

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
April 26, 2007
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Vicki L. Winston, Secretary
Nagaraja Rao
Vacant

Vice Chair Stephen A. Williams
Zachary Harris
Jeff Lee
Vacant

The meeting was called to order by **Chair Finlay** at 7:05 p.m.

Commissioner Harris led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Finlay, Vice Chair Williams and Commissioners, Harris, Lee, Rao and Winston

Absent: None

INTRODUCTIONS

Staff Present: Jonelyn Whales, Associate Planner; Janet Harbin, Principal Planner; Carlos Pravat, Assistant City Attorney; Richard Mitchell, Planning Director

Brown Act – There were no public speakers.

- 1. EID/TMP/GPA/RZ1102306 – Canyon Oaks II at Castro Ranch Road - PUBLIC HEARING** to consider certification of an Environmental Impact Report and approval of a General Plan Amendment, Rezoning and Tentative Subdivision Map to allow construction of 36 detached single-family dwellings, including four custom homes sites; associated utilities, infrastructure and roadways; improvements to the intersection of San Pablo Dam and Castro Ranch Roads; and, establishment of a 300-acre land bank. The project is located south of San Pablo Dam Road near the intersection of San Pablo Dam and Castro Ranch Roads, adjacent to and northwest of the existing Canyon Oaks I development. The project also requires a Lot Line Adjustment. Assessor Parcel Numbers for the site include 573-020-009, 010, and 011. Zoning Districts SFR-1, Single Family Low Density Residential, C-2, General Commercial, and EA, Exclusive Agricultural; and General Plan designations of General Commercial/922, Very Low Density Residential/ 942, and Preservation Resource Area/941. TJG/Summit Development Corp., owner; John Zentner, applicant. Tentative Recommendation: Conditional Approval.

Chair Finlay provided an overview of meeting procedures for speaker registration and public hearing functions and procedures. She hoped that a summation could be provided of any actions, changes or new information be addressed since the item was last heard.

Associate Planner Jonelyn Whales said staff was directed at the last meeting to draft a new Resolution which was provided as Exhibit B and F. She noted the applicant also provided a handout this date regarding conditions, and a letter from the neighborhood council asking about how the notice was posted. She said the notice was mailed out to property owners within a 500 foot radius which was over the 300 foot requirement, as well as a posted notice on the pole located at Castro Ranch Road and San Pablo Dam Road. She also said the continued hearing was also advertised in the newspaper twice.

John Zentner, Zentner and Zentner, Oakland, said he emailed suggested modifications today which he distributed to the Commissioners and staff. Regarding the issue of the land bank and its permanent retention of open space, they are actually down-zoning the site, they have agreed that within one year of their start of pulling building permits, if they have not received their official land bank status, they would voluntarily place a conservation easement over the land bank area. The language before the Commission was language they worked on with Assistant City Attorney Mary Renfro, described as his point one, which would affect Resolution 07-04, condition 5.

Secretary Winston confirmed that Ms. Renfro was more or less agreeable to the proposed language.

Chair Finlay questioned if one year would provide adequate time to get something through a public agency, and Mr. Zentner felt it would be difficult but doable, said the service representative would give them some flexibility in terms of the easement situation so that even if they did place the easement on prior to the final license agreement, they would be satisfied.

Commissioner Lee said, suppose the Fish and Wildlife Service did not grant them the conservation bank status, he asked what would happen, given that the property may be stuck as a conservation easement. Mr. Zentner said the original condition allows them the latitude to be able to use the land bank for other local mitigation projects. For example, in the Fairfield area they have done mitigation credits swaps for oak tree plantings or native tree plantings. There is a significant area on the bank that would be available for riparian restoration and would be subject to local mitigation credits, which would generate the maintenance funds they would need to improve the property. If no maintenance funds were generated, the property would stay as is with a conservation easement over it.

Mr. Zentner said the second suggested change; condition 2 relates to the custom home lots dues and liability. This is a result of discussions they had with Commissioner Harris. They agree to put the custom homes into the HOA, but there is a differential in terms of the dues structure as well as liability terms, which can be worked out in detail when the HOA is set up, as they will be subject to state review by the Department of Real Estate.

Chair Finlay confirmed that staff had no issues relating to how condition 2 was being proposed or re-written. **Commissioner Rao** said under dues and liability, he asked for more explanation of the differences. Mr. Zentner said there will be differences in costs primarily on the production home lots. They will have some fairly significant storm water treatment measures, as they have a large bio swale on one side of the street, they have individual bio retention areas on each lot, and since they are responsible for almost all of the tree loss occurring on site, the production homes would be responsible for the maintenance cost of trees. On the liability side, there is much more liability from the custom homes for fire hazards. They developed vegetation management plans for both areas which is part of the EIR, but the liability would be different for the two areas and the production homes should not have to share in that.

Commissioner Harris said as condition 51 was written into the Resolution, there was more language within the introductory paragraph as well as subsections A through E. He asked if it was the intent that the language more or less replaces the first sentence of the introductory paragraph. Mr. Zentner said yes, he simply did not want a long paragraph to read before getting to the gist of the recommendation. He said the same would be true of his next suggested change.

Mr. Zentner said currently the staff report recommendations and conditions require that they cannot pull a grading permit until the final map is done. Their engineers have been working with the City engineers on the grading plans and they have made great progress and their engineers feel comfortable that they would be able to pull the grading permit with City approval prior to the final map being done. He discussed this with Ms. Renfro on the City's position, but he wanted increased flexibility in case the City engineers agree it is appropriate to pull the grading permit prior to the final map being done. He could envision that it would be August or September after the CUP is approved, and they would like to get the grading done prior to the rainy season. He said they do not want the grading plan pulled before approval of the CUP, and he has incorporated that change.

Secretary Winston confirmed with Mr. Zentner that this was under the assumption that the tentative map is approved as well as the number of lots approved. **Chair Finlay** questioned whether this was legal, and Assistant City Attorney Carlos Pravat felt this was truly the decision of the Planning Commission.

Ms. Whales said staff had not yet digested this yet, but when she talked to the engineer, she was under the impression that the City would prefer to have the CUP in place before any grading was started on the site. Mr. Zentner said currently, the condition states that the final map must be done. His proposal was that the CUP must be approved prior to the grading permit and not the final map. Assistant City Attorney Pravat said either way was legally sufficient.

Ms. Harbin said staff's concern was that if grading began prior to the final map was approved, the applicant would also begin to implement improvement plans as well. Staff wanted to have the final improvement plan and final subdivision map in place before the grading was done, and the resolution currently was the way the City would prefer it occur. However, if the Commission felt comfortable in changing the language, it could. Mr. Zentner said he would also be open to amending his suggestion to make it at the City Engineer's discretion, as they were not trying to shortcut any requirements, but having had the experience in other sites, they can grade the site to get set up for the winter while the improvement plans are being reviewed and approved. The grading permit would not be approved until the City Engineer was comfortable those actions could take place. **Secretary Winston** felt this was determinant also on what was defined as the winter/rainy season.

Regarding Item 4, Mr. Zentner said the item includes discussions they had with Commissioner Harris and with other commissioners at the last meeting. It was asked that they look at the City condition 120.B. which looked at the production of vibration from construction equipment during the weekdays and weekends. The City's ordinance, and as reflect in the condition, requires that pile drivers not be used on the weekend. They reviewed other cities' standards that have been used to identify vibration and impacts and they arrived at an impact level of .1968 ppv which stands for peak particle velocity. It would eliminate pile drivers but also vibration rollers on the weekend within 50 feet of the homes of Canyon Oaks I. The standard is within 25 feet, but they increased it an additional 25 feet because there is a stucco wall which is sensitive to vibration as part of the boundary of Canyon Oaks I. He felt the resolution was carefully crafted, he felt there

were good compromises included in it and one that he hoped could be useful in the future for other projects.

Commissioner Harris said he spoke with the civil engineers in his office and he was okay with the item. Assistant City Attorney Pravat said his only concern was that the City verify that the time of 7AM-7PM was appropriate per the Richmond Municipal Code. Mr. Zentner said he took the language out of condition 120B and did not check with the ordinance first and was willing to whatever the ordinance states in terms of proper time, and Mr. Pravat confirmed it was 7AM to 7PM and was consistent.

Vice Chair Williams said like Commissioner Harris, he had an opportunity to discuss this with the many engineers he works with on a daily basis and sometimes when there is pile driving issues what can be done to err on the side of safety is to go out and videotape structures that are in the area because periodically there may be a hairline crack or fracture somewhere and one would not know if it was pre-existing or contributable to the work being done. Mr. Zentner said they will be videotaping along the various property lines.

Mr. Zentner said with regard to other changes, all commissioners have expressed concerns about how the project fits within the hillside ordinance. He said staff has essentially made a determination that the project is at least conditionally acceptable and compatible with the hillside ordinance. Having said this, Commissioner Lee did express concern about this. He said Commissioner Lee and he walked the site, talked about how does the roadway fit into the process and grading questions were addressed. They also had an issue with Contra Costa County. He contacted them with regards to meeting on the intersection, the third page of the material is a copy of his email action. The County has not yet responded, but he was sure they would.

Mr. Zentner said also in the packet the Sherwood Forest neighbors have provided letters of support for the project. He said Eleanor Loynd's April 12th letter brought up some good points, and the last letter includes communications from the East Bay Regional Park District and are in agreement to work out the location of the fire roads with the City and the Park District. There are 3 fire trails that go through the land bank. They are probably going to settle on 2 of those, are going to give the District an access easement over those roads to do fire fighting activities. Also, if there are improvements needed to any of those trails, the conservation mechanism will be required to make those and any grading permits for those would be subject to a separate CEQA action, which was one of Ms. Loynd's primary concerns.

Commissioner Lee said he had a very constructive discussion while walking the site and felt it gets down to interpretation of the hillside ordinance. In Mr. Zentner's email to him, it states that the hillside ordinance was not a flat prohibition; that it seeks to minimize tree loss and grading of steep slopes. Earlier in the same email it states there are natural slopes to the north that are steeper than 2:1, so these would require grading. This result is that you end up grading most of the north slope and losing the trees on that slope and this is where he disagreed as the interpretation of intent of the hillside ordinance. His suggestion to Mr. Zentner was to take the land that is comprised of lots 1-9 currently and make them custom lots that are built with the slope rather than on flat pads graded into the slope, but this was disagreed upon.

Chair Finlay asked the applicant to point out lots 1-9 on the map for the Commission's benefit. Mr. Zentner pointed out the lots, various existing and proposed roads, and Mr. Zentner discussed soils, compaction, tree removal and grading areas.

Secretary Winston confirmed that 65 homes were in Canyon Oaks I. She said some slopes or the contours were created by dumping of previous soils from Canyon Oaks I onto the site, so she felt it was not truly known what the natural contour was. Mr. Zentner said they do not know for sure, felt the dumping of the hill probably steepened some of the slopes and he said clearly the slope at the front of the site was artificial.

Secretary Winston said she was hearing that there is disagreement about what constitutes minimal grading and what constitutes diligent effort to retain as many significant and important trees as possible and said she would discuss this later on. She said she also took some photos of the site which would relate to how high up the hill the development would go in relationship to other landmarks. Mr. Zentner said he put together an exhibit of where the homes would be relative to other nearby homes. However, he finished it at 4:45 p.m. and presented one copy. **Secretary Winston** had one copy also and presented it. She noted an area from the Canyon Oaks I site in 2005 had not yet grown in. Given this, she presented (bad) pictures (due to her printer) of how Canyon Oaks I was seated in the valley. She then took pictures of the Canyon Oaks II site of where the custom lots would be, and the third picture she took a shot of a house circled and it showed how high the development was creeping up on the hillside. Mr. Zentner said the house circled is higher on the hill and also on sea level than their custom lots would be. He said the house was about 424 and 30 feet above sea level. He also noted the Poplar trees would also shield the view. **Commissioner Winston** asked Mr. Zentner to show where the tract homes would be in the pictures and Mr. Zentner said they would not show up on picture 3 because of the trees, but pointed out their location on picture 2 and noted the large knoll in the center of the project they were preserving. He drew the lower custom home lots in a dashed line because they are going to be hidden by the knoll, the two upper custom home lots would be visible but they are lower than the Nobcomb, most would be screened by either individual vegetation screening requirements on the homes or by existing trees, and the production homes would blend into Canyon Oaks I. Lastly, he noted they are preserving 320 acres above that in the north and south that would permanently protect the ridgeline and slopes. Their homes will not be higher than the existing County Nobcomb so they are not violating the line.

Secretary Winston prefaced her comments as not being argumentative, she said that while she appreciates the preservation of the 320 acres and the land conservation bank concept and promise, she felt this was feeding into the discussion that has been almost a “threat” of what could be if the Commissioner does not approve this. She said this project is better, felt the drawings and photos helped, she submitted her photos taken April 26th into the record, and felt the custom lots were drawn in different locations in photo 1 and 2. She said in photo 2, the applicant has drawn the two custom lots and the other two lower ones that would be screened, and then what exists as the tentative map as it exists looking up into the hillside. She felt there was a problem with the representation of the photos. Mr. Zentner disagreed and said the bald spot was Nobcomb, their upper custom home lots were only separated by a short distance from the home on Nobcomb. **Secretary Winston** said his markings on photo 2 were consistent with the Google map. Her photo 3 picture was not a custom home lot and was the other side of the small bald spot on the hill. She agrees that the trees do match up and he has answered the question in that it could be a matter of perception and she was okay with this.

Mr. Zentner said he thinks the project approval has been fairly carefully segmented. They were asking tonight for approval of a tentative map and not the vesting map. The vesting map carries certain legal capabilities and responsibilities. They are looking for the CUP approval later along with that vesting map. They are now requesting the GPA, the rezoning, the EIR, and the tentative map.

He felt it was highly appropriate to be looking at the retaining wall issue as part of the hillside ordinance discussion when the Commission looks at the vesting map.

He noted that the developer of the project; Edenbridge, was present and has agreed to spend a considerable amount of funds necessary to do the final engineering on the grading and he expects to have significantly lower retaining wall heights for that plan. But, he does not think it is prejudicial to vote on the tentative map now because it does not carry near the legal capabilities or advantages to them that the vesting map does.

Secretary Winston thought that with the tentative map they were giving them the next step to put into more detail the number of lots that are buildable and their relative positions. Ms. Harbin said this is correct. The custom lots will need to come back in the future in some form for design review. The Commission would have a chance to review them to see how they are developed into the hillside at that time. However, Mr. Zentner said the City would not be giving any legal rights to those lots, which would be done with approval of the vesting map. He noted that Paul Lai from Berlogar Geotechnical was present and available to speak. He was the consultant for Canyon Oaks I project, as well as Tom Simonson from Edenbridge Homes as the home builder.

Public Comments:

Paul Lai, Principal Engineer for Berlogar Geotechnical, said they were one of the best firms in the Bay area doing hillside grading, and specialize in this type of grading. He referred to the areas between Lots 9 and 10 and said there was a swale area. If nothing is done to the area, it will eventually become a landslide. Along San Pablo Dam Road, there is rock which is thick and slopes out to the road. He would recommend that if the home sites were developed and houses built, the entire slope should be dug out and put back according to engineering standards and sub-draining.

Chair Finlay questioned whether there was an on-going issue of on-going drainage and flooding that this would resolve onto the adjacent houses at the back of the lots. Mr. Lai said this will resolve this from a drainage standpoint and provide for much better drainage. He said the area had experienced two very small landslides which was unusual for the area, they want to be sensitive to the environment and topography and their approach for the custom lots is to find the best siting on the land.

Commissioner Lee asked what would be the difficulty in minimizing the grading and building custom homes instead of foot-printed homes on that same section of land and build the homes down the hill on top of what is there versus grading pads into it and building standardized homes on graded pads. Mr. Lai said custom home lots tend to cost more but would be very limited in terms of what can be built on them whereas standardized homes are more efficient and cost effective.

Tom Simonson, Edenbridge Homes, Los Altos, said the company was small, all principals who started the company have an amazing breadth of experience, he was the director of planning and working with Mr. Zentner and other consultants on the project since February 2005. Larger home building companies who produce mass numbers of houses were interested in the bigger picture, but they were more interested in the design details. They want to have a lower impact on neighbors, feel strongly about their high quality product, said most communities were infill development, and they were acutely aware of community member needs.

Commissioner Rao confirmed Edenbridge Homes had never built any other hillside developments in the area, although the vice president of the company had in the past. Mr. Simonson said they have also consulted with Bob Rourke of R&R Design which is a well-known specialist in hillside design and development and they were working closely with them in grading and improvement plan development. He further discussed elements of their work with R&R Design relating to grading, slopes and drainage.

Chair Finlay recognized Councilmember Viramontes and Councilmember Marquez.

Eleanor Loynd, Chair of the El Sobrante Valley Planning and Zoning Advisory Committee, said they were in favor of the project, 1) are in support of the applicant's condition to set up a conservation easement within one year, 2) they are still concerned about separating the 21 acre Tri-lane site from the project review and recommend an addendum be added to the EIR which would include a review of that 21 acre site, does not feel it is fair to call the 21-acre parcel a part of this project review and then ignore it completely. 3) According to EID 1102306, page 10 and 11 of 13, the conservation bank includes an estimated 16,000 trees which will be preserved by establishment of the bank. There is no information provided as to how that estimate was reached and they request information on how and what methods were used to determine that there are 16,000 existing trees on the conservation land bank site. 4) According to EI 1102306, page 11 of 13, she quoted, "The development site includes about 400 trees of which 197 would be lost almost entirely as a result of the grading required to create the roadway connection between Canyon Oaks I and the intersection of San Pablo Dam Road and Castro Ranch Road." So, the roadway connection would cause the loss of 197 trees, but in the information it states there would be 399 trees lost. She questioned the reason for the balance of 203 trees to be removed and asked for additional information relating to this. She questioned whether or not it was possible to delete one or two homes to save the other 203 trees and requested a determination of this. 5) The document states in several different places that the project meets all of the requirements of the hillside ordinance. Again, they would like to see an addendum added to the EIR which includes a comprehensive look of the hillside ordinance in regards to this project. She questioned whether it was truly consistent with the hillside ordinance. 6) According to Res No. 07-04, page 15, "The project applicant shall pay in-lieu fees mandated by the City to provide funding for the acquisition and maintenance of parklands throughout the city." She questioned what were those park fees and questioned why they were not listed. 7) It is their understanding that Mr. Zentner has talked to the East Bay Regional Park District and the Richmond Fire Department about fire roads and that the roads be evaluated, and they very much appreciate this. 8) They would still like to have a review of possibility of setting up a geologic hazard abatement district to help the new residents deal with possible landslides on the property. There are at least 7 old landslides in the estate lot area. 9) Another concern is the intersection of San Pablo Dam Road and Castro Ranch Road. They would like to know when the Commission will be able to review this. The County staff indicated two weeks ago that it was the first time they had heard of the project, so at some time, she wanted the City and the County to meet and discuss the design of the intersection, as half the road was in the County and half was in the City.

Barry Johnson, President of Summit Development, owner of the property, felt both Paul and John had made constructive comments, said the first day they sat down with planning to discuss the project, it was always his intention to reach the highest level of compliance and that was why they chose Berlogar, R&R, John Zentner and others given the project's site and topography. He said it was not his intention to be the owner/developer of the project. He said in his work with other developers, they attempted to develop projects which were too aggressive and did not comply with the hillside ordinance and other aspects that would ultimately become a

determining factor. When they developed the economics of the project, they identified 32 production lots and 4 estate lots to be the minimum to support the economics of the property. Putting the residual property into the conservation bank was felt to be an offer of good faith, he has never held anyone hostage by suggesting they would put a mini-mart or gas station and maximize the current zoning, but he felt what has not been talked about is the fact that he is making the debt service on the property at about \$30,000 a month, taxes and maintenance over the last 10-12 years on it in the millions, and they are attempting to create a viable solution to the ownership in generating some form of a return that is the result of a good project, good planning and results in something the City can be proud of. They submitted \$119,000 to the city to help process the application, another \$50,000 because the effort was more complicated, as well as additional money as requested by the City. He asked the Commission to picture themselves writing the checks every month. He did not feel the hillside ordinance was intended to bankrupt a land owner, feel they have made the best effort and take what they have, bring it into compliance and build a proud project.

Secretary Winston confirmed with Mr. Johnson that he has been involved with the land for 14 years, that he purchased FRB with the option of purchasing the stock of FRB, which was the original land owner. The original purchase price was \$6.8 million by FRB and they currently had \$3.2 million of debt.

Joanne Spalding, El Sobrante Legal Defense Fund, said she spoke at the last meeting, felt there were a few remaining issues; in terms of the consistency of the EIR under CEQA, felt documents should include an analysis of the Tri-lane site and potential development on that site, felt it was improper segmentation under CEQA to not include that analysis, it also should not be certified until the EIR includes analysis of the new information regarding the Alameda Whip Snake. It defers analysis of the project's impacts on the snake and the fact that the critical habitat designation has been moved subsequent to the preparation of the draft EIR would require a supplemental draft EIR that would include this new information. The other issue is that the County should have been informed of this project during the administrative draft EIR stage and if it has not been, this is a potential procedural flaw on the process. Regarding the consistency of the hillside ordinance, she said from understanding based on information heard this evening, the grading that needs to occur is because of the colluvium and feature of the site that needs to be graded in order to build the road and the homes. The ordinance includes a provision that says, "the following methods for mitigating a geologic hazard are not acceptable: removal of large trees of existing mature vegetation that substantially contribute to the natural character of the site." She felt this was inconsistent, given this provision. In addition, she said limitations on grading of over 26% slope are not as fluid as other speakers make them out to be. She said the 26-30% slope provision says that "while variant grading may occur, major topographic features shall retain their natural forms," and she felt the word, shall, was not permissive. For over 30%, it states that "development grading can only occur if it is clearly done so that detrimental safety, environmental and visual impacts are avoided." She felt the removal of that many trees was not avoiding detrimental environmental impacts.

Chair Finlay confirmed with Ms. Whales that the EIR was circulated to the County.

Rebuttal – Applicant

John Zentner, said regarding whether or not they could simply avoid grading and still build custom lots and they cannot. He said there is various colluvium which requires replacement because of the roadway. If they take out the colluvium, they will take out at least 50% of that slope and at least 50% of the trees that are being lost. Whether they could then do custom lots

on 2 or 3 other lots there, he felt they could possibly, but he does not see it as the costs would be too great and would not be successful. Regarding the 399 trees lost, he said there were approximately 399 trees on the site, they found 24 more which raised it up, and approximately half of those would be lost under the current plan. Regarding the hillside ordinance consistency, Ms. Spalding did not finish the quote of the ordinance. She said “development grading can only occur if it is clearly done so that detrimental safety, environmental and visual impacts are avoided.” The next sentence reads, “The use of larger lots, variable setbacks, and variable building structural techniques such as stepped or pole foundations are expected” and they are providing all of those. They have much larger lots, stepped pads, variable setbacks, are in consistency with the ordinance and staff has agreed with them. Lastly, this is a site that fits in with the surrounding neighborhood, is a safer site to develop, and they feel comfortable that they came in with the best project as possible for the site—better than the existing zoning and better than a lot of the other proposals.

Secretary Winston confirmed with Mr. Zentner that there were 399 mature trees on the site, half of which would be removed, or 197, and actually there were more than 399 trees, but they were not mature or significant and half of those would be removed.

Rebuttal – Opponents – None

Ms. Whales summarized the recommendation, stating that based on the testimony and facts this evening and in previous meetings, staff recommends that the Planning Commission approve the project by taking the following actions, but has provided three alternatives from which to choose:

1) Adopt the Resolution recommending the City Council certify the final EIR and approve a proposed amendment to the General Plan for the Canyon Oaks II residential project subject to amendments to the mitigation and monitoring program of the Final EIR and 2) adopt the Resolution recommending the City Council certify the final EIR, Exhibit, A and adopt the ordinance amending the zoning ordinance with attachments, and 3) Adopt the Resolution certifying the final EIR as adequate to support the approval of the tentative parcel map and conditionally approving the tentative subdivision map (adopting items 1, 2 and 3);

OR

1) Adopt the Resolution recommending the City Council certify the Final EIR and approve the tentative subdivision map as amended by the applicant (adopting items 1, 2 and 4);

OR

1) Adopt the Resolution for the Final EIR stating it is inadequate to support the approval of the tentative tract map and deny approval of the tentative subdivision map (adopting 1, 2 and 5).

Secretary Winston said she did not have all corrections to the Resolution and confirmed they were not all revised in the documents. Ms. Whales said the corrections were made in Exhibit E.

Secretary Winston said there was also a motion made which was not seconded. **Chair Finlay** said she suggested the Commission take under consideration a substitute motion which Commissioner Lee put forward, and Secretary Winston seconded. If we were to reconsider the motion that Secretary Winston made this evening, she would have to remake it. Ms. Whales said the minutes were prepared and clear about the motion as well as events, which was part of

the staff report. **Chair Finlay** said on the page prior to the last page, it states she actually did make a substitute motion, but she did not. It was Commissioner Lee's motion. The action on the last page states the motion was made by Commissioner Rao but it was actually made by Commissioner Lee.

Regarding Exhibit E or Attachment #8, Ms. Whales referred to the revised Resolution 07-04:

- Page 6, Condition 1, there should be a strike-through the very first one, "Recorded final map, final grades, utilities, and drainage shall be in substantial compliance with the..." She said all new information starts off with, "All grading, padding and building placement as well as the design of all infrastructure and other site interventions shall be subject to review and approval through the CUP process."
- Condition 51, page 15, under Standard Conditions, there is some text in bold, "The Association shall include the four estate lots. Dues from the homes on these lots shall be apportioned according to the actual share of cost incurred by these lots."
- Condition 51A: The only change to that paragraph is "front yard landscaping."
- Page 21, Condition 60, "The project applicant shall obtain a water quality certification from the Regional Water Quality Control Board."
- Page 21, Condition 89, the hours were changed to coincide with the hours of the Richmond Municipal Code; or "7:00 a.m. to 7:00 p.m." and "B. Pile Driving between the hours of 7:00 a.m. and 7:00 p.m."

Ms. Whales said these were the only changes to Resolution 07-04.

Commissioner Harris said Condition 120 was to be amended because they wanted to make it consistent with what was seen in 89A and B. Ms. Whales said they were changed and were consistent. **Commissioner Harris** confirmed that the Commissioner may or may not incorporate the change proposed by the applicant for 89B.

Regarding Exhibit F, Resolution 07-05:

Ms. Whales said the resolution changed as a result of the motion. This would be where the Commission would be denying the tentative map.

- Condition 3E, "That the design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat." Previously staff had said that the criteria was satisfied, but it has been changed to state, "Criterion not satisfied." She said the Commission was unable to make this finding based on the facts presented in paragraphs 1, 2 and 3.
- Page 5, number 5, it states, "The commission finds that approval of the tentative tract map which would permit development of the project site with 32 detached homes and 4 custom homes as part of a residential subdivision project will not result in a number of significant adverse impacts on the environment." This has been changed to state that

the “Commissioners are unable to make this finding because of the facts that are stated in 1 and 2.

- There was also a Section 2 that was added which states, “If the tentative tract map is denied, there is no conditions of approval that are being recommended by the Commissioners.”

Secretary Winston felt what she needed to do is that for that particular exhibit, she needed to look at. She clarified that the substitute motion was a motion to continue the public hearing, have staff incorporate the comments she made and to pull together appropriate findings, which was done. **Chair Finlay** said she wanted to be clear that if a motion is made this evening and if it is to deny the tentative map, then the denial of the tentative map would leave the tentative map with no conditions, and Ms. Whales agreed that was correct. She questioned if it were appealed, would conditions still be attached to the tentative map as satisfying the EIR. **Commissioner Harris** questioned whether Exhibit E would be the call for denial and the Commission reviewed the exhibits. Ms. Whales said the applicant’s version indicates, “as suggested by the applicant” and staff was providing two versions of Exhibit E; one by staff and one by the applicant.

Commissioner Harris said also, subsequent changes have been submitted by the applicant today, and he confirmed that Exhibit E would be the basis for adoption and the Commission could refer to the letter and make its decision.

Chair Finlay noted Exhibit F was for denial of the tentative map and **Secretary Winston** said this was the basis for her original motion she made.

Regarding Exhibit D, Resolution 07-05:

Chair Finlay felt the changes the Commission has already incorporated should be in both Exhibits D and E, which should satisfy the issue. **Commissioner Harris** said Exhibit D was a certification of the EIR as adequate to support the tentative map approval. If the Commission wanted to make a recommendation to the Council, it would accept Exhibits B and C from the prior staff report as well as Exhibits D. He confirmed with Ms. Whales that the only modification to Exhibit D was the date of certification to “April 26, 2007”, “07-02” and the word, “Special” were different as those presented at the last meeting in the exhibit.

Commissioner Harris said that at the April 5, 2007 meeting, the Commission did discuss additional items be incorporated into Exhibit B, Resolution 07-02 and Resolution 07-03 that had not yet been incorporated. Ms. Whales said they were only typographical errors which have been corrected. **Commissioner Harris** disagreed and referred to Exhibit B, Resolution 07-02.

Regarding Exhibit B, Resolution 07-02:

- Remove the third paragraph from the bottom which states, “Whereas, on April 2 the Development Review Committee and Planning Commission reviewed the staff report regarding the proposed project and recommends approval subject to the conditions as outlined in the resolution.” However, when they met on April 2, they did not provide a recommendation for it and we talked about striking that paragraph out of the resolution.
- Top of page 2, first paragraph, we talked about for clarity, “Whereas, by resolution the Commission conditionally approved the tentative map for the project.” **Commissioner**

Harris said they wanted to make it clear that approval of the tentative map was under Resolution 07-04.

- Page 2, the last “Whereas” paragraph, the date of the public hearing should be revised.

Chair Finlay proposed taking Item 1 on the staff recommendation which was to adopt the Resolution recommending the City Council certify the final EIR and approve a proposed amendment to the General Plan for the Canyon Oaks II residential project subject to amendments to the mitigation and monitoring program of the Final EIR and then go through Exhibit B and make any corrections and incorporate those corrections into a motion and a second.

Secretary Winston felt that when the original motion to adopt the resolution was subject to amendments to the mitigation and monitoring program and she was not seen this reflected, so the Commission would have to go through these changes.

The public hearing was closed.

MOTION: Commissioner Lee moved to adopt a Resolution recommending the City Council certify the final EIR; approve a proposed amendment to the General Plan for the Canyon Oaks II residential project subject to amendments to the mitigation and monitoring program of the Final EIR.

Chair Finlay confirmed with Ms. Whales that the Commission would be able to alter the final EIR when it comes to things such as mitigation because it had not yet been certified. Ms. Harbin noted there needed to be a nexus between all mitigation measures and the project so what comes out of the document into the mitigation measures needs to have a connection.

Secretary Winston said she wanted to incorporate what they have learned into some of the comments received on the EIR and where it seems that there needs to be additional consideration and mitigation to offset the impacts. She felt the EIR sufficiently lays out the impacts of the project; however, she does think mitigations suggested on all of them are sufficient. She still did not believe that when there are 400 mature trees on the site that getting rid of half of them, even with replacement. She also felt concern about the land conservation bank and so many lower level trees being removed, and asked for some time to gather her amendments.

Chair Finlay asked that during the break, if any Commissioners contemplated making another motion, they should gather their thoughts and be prepared.

BREAK

Chair Finlay called for a ten-minute break and the meeting was reconvened at 9:28 p.m.

MOTION: Commissioner Winston moved that the Planning Commission adopt Resolution 07-02 recommending the City Council certify the final EIR and approve a proposed amendment to the General Plan which is Exhibit B for the Canyon Oaks II residential project subject to the corrections as noted earlier, eliminating the statement that on April 2nd the Development Review Committee recommended approval, adding Resolution 07-04 to the tentative map reference from page 2 to Exhibit B, and change the date to April 26, 2007 on pages 2 and 3, subject to the following amendments to the mitigation and monitoring program of the Final EIR:

1. Regarding Mitigation Measure BIO 4: Tree preservation: The site development plan should demonstrate that diligent effort has been made to retain as many significant and important trees as possible according to hillside ordinance regulation 4A.

This ordinance addressed only the parcel areas being developed, not areas being set aside as open space. The Final EIR mitigation measures need to go beyond just referring to the retention of open spaces as a measure to lessen the impact in replacing those trees that are being lost. This is about half of the 400 trees on the site. The site development plan should be revised to retain the resources that contribute to the character of the area.

The mitigation and monitoring program is to require that the tentative subdivision map be revised to conform to hillside ordinance regulation 4A and address how diligent effort has been made to retain as many significant and important trees as related to the parcel areas being developed.

The mitigation and monitoring program refers to the entire area; the conservation land bank and entire area in retaining the trees and the hillside ordinance itself limits this for only the parcel areas being developed. So, the developer cannot take credit for saving trees that exist just because it is owned by the property owner.

Chair Finlay noted the measure does not indicate how you do this or who approves it if you do it. **Secretary Winston** said she does not feel the mitigation measures that are in the EIR right now appropriately deem the impact to be less than significant based on the preservation of however many trees are not being destroyed that are not a part of the parcel map. Therefore, it needs to be revised. **Chair Finlay** asked what would satisfy it; a less than significant number or a replacement tree ratio?

Secretary Winston said when she made this motion before, she suggested taking 100 of the 197. **Chair Finlay** said Condition 42 says that the applicant shall ensure that for each native Oak tree measuring 4" diameter at breast height or larger within C, D, F, G's jurisdiction that is removed by the project, shall be replaced with 5 native Oaks which is a 5:1 mitigation ratio.

Secretary Winston said this was a condition being placed on the approval of the tentative map. She was talking about going back to the EIR which lists the presence of a tree replacement program, that even though you are eliminating half of the mature trees on the site, it is less than significant. However, the hillside ordinance requires retention and integration of mature trees into the development, and she was not accepting that a replacement program will be sufficient and she was talking about retention of trees.

Commissioner Harris questioned if Commissioner Winston was targeting a re-evaluation of how the area is to be configured to say "x" number of trees? **Secretary Winston** said if necessary; she thinks the current EIR as it stands now says that destruction of half of the mature trees on this site was less than significant because you have a replacement program. However, when you refer to the hillside ordinance regulation, it says to retain as many significant and important trees as possible. It does not talk about replacement there. She did not think that eliminating half of them retains as many as possible, and she suggested at least cutting it in half. But, she did not feel it was appropriate to provide a number.

Commissioner Harris understands the idea, but he felt some criteria would need to be set as to how trees would be removed. **Secretary Winston** disagreed and felt this body can say and

make a determination to interpret whether or not we think the hillside ordinance regulations have been followed. She is saying that the mitigation monitoring report fails to adhere to that ordinance.

Chair Finlay felt another way to say it is to say it will be at the discretion of the Planning Department or his designee. **Secretary Winston** felt it was up to this body. She said the EIR is based on the project that is being handed to them, so given the order of things they must go through on this, she felt they needed to have another project to look at since this body, if we accept this motion, are deeming that a mitigation to reduce this to less than significant has not been appropriately demonstrated in the current EIR. She felt the EIR was an opinion and she did not agree with it.

2. Regarding Grading Regulation of the Hillside Ordinance, 3A, 4B: Requires minimum grading and alteration of natural land forms. She said she wanted to just leave it with the hillside ordinance and did not want this incorporated into her motion.

Chair Finlay asked for a second to the motion. The motion died for a lack of a second.

Secretary Winston said she eliminated from her original motion about removing 15 of the lots get stripped with the retaining wall requirement, getting rid of the intersection of Castro Ranch Road because of the grading, and also coming up with other alternatives. So, it was somewhat different than her first motion and it was paired down.

MOTION: Commissioner Harris moved to adopt the Resolution recommending the City Council certify the final EIR, approve a proposed amendment to the General Plan, Exhibit B as Resolution 07-02, for the Canyon Oaks II residential project subject to amendments to the mitigation and monitoring program of the Final EIR, with the amendments to the resolution as stated earlier by Commissioner Winston with modification to Mitigation Measure BIO4; to add that “prior to the issuance of a grading permit that a survey be conducted by the developer and agreed upon by the Planning Director or designee outlining what trees or the number of trees that are to be removed or preserved on the project site and that no more than 100 trees are to be removed as agreed upon by the Planning Director or designee.”

PROPOSED AMENDMENT TO MOTION: Commissioner Rao proposed putting a number on the trees to be removed, such as no more than 100 trees, as agreed upon by the Planning Director or designee, and seconded the motion. He suggested the developer also agree to the number. Commissioner Harris agreed to the initial amendment but not to the developer agreeing to the number of trees.

Commissioner Harris restated his motion to state: “Prior to the issuance of a grading permit the developer shall submit a grading plan identifying the number of trees to be removed. That shall be presented to the Planning Director or designee, and the Planning Director or designee shall make a determination as to whether the number of trees presented in the report are acceptable for removal or they shall have the right to put in measures to preserve trees as they decide.”

PROPOSED AMENDMENT TO MOTION: Secretary Winston asked to add...”shall include the number and specific trees”, and **Commissioner Harris and Rao** agreed to the amendment.

Commissioner Harris felt the Planning Director would have the ultimate right to make a decision as to whether a certain tree can be preserved or not, given certain practices.

ACTION: It was M/S (Harris/Rao) to adopt the Resolution recommending the City Council certify the final EIR, approve a proposed amendment to the General Plan, Exhibit B as Resolution 07-02, for the Canyon Oaks II residential project subject to amendments to the mitigation and monitoring program of the Final EIR, with the amendments to the resolution as stated earlier by Commissioner Winston with modification to Mitigation Measure BIO4; to add that “prior to the issuance of a grading permit that a survey be conducted by the developer and agreed upon by the Planning Director or designee outlining what specific number and species of trees (Winston) that are to be removed or preserved on the project site, and that no more than 100 trees are to be removed as agreed upon by the Planning Director or designee (Rao).” VOTE: 5-1 (Winston voted no).

Chair Finlay asked the Commission to review Item 2, adopt the Resolution recommending the City Council certify the final EIR, Exhibit, A and adopt the ordinance amending the zoning ordinance with attachments for the Canyon Oaks II residential project.

Secretary Winston said the last time she had no problem with this and part of her motion was to adopt the resolution recommending the ordinance amending the zoning ordinance; however, there may be other specific corrections.

Chair Finlay confirmed this was for Resolution 07-03.

MOTION: **Commissioner Harris** made motion to adopt the Resolution recommending the City Council certify the final EIR, Exhibit, A and adopt the ordinance amending the zoning ordinance with attachments for the Canyon Oaks II residential project, with the following corrections:

- Page 1 of the Resolution 07-03, third paragraph down, it makes reference to the DRC meeting and approval being recommended, and this was not the case and asked to delete the paragraph.
- Page 1, sixth paragraph down, it references the tentative map for the project. He clarified the reference should be listed as “Resolution 07-04” which is the approval of the tentative map. It would be revised to read, “Whereas, by separate resolutions the Commission conditionally approved the tentative map for the project under Resolution 07-04; and”
- Page 3, part of Section 2A, last paragraph under staff statement, “finally, the almost 300 acres left to the project including a remainder of parcel 573-020-011 currently zoned SFR1 EA and all of parcels 573-010-010 and 573-030-017 currently zoned EA would be rezoned CRR with the exception of the Tri-lane site (as discussed as part of other measures). These lands would comprise a land conservation bank in perpetuity.”
- He said one thing brought up during the April 5th meeting relative to Section 2C within the staff statement was that a sentence be added saying “that improvements may be needed to existing utilities to accommodate the proposed project.”
- At the end of the resolution, it would reference the date of this meeting.

CLARIFICATION: **Secretary Winston** confirmed with **Commissioner Harris** that the Tri-lane area would be pulled out of that paragraph because the site is part of parcel 573-020-011. If the Commission accepts this, that adopts the condition presented by the applicant as part of Resolution 07-04.

ACTION: It was M/S (Harris/Rao) to adopt the Resolution recommending the City Council certify the final EIR, Exhibit, A and adopt the ordinance amending the zoning ordinance with attachments for the Canyon Oaks II residential project, with the following corrections: Page 1 of the Resolution 07-03, third paragraph down, it makes reference to the DRC meeting and approval being recommended, and this was not the case and asked to delete the paragraph; Page 1, sixth paragraph down, it references the tentative map for the project. He clarified the reference should be listed as "Resolution 07-04" which is the approval of the tentative map. It would be revised to read, "Whereas, by separate resolutions the Commission conditionally approved the tentative map for the project under Resolution 07-04; and"; Page 3, part of Section 2A, last paragraph under staff statement, "finally, the almost 300 acres left to the project including a remainder of parcel 573-020-011 currently zoned SFR1 EA and all of parcels 573-010-010 and 573-030-017 currently zoned EA would be rezoned CRR with the exception of the Tri-lane site (as discussed as part of other measures). These lands would comprise a land conservation bank in perpetuity." He said one thing brought up during the April 5th meeting relative to Section 2C within the staff statement was that a sentence be added saying "that improvements may be needed to existing utilities to accommodate the proposed project." At the end of the resolution, it would reference the date of this meeting. Vote: 6-0.

Chair Finlay said now the Commission would need to make a decision to craft a motion to approve condition 3 which conditionally approves the tentative subdivision map and adopt the mitigation and monitoring program as well as certifying the EIR as adequate for approval of the tentative map. She said this was staff's original recommendation. The Commission can look at this recommendation, Item number 4 which adopts the tentative subdivision map as amended in Exhibit E, as suggested by the applicant, or as suggested by Commissioner Winston at the last meeting, deny the tentative map.

MOTION: It was M/S (Winston/Rao) to adopt a resolution for the Final EIR as inadequate to support approval of the tentative tract map and deny approval of tentative subdivision map 8451 as attached in Exhibit F for the Canyon Oaks II residential project based on the Commission being unable to make findings 3E because of the Alameda Whip Snake, findings 5 because of vegetation removal, and to delete finding 1 for the criteria not satisfying and retaining 2 and 3, and all to be renumbered. Vote: 4-2 (Harris and Finlay voted no.)

Chair Finlay noted the Commission voted for Items 1, 2 and 5 of the staff report. She said appeals may be made in writing to the City Clerk by Monday, May 7, 2007 by 5:00 p.m.

COMMISSION BUSINESS

2. Reports of Officers, Commissioners and Staff

Planning Director Richard Mitchell reported that this morning there was a meeting relating to the General Plan focusing primarily on the industrial corridor, it was well attended, and staff would

bring two reports to the City Council which will be a recommendation for a modification of scope and budget for the General Plan and also a preliminary report to a comprehensive report that would come before a combined meeting of the Council and Planning Commission which is scheduled for June 12, 2007.

Vice Chair Williams asked to adjourn in memory of a neighbor and friend, and former City Finance Department employee, Pamela Kagler.

Chair Finlay said the nomination committee consisting of herself, Rao and Lee would meet and confer the beginning of May, report the slate in June, and in July they would take a vote. She also asked the Rules Committee to convene. When they were asked what constituted a quorum and how it referred to Commissioners being termed out and whether they can continue to serve, and if a Commissioner is not termed out, serving 6-8 years, can they continue to serve at the pleasure of the City Council. She said we may have an attorney position paper that may advocate the fact that this could be done, but wanted the Rules Committee (Harris and Williams) to meet on it. She asked the two commissioners who are termed out to return to the next meeting and let the Commission know whether or not they would even consider continuing to serve at the end of their term because if not, the Planning Director and Council would need to know this, as well.

Commissioner Winston said if nominated or elected, she will choose not to serve or run, but thanked the Commission.

Adjournment

The meeting was adjourned at 9:30 p.m. in memory of Pamela Kagler.
