

**PLANNING COMMISSION MEETING**  
**COUNCIL CHAMBERS, RICHMOND CITY HALL**  
1401 Marina Way South, Richmond, CA  
August 2, 2007  
7:00 p.m.

**COMMISSION MEMBERS**

Virginia Finlay, Chair  
Zachary Harris  
Jeff Lee  
Vacant

Vice Chair Stephen A. Williams  
Nagaraja Rao  
Vacant

The meeting was called to order by **Chair Finlay** at 7:03 p.m.

**Vice Chair Williams** led in the Pledge of Allegiance.

**ROLL CALL**

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

**Absent:** None

**INTRODUCTIONS**

**Staff Present:** Jonelyn Whales, Janet Harbin, Hector Rojas, Carlos Privat and Richard Mitchell

**NOTED ABSENT:**

**Commissioner Rao** was noted absent.

**MINUTES** – None

**Chair Finlay** provided an overview of the Consent Calendar, meeting procedures for speaker registration and public hearing functions and procedures. She said certain items approved by the Commission may be appealed in writing to the City Clerk by August 13, 2007, by 5:00 p.m. and announced the appeal process after each affected item.

**CONSENT CALENDAR**

**Chair Finlay** said Consent Calendar Items were Items 4, 5, 6 and 7.

Ms. Harbin said Item 3 would be continued to the September 6, 2007 meeting, as the Council determined it was appropriate to extend the comment period. **Chair Finlay** recommended opening the item to allow for public comment for those who could not speak at the September 6<sup>th</sup> meeting.

Ms. Harbin said a letter was received regarding Item 5, which was before the Commission.

**Commissioner Harris** confirmed with staff that the letter of the neighboring property owner indicated agreement to share and maintain the land and not deed it over. Mr. Privat said the owners were present to speak, and Item 5 was removed from the Consent Calendar.

Ms. Harbin referred to Item 7, said comments were received by neighbors and a copy of conditions of approval for the Tentative Tract Map that was before the Commission.

**Chair Finlay** requested Item 7 be removed. She confirmed speakers were signed up for Item 1, 4, and 7. No members of the public wished to remove items.

**ACTION: It was M/S (Harris/Lee) to approve the Consent Calendar consisting of Items 4 and 6; unanimously approved.**

**Items Approved:**

- 4. ST 1103984 – Street Vacation at Alley Way off South Side of Wright Avenue - PUBLIC HEARING** to consider a request to vacate and abandon for public purposes an alley way off the south side of Wright Avenue between 13th Street and Marina Way South (No APN). R&D/Business (KCSP) Zoning District. City of Richmond, owners; Gerry Hynes, applicant. Tentative Recommendation: Recommend Conditional Approval to City Council.
  
- 6. CU 1104046 – Making Waves Academy Charter School at Lakeside Drive - PUBLIC HEARING** to consider a request to grant a Conditional Use Permit to operate a charter school serving Grades 5 through 8 located at 4123 and 4131 Lakeside Drive (APN: 405-371-012). M-1, Light Industrial Zoning District. Limar Realty Corporation #19, owner; Tad Sekino of Hardison Komatsu Ivelich & Tucker, applicant. Tentative Recommendation: Conditional Approval.

**Brown Act**

Herk Schusteff felt the Forest Green proposal was wrong for the City even though the City Council may be prepared to approve it, felt subdivisions caused a loss of funds for cities and it would be a burden on taxpayers, felt the future of the hillsides was important and asked people to vote against it.

Barbara Pendergrass, El Sobrante Municipal Advisory Council, said the ESMAC adopted General Plan policies for the El Sobrante area and hoped these principles would be taken into consideration, starting with Forest Green. She read the 5 principles, distributed them to the Commission and hoped they would be taken into consideration.

**Chair Finlay** confirmed with Mr. Privat that for tonight's purposes, a quorum was no less than three members and three votes were needed to carry any motions. She then discussed public hearing procedures.

**Items Discussed:**

- 1. EID/TPM 1103631 – Three (3) Lot Parcel Map at 125-127 Western Drive - PUBLIC HEARING** to consider approval of a Parcel Map (File # 1103631), a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for three lots on property located at 125 - 127 Western Avenue (APN: 558-020-007). SFR-2, Very Low Density Residential Zoning District, Pt. Richmond Planning Area. John and Paige Poulos Woolley, owners/applicants. Planner: Janet Harbin/Jonelyn Whales

Ms. Harbin said the matter was previous heard by the Commission on July 12, 2007, briefly described the project, said concerns had been raised by the public and Commission, an alternate Parcel Map was submitted showing the applicant could meet setbacks, the project was considered a minor subdivision, Parcels B and C met the lot frontage requirements, future residences to be developed on the property would be approximately 2,000 to 3,000 square feet which had been of concern to residents, at least one existing dwelling unit would be demolished on the property and currently there were 4-5 structures in various stages of deterioration.

She said one concern related to tying into the sewer line. The City would not allow the owners to tie into the old sewer line, but there was one newer lateral that runs along the site which would be checked and could be utilized. Condition 5H is contained in the resolution addresses the lateral sewer lines, it clarifies some of Commissioner Harris' concerns, and she read the condition. A letter was also received by staff and Commissioners from John Knox. BCDC reviewed the project and determined that the actual building area lots were not within the restricted development area of their jurisdiction, and Exhibit A and Attachment 2 (alternate map) showed the line of jurisdiction.

Additionally, Ms. Harbin said staff checked other properties in the area and found there was no requirement by the City to have access to the shoreline. She said there were three options provided by staff; 1) approve the Tentative Parcel Map proposed with conditions; 2) approve the Tentative Parcel Map with changes or modifications and conditions, or the alternate map; or 3) deny the Tentative Parcel Map.

**Chair Finlay** referred to Condition 2 and stated it referred to the July 6, 2007 map, and that Condition 3 related to the July 12, 2007 map.

**Commissioner Lee** requested BCDC's jurisdiction statement and Ms. Harbin read their comments into the record, stating the pads that the applicant had shown to them for each parcel did not enter the restricted development area, and that BCDC was in agreement with the map. She said the applicant will be opening up the property for viewing and removing a fence in order to see into the property, and BCDC was not requiring any public access across the parcel.

**Commissioner Lee** questioned if there would be a building pad further toward the Bay from the location of BCDC jurisdiction line, and Ms. Harbin said a pad would most likely be further up on the property, and the current building pad was not within the restricted area.

**Chair Finlay** questioned if the lot gross and net figures the Commission had were reflective of the lot and not reflective of what was left to build on with BCDC jurisdiction. Ms. Harbin said there were two numbers of Lots B and C, and the area that remained available for building was the lower number (6,152 square feet and 6,548 square feet). The higher number was the gross amount of square footage on the lot.

**Chair Finlay** said she understood this, but her understanding of the figures were based on the lot in its entirety and not based on the location of the BCDC jurisdiction line. If so, that narrows between the utility easement and the BCDC line, which would have a very restrictive space versus what was shown on the map. Ms. Harbin said part of the property was under water, but she did not know if the measurements considered that and asked the applicant for an explanation.

**Commissioner Lee** felt the question was, where the footprint would be located, and not whether there was enough build able area.

Whit Manly, Attorney representing the applicant, clarified that the BCDC jurisdictional line does not mean you cannot build a house south of the line, but if something was built, the developer must go to BCDC and obtain permission.

**Commissioner Harris** said given this, he confirmed with Mr. Manly that the net numbers shown were the full parcel area minus the easement areas, which had nothing to do with the BCDC lines.

**Commissioner Lee** said Ms. Harbin's presentation assumes there would be no building on the water side of the BCDC line, and Ms. Harbin apologized for her mis-statement; saying there would be restrictions; however, this fact would not change any of staff's other recommendations in the report.

**Commissioner Harris** said one definition presented in the ordinance was that of lot width. The parcel is oddly shaped, it was difficult to determine what the mid points were, but at its maximum, the entire lot was slightly more than 120 feet. He felt this alone could allow for a 60 foot division between Parcels B and C, he did not believe this was at the mid-point of the lot and recommended it be clarified at some point.

Ms. Harbin said the Engineer of Record had signed off on the lot and assured this was the case. She felt that staff could condition this to be verified again, as each of the parcels totaled 60 feet in width prior to approval of a conditional use permit, and presently, this was the center of the lot.

**Commissioner Harris** referred to the issue of minimum lot width including the easement and said during the Agenda Review Session it was brought up that the easement could be incorporated within the parcel because that was what has been done before. He said this was the case in the Sunset Point map where one of the lots was smaller. The Commission told the applicant to amend the map to create build able lots greater than 5,000 square feet. Given this, he could not accept the idea of the easement area being incorporated into the parcel area, which was in conflict with what was discussed a few months ago.

**Chair Finlay** said it was her understanding that Item 3 accommodated the discussion and resolves the issue. **Commissioner Harris** read the item and agreed.

**Commissioner Lee** asked for an explanation of how a line that was 118 feet long could be 60 feet on both sides. He felt it did not appear to be achieved on the map being considered, and **Commissioner Harris** said unofficially, the width at its maximum was slightly more than 120 feet.

**Chair Finlay** said the lot line in question was not mid-way between the top and bottom of the lot, but between Parcels B and C, and **Commissioner Harris** agreed. In calculating this, she questioned whether the Engineers would go into the easement in any way in the calculation of Parcels B and C because then it would be truer at mid-point. The Commission agreed there were points that were wider.

Page Poulos, applicant, said they originally submitted a map which they liked very much; however, there was a flaw in the map in considering the access easement in the total lot square footage. The revision is dated July 12, 2007 which was being requested for approval. She said the map has the approval of the Fire Chief, Planning staff and City Engineer and they are

confident they can achieve in their goals of building homes in the space, but actual building footprints and designs have not yet been made. She felt it was highly likely that some of the building and steps going down to the beach would be built within the jurisdictional line and they understand they will need to have BCDC's full approval. They are also working with them on view corridors, which would be finalized once the actual map was approved. She understands some neighbors prefer the first map submitted over the second map; however, the second map appears to be the one that most meets the City's needs, and they support this.

#### Public Comments:

Rodrick Satre, Chair of the Point Richmond Neighborhood Council Land Use and Design Review Committee, said their organization discussed the project and requested 1) garages be dedicated for garages without any living spaces, 2) preservation of views, 3) access allowed to the beach, and 4) three sites to promote smaller homes, and he questioned whether the plan met that criteria.

Christina Kirker spoke in support of the three-lot plan, felt it was appropriately laid out and was an enormous improvement.

Jerry Richardson said he was very surprised of all demands made of the applicants, felt they would meet those demands, said there was currently no beach access and he felt the demands were unfair and hoped the Commission supported it.

Brian Collier voiced support for the project, felt it was a good plan and asked for its approval.

Jean Knox felt the mitigated negative declaration was insufficient, additional conditions needed to be adopted prior to the map being accepted, felt it did not evaluate all "reasonable" development at the site, felt there were many areas in the negative declaration that indicated the property could be developed under the SFR2 zoning regulations; however, no specific analysis was attempted to see how three houses built to the maximum of the code would crowd the shoreline and conflict with aesthetics of the site. She felt this analysis was essential, but instead comparisons were made to existing structures as the basis for judging and comparing. She referred to page 8 of the negative declaration which she felt misrepresented potential light and glare conditions and would create new vistas and new homes that did not conform with natural topographies, and she felt BCDC's view corridor was no higher than 20 feet and uninterrupted. She referred to page 20, stating the documents for both hearings were in error in that they referenced inaccurately the developer, the applicant, proponents and opponents. She felt the mitigated negative declaration was flawed, said documents move further into the future important items that should be analyzed now, such as views, density and compatibility of the shoreline. In addition to conditions A-M, she asked the Commission adopt further conditions regarding height limits, view corridor conditions, setbacks that would prevent development by the sea wall, and to look at Condition K which stipulates that prior to development of the first parcel, approval by BCDC must be granted, which she felt would not be fair to the remaining homes to be built. She said there were many other points and confusion to be verified prior to approving the proposal.

Michael Chartolk said his primary concern was the configuration of the buildable areas and visual impacts from the three-lot parcelization. He did not understand staff's basis for size, and the potential for large structures to be built was high. When the Pt. Richmond Council approved it, it was with height limits, and now there were none imposed. He also objected to the absence of any visual analysis, conditions associated with providing visual pathways or seeking height

limits, noted the lots cost \$3.1 million, would be sold for about \$1 million each, there would most likely be three large mansions, and asked that the map not be approved.

Pamela Hyland disagreed with the argument made by a previous speaker about beach access and other restrictions of homes in the area and she felt added conditions should be made.

Carla Bowman echoed previous speakers about view corridors, felt the analysis did not address environmental or endangered species and said the species in the area were totally dependent on the eel grass, found only in three spaces in the Bay. There were a variety of shore birds not listed as endangered, but threatened, and if houses were increased the environment would be affected and the species would die off.

**Boardmember Livingston** confirmed with Ms. Bowman that she felt if homes were built the species would be affected by not being able to feed on eel grass, and she agreed and discussed her biology background.

**Chair Finlay** confirmed with Ms. Bowman that the eel grass occurred on the water side of the sea wall.

George Coles said the application went through the neighborhood council land use committee where he spoke in favor of it in anticipation that items would be worked out. He said the Planning Department recognizes neighborhood council recommendations, noted they were quite ambivalent and noted 67 neighbors were against the map. Limitations were 20 foot setbacks from the beach, height limits 16 feet above grade and others.

Jeff Shea said he hoped the property could stay low profile and he did not believe future development would address that. The fences along the street were over the property line onto City property. He said Western Drive was very wide, he has two small children, cited future safety concerns, voiced concerns with beach access and asked the Commission not to approve the map.

Roger Craine felt the proposal really requests squeezing three lots into a parcel that the Code would allow for two lots, the proposal asks for at least three variances, the neighbors are concerned and requested development done according to the Municipal Code. Regarding the variances, under the original plan the lot was not 6,000 square feet and the new plan makes the one lot longer, which makes the other two smaller. As measured, it violates the width requirements for the mid-point measurement. He also felt the definition of flag lots did not meet the Municipal Code's definition.

Kate Lord acknowledged the difficulty of reading through the various technicalities of the matter, hoped the Commission was very careful and took its job responsibly, felt there was much lacking in the documents, and felt that analysis did not take into account all future development. She hoped the Commission would enact stringent conditions on any permitting for the property regarding height limits, setbacks, size and wanted the area kept beautiful.

Patricia Herron said she lives two homes away from the proposed subdivision, voiced opposition, agreed with information contained in John Knox's letters, said she was a retired Superior Court judge and it was difficult to ignore the specific and clear provisions of the Municipal Code. She felt the matter may be illegal and actionable and echoed concerns expressed by previous speakers. She felt if the Code was outdated it should be changed, but acknowledged the Commission had a responsibility to apply it as it existed.

Richard Katz read a portion of the staff report regarding beach access and Keller Park nearby access and felt this was wrong and read a section of Article 15 of the Municipal Code relating to projects nearby water and public access.

**Commissioner Harris** noted Mr. Katz was reading from the Subdivision Ordinance, Section 15.08.160(1) and he read out loud Items 4 and 7, and Mr. Katz felt there was no other reasonable public access to the contiguous shoreline.

#### *Rebuttal – Applicant*

Whit Manly, Attorney representing the applicant, recommended including a condition to require the Engineer to confirm lot widths, said three single-family dwellings would be built on the site and the mitigated negative declaration analyzes this, which was the correct approach. The houses will be subject to the zoning ordinance, go through the use permit process and have conditions. Today, if the map is approved, three houses would be approved subject to this scrutiny. He suggested the following additional conditions of approval, given concerns raised: 1) require that the applicant comply with all mitigation measures in the negative declaration; 2) require compliance with BAAQMD condition 7 regarding odors; and 3) require the City Engineer to verify 60 foot lot widths.

#### *Rebuttal - Opponents*

John Knox said they really feel, and evidence shows, that jamming three houses on the lots is wrong to do for the property. He felt it was right for two lots, but not three. Problems have been raised and not answered such as the view corridor, beach access, heights, and defended the palm tree not yet mentioned, stating it was planted by Jack London, and he hoped this could be taken into consideration. He recognized people spent a lot of money for the property, but felt two structures could meet their plans.

Ms. Harbin said the Planning Commission could take one of the following actions: 1) approve the resolution approving the mitigated negative declaration with accompanying mitigated monitoring and reporting program and approve the Tentative Parcel Map into three separate residential lots as shown in Exhibit B, with conditions; 2) approve a resolution approving the mitigated negative declaration with accompanying mitigated monitoring and reporting program shown in Exhibit A, and approve Tentative Parcel Map, with modifications and additional conditions as Attachment 3 to parcelize the property into three residential lots via July 12, 2007 map; or 3) direct staff to prepare a resolution to deny the Tentative Parcel Map.

**Commissioner Harris** questioned why the mitigated negative declaration was being approved now versus it being approved during planned construction. He said there were portions of the document that have been written off as non-impacts and felt some of the issues would be affected through development.

Mr. Privat said if the Commission did not feel the mitigated negative declaration was adequate enough because it does not address concerns raised, then the Commissions had the option of not certifying it.

**Commissioner Harris** asked if a tract map could be approved without certifying the mitigated negative declaration, and Ms. Harbin said it could not; the environmental document must be approved to approve a tentative parcel map, and Mr. Privat said he concurred with this.

**Boardmember Lee** asked the applicant if there were conditions that would be accepted on the project as to height and setbacks. Ms. Poulos said they originally submitted a map that had a larger build able space on the two parcels closer to the Bay. In order to meet the exact Code and ordinance standards for the lot size, net of access easements, they made changes to the Parcel Map which was being considered tonight. At this time, they have not worked with their architect and site planner to actually set building footprints or consider their locations. She recognized that people were greatly concerned about large 35 foot structures that might rise directly from the sea wall; however, she said they did not want to make large concessions at this time because there would be many made when they go ahead in their design process and work with neighbors. She said they would be willing to agree that in a zone 10 feet back from the sea wall, no habitable structures could be built. She acknowledged there would also be view corridors established.

**Commissioner Lee** said he felt it was the fear of the unknown as being the largest issue, did not feel everyone was as far apart and was trying to determine how to address issues to be quantifiable.

**ACTION: It was M/S (Lee/Williams to close the public hearing. Vote: 3-1-1 (Harris voted no; Rao absent)**

DISCUSSION: **Commissioner Harris** said the July 6, 2007 map was not being considered, did not like how the jog was created to create the 60-foot width but said he would be willing to approve it. He said he did not agree with the public utility easement, did not accept the idea of the flag lot, felt some of the items were not analyzed as impacts in the negative declaration, admitted he was hesitant to accept some of the findings to be made, but also did not want to advocate continuation.

**Chair Finlay** questioned and confirmed with Commissioner Harris that if the public hearing had not been closed, would it provide an opportunity for Commissioner Harris to work on substitute language for the mitigated negative declaration and not for denial. She asked if this could legally be done and Mr. Privat said the Commission could make additional findings or alternative findings, and **Chair Finlay** therefore suggested rescinding the closure of the public hearing.

**ACTION: It was M/S (Lee/Williams) to re-open the public hearing in order to address conditions in the negative declaration. Vote: 4-0-1 (Rao absent)**

**ACTION: It was M/S (Harris/Williams) to continue the public hearing for the specific purpose of preparing substitute language by Commissioner Harris for the mitigated negative declaration to cover the Findings regarding Section 1; Aesthetics, Section 3; Air Quality, and Section 4 Biological Resources. Vote: 4-0-1 (Rao absent)**

## RECESS

**Chair Finlay** called for a 5-minute recess, and thereafter, the Commission reconvened their regular meeting.

2. **CU 1103502 – Marina Live/Work at 900 Block of Marina Way South** - PUBLIC HEARING to consider approval of a Conditional Use Permit, a Mitigated Negative Declaration and Mitigation Monitoring Program for 64 live/work units on a vacant parcel located on the west side of the 900 block of Marina Way South between Wright Avenue and Regatta Boulevard (APN: 560-260-054). Knox-Cutting Specific Plan: R&D/Business, Light Industrial and Sub-Area D. David Spatz, owner/applicant. Tentative Recommendation: Hold Over to 9/6/2007.

**Chair Finlay** said the item was noticed as a hold over item and recommended a motion from the Commission to hold over the item.

**ACTION: It was M/S (Harris/Lee) to hold over CU 1103502 to September 6, 2007; unanimously approved.**

3. **EIR 1102923 – Forest Green Estates: Comments on the Draft EIR** - PUBLIC HEARING to receive comments on the re-circulated/modified Draft Environmental Impact Report (DEIR) for a proposal to subdivide a 81.1 acre hillside parcel into 120 lots for single-family dwellings located three blocks south of San Pablo Dam Road at the end of Wesley Way between Clark and La Colina Roads (APNs: 435-200-008 and 435-051-005). SFR-2, Single-Family Very Low Density Residential and CRR, Community & Regional Recreation Zoning Districts. General Holding, Inc., owners; John, Wollman, P.E., applicant.

**Chair Finlay** said the Council made the decision to extend the comment period on the Forest Green Estates Draft EIR, the new date for the hearing to receive public comment before the Planning Commission will be September 6, 2007. She noted there may be people who could not return on September 6<sup>th</sup> and therefore, she opened the public hearing to take public comments.

Public Comments:

Iris Ridgway said in the 1960's she lived on La Colina Road and all of the homes except one on that road slid along the hillside. When she read there was a possibility of building on the geologically unstable area she was afraid for those people. She asked how many streetlights she would have to wait for in order to get onto the freeway, noting the traffic was already backed up, and said if the homes were approved there should be disclosures about the earth movement.

**ACTION: It was M/S (Harris/Lee) to continue EIR 1102923 to September 6, 2007; unanimously approved.**

5. **ST 1103959 – Street Vacation at the Terminus of South First Street** - PUBLIC HEARING to consider a street vacation at the terminus of South First Street (which was formerly known as Maine Street), (APNs: 558-251-008 & 009). M-2, Light Industry Zoning District. James Wright, owner/applicant. Tentative Recommendation: Recommend Approval to City Council.

Jonelyn Whales gave the staff report and a brief description of the request, stating the applicant requests the Planning Commission recommend to the City Council vacation of the right-of-way. At the Design Review meeting it was noted the street was noticed as Railroad and there was a question regarding the adjacent property owner. She said a letter was not received at that time stating what the intent was regarding sharing the right-of-way, but since that time the adjoining

property owners have indicated they intend to maintain that right-of-way because it would be split between the two property owners.

**Chair Finlay** noted the map indicated, "South First Street, formerly Railroad Avenue" which she confirmed was correct. She said another issue Commissioner Harris raised in the staff report was that it was listed as being 230 square feet, and she confirmed it was 60 x 56.49 or 3,389.4 square feet.

James Wright, owner/applicant, said they were in agreement with the Barceski's about what they want to do with the end of the lot. **Chair Finlay** said it was her understanding that in the report, the two parties did not wish to share in the maintenance of the right-of-way, which has been cleared through a letter for the file.

Public Comment:

Jack Barceski confirmed that he and Mr. Wright were in agreement and they will take care of the property.

Ms. Whales gave staff summation, stating based upon findings outlined in the staff report with corrections identified, staff recommends that the Planning Commission recommend to the City Council approval of the street vacation, subject to conditions A-D as listed in the staff report.

The public hearing was closed.

**ACTION: It was M/S (Harris/Lee) to recommend to the City Council approval of ST 1103959 based on findings presented in the staff report and conditions A-D, with clarification that Item 2 be amended to read, "the approximate area of the lot is ±3,389 square feet.**

**7. CU 1102306 – Canyon Oaks II at San Pablo Dam and Castro Ranch Roads - PUBLIC HEARING** to consider a Conditional Use Permit related to consistency with the Hillside Physical Constraint Area, RMO Overlay District of the Zoning Ordinance, Section 15.04.510.530(D), to allow construction of 36 detached single-family dwellings, including 4 custom homes sites; associated utilities infrastructure and roadways; improvements to the intersection of San Pablo Dam and Castro Ranch Roads, and development of a 300 acre land bank south of San Pablo Dam Road near the intersection of San Pablo Dam and Castro Ranch Roads. The project also requires a Lot Line Adjustment. (APN Nos. 573-020-009, 010, and 011). SFR-1, C-2, RMO, and EA; 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.

Jonelyn Whales gave the staff report and brief description of the request, said the project has had the Final EIR certified by the City Council, approval of the Tentative Tract Map, as well as the General Plan Amendment and Rezoning. The applicant requests the Commission find that the development as outlined on the Tentative Tract Map for 32 single family homes is consistent with the City's hillside ordinance.

She noted an analysis was conducted and outlined in the staff report as well as a table which outlines the hillside consistency, which was also part of EIR. The applicant also prepared an

analysis regarding the hillside consistency. If the Commission finds that the project is consistent with the hillside ordinance, specific findings must be made which are outlined in the staff report on pages 4-7. Options are also identified in the staff report for the Commission to consider. Conditions have not been brought forward because many were already identified in the Tentative Tract Map; however, additional conditions could be made and staff can bring back the item.

She described some typographical errors in the staff report: page 3, 4<sup>th</sup> paragraph, there is a beginning of a sentence that states "furthermore, staff" which should be deleted after the word "areas". She also said an exhibit was inadvertently left out of the packet; however, staff has provided the Commission with a copy of it tonight, as well as a copy of the conditions of approval contained in the Tentative Tract Map, which was before the Commission, and a copy of a letter from Canyon Oaks I residents; Brenda and Mark LaPlant, who were on vacation.

John Zentner, Zentner and Zentner, Oakland, expressed appreciation for the community's support especially with the help of Barbara Pendergrass and Eleanor Loynd. He said the project has a number of significant benefits such as taking buses off Orinda Road and putting them back on San Pablo Dam Road avoiding safety issues, a model storm water treatment program, and conversion of the roadway between Canyon Oaks I and II into a landscaped emergency vehicle access. He felt one of the primary benefits of the project speaks to the hillside ordinance, said the project uniquely gives up 90% of land to open space, the project minimizes grading and tree loss, and the number of retaining wall heights over 4 feet were reduced by 50%. They have also cut down the number and length of retaining walls.

**Commissioner Harris** confirmed the most recent map was July 17, 2007 and the prior map was dated January 25, 2007.

Mr. Zentner said the second map had been subject to initial review for the grading permit by the City Engineer. He felt the project met the hillside ordinance goals, preserves the significant natural features on the site as well as providing almost 300 acres of open space along the ridgeline.

#### Public Comments:

Calvin Fong said he lives in the Canyon Oaks I development, supported the conditional use permit, noted the neighbors met and came to agreement on three specific conditions 56, 57 and 58, which were approved by the Council by resolution, said he knows many neighbors have specific concerns which is typical of land use issues, there will be another opportunity to comment on specific design issues, but he feels very comfortable moving forward with the project.

Eleanor Loynd, Chair of the El Sobrante Valley Planning and Zoning Advisory Committee, said the applicant has appeared before the Committee several times, has met with neighbors, City and County staff, AC Transit and the East Bay Regional Park District, supported the project and asked the Commission to grant the request.

**Chair Finlay** questioned if Ms. Loynd was concerned at all about the precedence the subdivision might create as a result of the interpretation of the hillside ordinance.

Ms. Loynd said she did not know all details, but one of the things they did want to keep in the General Plan was the hillside ordinance and she felt the project was somewhat of a trade-off due to the savings of 300 acres on the hillside.

**Commissioner Harris** thanked the applicant for reduction of retaining walls and asked how they were able to be reduced or eliminated and questioned if pads would require additional excavation.

Mr. Zentner said they spent \$45,000 on very detailed topographical surveys and they have actually reduced the amount of cut and fill by about 15%. He referred to the July 17<sup>th</sup> map and described the need to re-grade the areas on the extreme right due to movement of road to the west when re-done. He said there is a significant knoll on the far western side of the project, they have backed further away from that to save more trees and reduce grading, and this was the reason for some of the higher wall heights.

**Chair Finlay** felt there were drainage problems from the knoll on the far western side and Mr. Zentner agreed, said there was an almost 1.4 acre area that drained into that direction which caused flooding, they re-worked the drainage to reduce it to .17 acres and, therefore, it will stop the flooding of the neighborhood.

**Commissioner Harris** questioned the drainage item on the map of Canyon Creek going into Canyon Oaks I, and Mr. Zentner said this was a 10-year storm pipe detention system, 72 inch pipe which is designed to retain the 10-year storm on site and meter it out slowly.

**Chair Finlay** said it was difficult for her to receive a 25-page document or make a decision on a conditional use permit when she did not have time to review the conditions approved by Council. She asked if she could add or modify those conditions, and Ms. Whales said conditions could be modified for the CUP; however, the conditions approved for the Tentative Map were already in place.

Mr. Privat said the item would return on the Consent Calendar, the Commission would have an opportunity to review conditions prior to the hearing and the item could be removed for discussion, as necessary.

Ms. Whales gave staff summation, stating staff recommends the Planning Commission adopt the required findings outlined in the staff report, with the statement of facts supporting the CUP of the Canyon Oaks II project and hillside ordinance for consistency and approve the CUP to allow development of 32 single family homes at 4 custom home lots on a hillside in El Sobrante Valley, subject to conditions as outlined in a resolution, which would return at a subsequent Planning Commission hearing on September 6, 2007.

**Commissioner Lee** said he supported the CUP but wanted to ensure that in an effort to protect the integrity of the hillside ordinance for future projects, he believes the small lots in and of themselves would not conform to his interpretation of the hillside ordinance. He felt lots 1-9 could be built on the hill rather than into the hill and grading could be minimized significantly. However, he supports the project and wants to make sure that the exception that enables him to support the project is the 300 acres dedicated to open space, but otherwise, would not be consistent.

The public hearing was closed.

**ACTION: It was M/S (Williams/Harris) to conditionally approve CU 1102306 subject to the conditions outlined in the staff report, adopt the required findings 1-7, and direct staff to prepare a resolution for adoption for action determined appropriate by the Commission and return to the Planning Commission with the resolution on September 6, 2007; unanimously approved.**

## **COMMISSION BUSINESS**

### **8. Reports of Officers, Commissioners and Staff**

Ms. Harbin requested the scheduling of a date for a hearing on the Chevron project and confirmed the majority of Commissioners present were not available on September 20, 2007. Mr. Mitchell said staff would hold a discussion next week with all parties and confirmed with the Commission the date would be left open until further notice.

### **Adjournment**

The meeting was adjourned at 9:53 p.m.

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