR should be reconsidered. The overall feeling about the project is that it relies too heavily on mitigation. The developer presented comparisons with other projects which was useful, but he asked if it was really the right way of looking into this. He said that the project did not have to be approved at this meeting. We have other projects on this creek that need to be considered.

Al Proietti, resident at 4950 Beacon Hill Drive, said that he lives about a half mile from the property, and a group of archaeologists has studied a site south of Castro Valley Blvd., and asked if there were similar sites at this project. Mr. Gregory said no.

Ms. Adesanya asked if the Specific Plan for Areas of Environmental Significance has been addressed. Mr. Buckley said the Specific Plan allows for certain types of development.

The Applicant said that there has been a lot of discussion, there have been many questions and worries about the environment. He told Council members that there has been an extensive amount of work, their biologist spent several weeks on the site, it has been reviewed by the County biologist, and reviewed by a third biologist, and there have been questions about how a riparian line is determined. The County's biologist represents the County not the developers.

Mr. Frank asked how to define the criteria about what a riparian boundary is.

The Applicant said he could not answer that question, he is not necessarily here to justify anything. You have in many cases not only the riparian corridor, but also the oak woodland boundary. The arborist findings have been reviewed, and justification for its conclusions. Those biologists and arborists are not here, but they are cited in the document, and were on the site for a long period of time. In addition, this is the fourth time this project has been presented. He acknowledged that there are specific concerns and people are worried about the environment.

Mr. Gregory said that the Applicants retained their own biologist, and that the Public Works Agency utilized another biologist to ensure the accuracy and impartiality of the first report. He retained the third biologist, to review comments and responses. Mr. Gregory said that the EIR contains information provided by the consultants, and he reviews the work that they have done. Ms. Goodbody asked if they review their information. Mr. Gregory said yes. They also review the preparation of the document and then also make sure that responses to the document are included.

Public testimony was closed.

Mr. Carbone said the Council has to acknowledge potential damage to vegetation, statements made by speakers, and the great amount of work by consultants. He appreciates the fact that experts have testified, but some have not visited the site, and how valid is that information? The Council has to rely on the document that has been presented. There should be no speculation by other people not familiar with the site.

Mr. Frank said that density, open space and mitigation are foundations for discussion.

Mr. Moore said that since the last meeting density was his biggest concern; the Council needs to determine what is fair to everybody and try to be consistent. The Applicant has

been asked to justify density issues, and his concern is inconsistency in how projects are treated.

Mr. Frank said there is no inconsistency, the issue is whether or not the Applicant's proposal and mitigation are justifiable.

Mr. Nielsen said that part of the problem is the difference between the riparian area and the oak woodland. The density question needs to be determined, and this can be a good vehicle to determine it as being environmental sensitive. 38 homes are too many. They did not do anything as far as the quality of life issue, so it's difficult to make a decision as far as the PD is concerned. It looks like lot of the problems can be mitigated.

Mr. Frank said that for the riparian corridor, regardless you are going to have an impact, the question is if you ask for PD can you give more open space. What he sees is more impact as a result of the PD, he does not see the benefit.

Ms. Adesanya asked what can be done in the custom home parcel and if there has been any thought since the last meeting. She said that in the draft there was alternative two of 33 lots and asked for some feedback, to allow more space for dedication.

Mr. Gregory said that in the DEIR the figure for Alternative 1, the No Project alternative, was designed to conform to the creek setback limitations. The additional townhouse alternative was presented graphically in response to a request from the Planning Commission.

Mr. Frank said that with this revised plan being provided by the Applicant, he did not see real significant change and said that more open space should be considered.

Mr. Nielsen asked if the square footage of the units is about the same in the alternative.

Mr. Gregory said it is a very schematic illustration, and the square footage of those units would probably be a smaller house type. It is not a concept that the Applicants want.

Mr. Carbone said that the Council was very clear about wanting to reduce the density in the last meeting.

The Applicant said that there have been 3 previous meetings, and that they respectfully disagree with the Council's analysis of the density.

Ms. Goodbody said she was concerned over the creek set back. The Department of Forestry required a minimum of 30 feet, the Applicant is proposing 10 feet. She said she hoped to see something different from the applicant. The Council has suggestions about utilizing open space and said she was disappointed about not getting this at this meeting. She did not feel comfortable making a recommendation.

Mr. Frank said that if the Council was in disagreement with the Applicant, they will present the project to the Planning Commission and then to the Board of Supervisors. It is their choice, what ever they want to present and it is clear what they want.

Mr. Carbone indicated he was ready to make a motion.

Mr. Frank asked the Council to make a determination. The Applicant is going on with his presentation to the Planning Commission. Ms. Adesanya clarified that the Council may also wish to recommend the revised project and asked if the Council recommendation was to vote in favor of the EIR and approve the project. Benefits to the public need to be adequate to support the PD zoning, so the park area should be expanded.

Mr. Buckley said that the Planning Commission will be taking several actions. They will make recommendations to the Board of Supervisors. The Planning Commission also can impose conditions, as can the MAC regarding mitigation measures. There are all kinds of conditions that could be considered.

Mr. Moore said he believed the Council was not being consistent with previous projects.

Mr. Frank said the key issue is if you would like to provide a recommendation. Mr. Frank said to either propose a yes to the zoning unit & tract map, or to say no.

Ms. Adesanya said the EIR process is quite thorough and she did not see a need to go back for more information. She will be open to a recommendation for approval with a condition that the density be reduced. She said she was overall satisfied with the environmental review of the project. She recommended certification of the EIR.

Mr. Moore said a rezoning application should be for the benefit of the public.

Mr. Carbone said there are no valuable benefits to justify the PD.

**Mr. Carbone moved to recommend certification of the EIR and denial of the project to reclassify ZU-2193 & TR-7530, because there is no value for the quality of life, and the project is too dense. Mr. Nielsen seconded. Ms. Adesanya and Mr. Moore voted no. Motion carried 5/2.**

2. **VARIANCE, V-11882, GREVES**, Application to construct a detached garage located in the front half of the lot and within the future width line adopted by ordinance where not otherwise permitted and 3 feet from the property line where 6 feet are required, in a R-1-L-BE (Single Family Residence, Limited Agriculture, 5-acre minimum building site area) District located at 6270 Crow Canyon Road, west side, 0.74 miles north of Cold Water Drive, in the unincorporated Castro Valley area of Alameda County, bearing Assessor's Parcel Number: 0085-1600-003

This item was continued to December 13, since the Applicant was not present.

- E. OPEN FORUM** – None.
- F. CHAIR’S REPORT** – None.
- G. COMMITTEE REPORTS** – None.
- H. STAFF ANNOUNCEMENTS, COMMENTS AND REPORTS** – None.
- I. COUNCIL ANNOUNCEMENTS, COMMENTS AND REPORTS** – None.
- J. ADJOURN** – The meeting was adjourned at 8:20 p.m.

**NEXT HEARING DATE: MONDAY, DECEMBER 13, 2004**