

MINUTES OF MEETING
ALAMEDA COUNTY PLANNING COMMISSION
OCTOBER 2, 2006
(APPROVED NOVEMBER 6, 2006)

REGULAR MEETING: 6:00 p.m.

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

OTHERS PRESENT: Chris Bazar, Planning Director; Steven Buckley, Assistant Planning Director; Bruce Jensen, Senior Planner; Karen Borrmann, Public Works Agency Liaison; Brian Washington, County Counsel's Office; Nilma Singh, Recording Secretary.

There were approximately eighty-four people in the audience.

CALL TO ORDER: The Chair called the meeting to order at 6:35 p.m.

ANNOUNCEMENTS BY THE CHAIR:

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. No one requested to be heard under open forum.

CONSENT CALENDAR:

1. **APPROVAL OF PLANNING COMMISSION MINUTES** - September 18, 2006.
2. **GENERAL PLAN CONFORMANCE REPORT – PROPOSED PURCHASE OF 80% UNDIVIDED INTEREST IN TEHAN FALLS PROPERTY** ~ Request by the Real Estate Section of East Bay Regional Park District (EBRPD) for a General Plan Conformance Report under Government Code Section 65402 for the purchase of an 80% undivided interest in fee of a 103 acre± property containing the notable geologic feature known as Tehan Falls, near Pleasanton Ridge west of the City of Pleasanton, for the purpose of park, trail and open space, in unincorporated Alameda County, designated County Assessor's Parcel Number: 941-2300-001-10.

Commissioner Hancocks made the motion to approve the Consent Calendar and Commissioner Imhof seconded. Commissioner Jacob made a correction to the September 18th Minutes: the time of his arrival, a result of which the vote on the first item should read 6/0. The amended motion to approve the Consent Calendar carried unanimously.

REGULAR CALENDAR:



1. **CONDITIONAL USE PERMIT, C-8205, CEDAR GROVE COMMUNITY CHURCH** ~ Petition to construct a new church campus totaling approximately 82,000 square feet of floor area with 508 parking spaces, on a 14-acre site, in the A-CA (Agricultural-Combining) District, located at 2060 South Livermore Avenue, northeast side, approximately 0.25 miles southeast of Tesla Road, Livermore area of unincorporated Alameda County, bearing Assessor's Parcel Number: 099-0900-004-04. (Continued from August 7, 2006).

Mr. Buckley presented the staff report.

Public testimony was called for. Henry Mutz, representing Cedar Grove, opted to speak after public testimony.

Brian Vos, The Wine Group, said his winery is situated around the subject property and his main issue is density. He introduced several related charts showing the winery site which has just over five acres of development out of the total 230 acres, a 2.5% density currently. Upon full development, it will have a 7.5% density. In comparison, he noted that the church is proposing a project with 9.7% density on 14 acres. As such, he believes that they lack land for the proposed project. He felt that the church's primary motivation is economic as farmland is less expensive. He was not against the church but felt that this proposal would have a negative impact on his winery and the greater Livermore wine industry. Cedar Grove has filed an appeal against their project causing a delay in their grape crushing next year.

Tom O'Neill, 1372 Spring Valley Common, spoke on the RLUIPA issue. He indicated a preference for a local government decision rather than a federal-based decision.

Dan Nelson, 2169 Buena Vista Avenue, stated that the subject site has always been a dumping ground for contractors, a blighted area, but it has now been cleaned-up. The church was working towards being a good neighbor. He hoped for an approval which would result in a good addition to the community and a benefit to the area.

Tom Reitter, although a member of the Livermore City Council since 1989, said he was speaking for himself. He was opposed to the proposal which was not a religious but a land use issue. This proposal, if submitted by an individual, would be denied. This is an urban use which should be inside the Urban Growth Boundary. He urged protection of the South Livermore Plan. In response to the Chair, Mr. Reitter explained that Cedar Grove's application for an expansion at their current location was heard only by the Livermore Planning Commission and was vehemently opposed by the neighbors.

Jeffery Gimenez, an Oakland resident, in support, stated that he travels to Livermore to attend the church and has received counseling by the Church Pastor. He urged for an approval.

Tania Sheldon, 1066 Madison Avenue, read and submitted a copy of a letter in opposition on

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behalf of Dan Marchand, Livermore City Councilman. He felt that the issues to be considered are planning, zoning, land use and responding to the will of the electorate. His concerns included the size of the proposed parking area and the use of septic tank. The proposal is an urban use which does not belong in this area which has been dedicated to agriculture and open space easements. Ms. Sheldon, speaking for herself, urged for a denial as this proposal would cover 9 acres of suitable grape soil and not contribute to the wine producing region.

John Fletcher read and submitted his written testimony. The three days between the release of the staff report and the hearing date is an inadequate time to prepare a response. The FEIR should not be approved as neither the responses to concerns raised at the July 17th hearing nor the written concerns submitted have been included. Some of these concerns included are the lack of ambient noise measurements beyond the project site boundaries; run-off issues; aquifer depletion affecting neighboring wells and the calculations of future activities. He felt that the application should be denied due to its incompatibility with the zoning, SLVAP, ECAP and the Urban Growth Boundary; the lack of justification for such a large church; and the use is non-agricultural. He stated that religion should not play a role in any decision.

Keith Cromie, 926 Alden Lane, Cedar Grove Pastor, pointed out that they would not have invested time and money to relocate if it was not necessary. This has been a three year process and a denial will place a burden in serving the community. He urged an approval.

Gail Shearer, owner of the adjacent Tazetta Vineyards, said that the issue of a community facility does not apply as stated in her September 22, 2006. Policy 50 states that the County shall promote community facilities near transportation corridors and within existing city downtown areas. She further read the response on Page 156 of the FEIR, a related portion of Policy 13 (old Measure D), and the last paragraph on Page 1 of the staff report. Such a use belongs in the city limits and within the Urban Growth Boundary. The following issues have not been addressed in the FEIR: storm drain systems and contour lines; the new well and waste water systems. She felt that any litter should be within the boundaries of the church.

Joanne Bezis, 1969 S. Livermore Avenue, read and submitted her written comments. She felt that an approval will result in a subdivision; this urban density does not conform to the land use of the area; there is not a need for an agricultural caretaker's unit due to the lack of agricultural activities and thus only two homes are the maximums allowed on one parcel; and the use does not meet the public need but will negatively impact the wine industry. She stated that although provisions exist to allow the proposed use, the intent did not envision an 80,000 square foot building and 65% of land covered in buildings and parking. She noted that fire protection is provided by City of Livermore and if approved, the County must require sprinklers and fire hydrants to assist the City.

Herbert Pedigo, 1061 El Caminito, submitted his written comments in support. This is a moderate-sized church which has been active in supporting community events and needs; 90% of members are from Livermore; the current property has been well-maintained and with an approval, the subject property will be improved also over what is currently on site.

Kevin Snider, Pacific Justice Institute, Sacramento, noted his letter of support dated August 18, 2006 and further discussed RLUIPA.

Dale Turner, in support of the project, pointed out that, similarly as in Napa, an approval will not affect the wineries economically. The denial of the expansion request at the current site by the City of Livermore was based on an emotional plea of some neighbors. Mr. Turner noted that the subject property had been on the market for over five months. He urged an approval.

John Bullock of Coblenz, Patch, Duffy & Bass, LLP, stated that written comments have been submitted on behalf of Tri-Valley Conservancy with the conclusion that since the findings cannot be made, the application must be denied and a denial will not violate RLUIPA. Many issues have not been addressed in the FEIR, including hydrology; availability of alternative sites; land use and planning issues; traffic, parking, and geology. The mitigation measures which need to be available and adequate are generalized. The certification of the EIR will be in violation of CEQA.

Sharon Burnham, Executive Director of the Tri-Valley Conservancy, explained the Conservancy's work and plan to preserve land. An approval will harm the Plan and lose farm land with great soil. Any non-agricultural project would be inappropriate at this location and she urged a denial.

Jean King, 4205 Colgate Way, pointed out that the issue is not whether the Church is good or not, but the fact that it is an urban use in an agricultural area, outside the urban growth boundary. An approval will set a precedent and erode the zoning of the area. She also urged a denial.

Richard Ryon, President, Friends of the Vineyards, urged the Commission to uphold ECAP, the South Livermore Area Plan and the Urban Growth Boundary. He noted the following: an approval will severely undermine the efforts to preserve the vineyards and agricultural land, and adversely affect the agricultural region; they do not oppose the church but the urban use; the City has been very successful in accommodating large churches within the City boundaries and this is not a religious but a zoning and public policy issue. He urged a denial.

Bob Baltzer read Mr. Don Miller's letter of opposition. On behalf of Friends of Livermore, he stated that Policy 340 prohibits such uses. The Findings reflect that the use is of a higher density than the surrounding areas, and no mitigation measures have been identified.

Tom Concannon said he did not agree with several findings in the EIR and requested that a revised EIR be circulated to address the following: the significant cumulative land use and planning impacts on the surrounding residential agricultural properties; an industrial-sized water and storm drainage system will make the area more attractive to similar higher intensive uses; loss of farmland; significant safety issues including traffic; and alternative sites. He urged for the Applicants to relocate to a more appropriate site. Mr. Concannon submitted a copy of his written comments.

Greg Thomas, 433 Swallow Courtt, representing Cedar Grove, noted that research had been done

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prior to the property purchase, that the church had met with County staff, developed a relationship with the neighbors to understand and mitigate concerns, and completed an EIR. He indicated that there are no other options and urged for an approval.

Jim Perry, 10017 Tesla Road, said he was a City of Livermore Planning Commissioner for 16 years, and was on the original committee which worked on the South Livermore Plan. He confirmed that churches had never been part of the discussions. The issue is not the church but its size and the urban-related with an agricultural accessory use.

Read Phillips, 1189 Vineyard Avenue, said her concern was the gateway to the wine region which needs to be maintained.

Mark Triska stated that he is a member of the Livermore Chamber of Commerce and Livermore Valley Wine Association Boards. He urged a denial based on an inappropriate location. An approval will set a precedent and will affect the current businesses and residences.

Jeff Etnire said he was involved with the South Livermore Valley Plan which has been very successful. To make vineyards successful, other uses and subdivisions have been allowed. Churches are allowed as conditional uses and are consistent with the spirit of the Plan and the law.

Michael Wood, 7702 Cedar Mountain, stated that he was the owner of Wood Valley Vineyards and Treasurer of The Winegrowers Association. Although he agreed that the church does great work, he felt that the community's interest should be considered as important and the up-keep of the Plan.

Carolyn Lord, 1993 de Vaca Way, concurred with all the points expressed in opposition and urged for a denial. Although Cedar Grove states that they have support from all other community churches, she confirmed that her church board has not discussed this application.

Margorie Leider, 1091 Batavia Avenue, said she was the Vice Mayor of City of Livermore but was speaking for herself. She had been a member of the Design Review Committee who had denied the church application because of the incompatible architectural design. If approved, a precedent will be set.

Jon Christensen said he owns a small vineyard near the Ruby Hill development and discussed the economic impact on the wineries. Although not against the church, Mr. Christensen felt that this was not the right location for a church.

Richard Wilkinson, on behalf of Cedar Grove, discussed the public need. A mixed-use community is important. The true name is Cedar Grove Community Church, a community and family-oriented church open to all with a facility to rent. He urged an approval.

Sblend Sblendorio, 4444 Mines Road, stated that he was the previous President of Livermore

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Valley Winegrowers Association and owns a vineyard. He felt that this is a good use, similar to other wine regions such as Napa where vineyards/wineries co-exist with churches. Mr. Sblendorio urged support as it is a compatible use which provides community services.

Henry Mutz, representing Cedar Grove, explained the history on the application process and urged certification of the EIR as he felt that it was adequate with no significant impact that could not be mitigated and approval of the project. At the request of the Commission, he further provided a brief history on their application for an expansion at the current location in the City; explained that about three months ago, four alternatives were suggested but none of the lots were for sale and were smaller than 10 acres which they needed; indicated that they were not advised that this property was outside the Urban Growth Boundary; and stated that the first discussion on the type of soil was during environmental scoping.

The Chair announced a break.

The hearing reconvened. Commissioner Jacob requested clarifications on Sections 3.8-1, 3.8-4 and 3.8-15 of the DEIR; the use of the word 'shall' in Policy 71 and the consistency of Policies 340 and 348. He expressed concern with some of the responses in the DEIR. The language of the summary in the FEIR does not reflect that the impact as outlined in 3.8-1 would be less than significant upon approval of the CUP language. The Chair also indicated that he had concerns with some of the responses in the DEIR and thought that the conditions should be adequately addressed and/or consistent with the policies. Commissioner Jacob added that he would like clear delineations of the issues for the CUP in the EIR. The EIR language is conditioned on approval of the CUP and if not approved, there are significant impacts which have not been mitigated.

Regarding Policy 50, Mr. Buckley agreed that the response to comment 21-2 on page 56 is incomplete and further discussed the Policy. A discussion followed. Commissioner Jacob read Impacts 3.81 and 3.84 and asked how the statement in the DEIR could be reconciled to reflect that the impacts would be less than significant upon approval of the CUP. County Counsel replied that the responses from the DEIR have been expanded in the FEIR and appropriate findings have to be made to approve the CUP and be consistent with the Plan.

Commissioner Jacob made the motion to certify the EIR and Commissioner Imhof seconded. The motion carried unanimously.

Commissioner Hancocks requested clarification on RUILPA. Mr. Washington explained that RUILPA has two main components: jurisdictions cannot discriminate against any religious institutions in land use decisions, and cannot impose a "substantial burden" on the institution to practice its religion absent a compelling government interest.

Commissioner Jacob also requested clarification on the findings and staff recommendation. The Commission discussed the size of the building and the parking lot, number of parking spaces, floor area ratios, the findings, definition of a community facility and an infrastructure, and the consistencies to the policies. The Chair indicated that he could not make the fourth finding in the

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Commissioner Jacob felt that it was not fair to the County that the City of Livermore does not consider its Urban Growth Boundary seriously, and the Chair added that the Applicant has not exhausted all administrative remedies within the City.

Commissioner Imhof made the motion to approve Phase I. Motion failed due to a lack of second. He suggested the possibility of a continuance for a month to allow time for further discussions between staff and the applicant. In response, Mr. Mutz said that although he appreciated the discussion, he would like an action today. Commissioner Hancocks asked if all opportunities to mitigate have been exhausted and noted that the Conditions of Approval have not been discussed. The Chair pointed out that the conditions have to relate to all the Plans and all the Findings cannot be made in the affirmative. The Commission further discussed and unanimously agreed that the four Findings could not be made in the affirmative.

Commissioner Loisel made a motion for a denial and Commissioner Ready seconded. Commissioner Imhof made a substitute motion for a continuance and Commissioner Jacob seconded. The motion failed 2/5. The motion for denial carried 5/2 with Commissioners Imhof and Hancocks dissenting.

- 2. **MEMORANDUM TO ALAMEDA COUNTY PLANNING COMMISSION: CALTRANS /CONTRACTOR GROUND CONCRETE SLURRY PONDS** - This ongoing activity involves the preparation of finely ground concrete material from Caltrans highway improvement projects for landfill disposal or limited beneficial reuse. The activity includes the placement of a liquefied slurry of ground concrete and water into polymer- or textile-lined settling and drying ponds, after which the dried cakes of ground concrete material can be removed and delivered by truck to sanitary landfills for disposal or reuse. This activity may require additional permitting or enforcement action, and/or may require the attention of the Planning Commission in the form of a

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determination or some other action – *Informational item only.*

Mr. Jensen presented the staff report adding that he had contacted Mr. Eck Senivongs at Caltrans via phone who had provided the following information: Caltrans hires a contractor who is responsible for all land use permits for any work on private parcels and disposal of materials at finish. The contract is between the contractor and the property owner. Mr. Senivongs was unsure if CEQA work was done through Caltrans although major freeway projects do have CEQA design review which may or not include the slurry pond activities. Each site has to be reclaimed at the end of the project. Mr. Senivongs was also not aware of any similar issues in any other surrounding jurisdictions. In response to a question from the Chair, Mr. Jensen further explained the term ‘blanket contract’, and the disposal process. Code Enforcement has been working on enforcement issues at the Dublin Canyon site and Mr. Bazar added that the Collier Canyon site is no longer in use, but is in the process of being cleaned up.

Public testimony was called for. Larry Gosselin, 12200 Mendenhall Road, felt that this is not an adversarial matter. He had been approached by a contractor eight years ago and he had left permitting requirements to the contractor. He is the landowner of two of the properties noted in the staff report. Two related reports have been submitted to staff on pH and toxicity namely ‘Concrete Grinding Residue Characterization’ prepared by Holmes & Narver for Caltrans dated May 9, 1997 and a research report on ‘Assessment and Mitigation of Potential Environmental Impacts of Portland Cement Concrete Highway Grindings’ prepared in August 2005 by Washington State University for Washington State Transportation Commission. Both reports indicate that the toxicity level is insignificant. Caltrans no longer monitors these actions. The main use at the Collier Canyon site is for preparation of the material as a soil amendment, which he asserted does not require a permit. Currently, there are discussions that perhaps the process does require a permit. There are five related issues: the permitting process; environmental risk, soil amendment, significance of land use and the recycling of concrete. The Planning Director has recommended on-going discussions between the affected agencies, departments and parties. Mr. Gosselin recommended that if this product is considered as a soil amendment, this matter should be referred to the Agricultural Advisory Committee and Zone 7.

Gary Cose, 6475 Collier Canyon Road, said he is the property owner directly opposite Mr. Gosselin’s property at 6550 Collier Canyon Road. His concern was his well water contamination as he is about 300 yards from the pond site. The pond construction is very poor with leakage and until it is confirmed that there is no contamination, he requested that no future work be permitted. This has become a business on an agricultural land.

Mark Bradford, property owner for twelve years at 6199 Collier Canyon Road, stated that he also has concerns regarding well water contamination which is their only source of water. His other concerns included spilled materials from trucks which will be washed in the creeks and wells; the ditches around the ponds are not lined; the pumping of water in non-containment areas; confirmation from Caltrans that they had not received any paperwork until they had shut down the operation; noise from 7 am to 5 pm; decrease of property values; and the affects of concrete dust.

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STAFF COMMENTS & CORRESPONDENCE: None.

CHAIR'S REPORT: None.

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: Commissioner Imhof announced that he and Commissioner Jacob will not be available at the next meeting.

ADJOURNMENT: There being no further business, Commissioner Imhof moved to adjourn the meeting at 11:10 p.m. Commissioner Carbone seconded the motion. The motion was carried 7/0.

CHRIS BAZAR, SECRETARY
COUNTY PLANNING COMMISSION OF ALAMEDA COUNTY