

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
September 6, 2007
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Zachary Harris
Jeff Lee, Secretary
Vacant

Vice Chair Nagarajo Rao
Stephen A. Williams
Vacant

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

Commissioner Williams led in the Pledge of Allegiance.

ROLL CALL

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

Absent: Chair Finlay

INTRODUCTIONS

Staff Present: Janet Harbin, Joe Light, Hector Lopez, Mary Renfro and Richard Mitchell

MINUTES – None

CONSENT CALENDAR

Secretary Lee said the Consent Calendar consisted of Items 5 and 6. No items were requested for removal or addition by the Commission or public.

<p>ACTION: It was M/S (Harris/Lee) to approve the Consent Calendar consisting of Items 5 and 6; unanimously approved.</p>
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Items Approved:

- 5. ST 1104224 – Street Vacation for a portion of 42nd street, 44th Street, 45th Street, Macdonald Avenue and Bissell Avenue - PUBLIC HEARING** to consider a request to vacate and abandon for public purposes a portion of 42nd Street, 44th Street, 45th Street, Macdonald Avenue, and Bissell Avenue (Near APNs: 517-280-003, 004, 007, 517-290-004, 010, and 011). C-3 (Regional Commercial) Zoning District. City of Richmond, owner; SPI Richmond Associates, applicant. Tentative Recommendation: Recommend Conditional Approval to City Council

6. Outdoor Vending Ordinance Amendment - PUBLIC HEARING for an Ordinance Amendment for changes to City's existing Outdoor Vendor Ordinance – Article 15.04.700 of the Richmond Municipal Code. Tentative Recommendation: Hold Over to 10/4/2007

Vice Chair Rao provided an overview of the Consent Calendar, meeting procedures for speaker registration and public hearing functions and procedures. He said certain items approved by the Commission may be appealed in writing to the City Clerk by Monday, September 17, 2007, by 5:00 p.m. and announced the appeal process after each affected item.

Brown Act

Jerome Smith quoted Robert Frost, voiced concerns about the impact of the Canyon Oaks II project to the hillside, asked the Commission to scrutinize its changing of the hillside ordinance, asked the developer to indemnify all future property owners due to soil instability and significant shifting of the hillside, and asked not to allow the project to destroy the hillside ordinance.

Vicki L. Winston said when the Commission denied the Tentative Map, it was based entirely upon the barrier of the proposed project to be consistent with the hillside ordinance. She said she was on the Commission at the time and made the motion and was shocked to learn that the Commission had unanimously approved the conditional use permit for the project with no conditions, no findings, and felt this has decimated the hillside ordinance which is the one thing residents had planned on protecting them from development of the hillside. She opposed the clear cutting hundreds of Oaks on soil that is unstable, questioned how to undo what has been done, acknowledged the project will go directly to the City Council and implored the Commission in the future to consider not just the impact of the Commission's actions but the impact on the future of all of Richmond.

Herk Schusteff submitted a letter regarding the hillside ordinance, spoke of the unspoiled resources of Richmond which he felt were being used to solve social, economic, participatory and health problems of the City. He said the EIR proposes discarding prohibitions on clear-cutting 100-400 significant trees, ignores restrictions on overbuilding steep slopes, felt these exceptions would become the rule, felt the EIR is incomplete, under-defined, topics and questions are deferred to some later date, and felt an appropriate proposal could provide for 36 homes without disenfranchising communities and desecrating the environment, and asked to reduce lots and use creative solutions. He asked for an honest assessment of the general plan, the hillside ordinance, felt the project was out of balance, asked for compromise, and felt good people could make bad mistakes.

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. Tentative Recommendation: Various

Ms. Harbin said the Commission had considered the item on several occasions, said the staff report discusses some of the items Commissioner Harris brought up at the last meeting which were some revisions to the environmental document, adding similar information to clarify issues,

changing some “no impact” items to “less than significant impact”, and adding a few conditions which are the type which would normally be required of any developer.

She said staff has provided three different options to consider and Commissioner Lee also had some information presented in the report regarding the Pt. Richmond Neighborhood Council recommending height limits be placed on each parcel.

The recommendation under Item 2 is for approval of the project, adoption of a resolution which would be prepared and returned to the Commission, and a mitigated negative declaration, subject to conditions discussed in past reports. The recommendation under Item 3 is to direct staff to prepare a resolution and to approve the mitigating negative declaration but impose additional conditions per Commissioner Harris. Item 4's recommendation is to direct staff to prepare a resolution to approve the project and the mitigated negative declaration as modified by the information contained in Attachment 2 which Commissioner Harris brought forward, with added mitigation measures and conditions related to the height restrictions which Commissioner Lee suggested.

Ms. Harbin said the applicant and her attorney, Whit Manly, were present, as well as 20 speakers on the item. The Commission also received an email from Charles Duncan which addresses the historic resource report which he prepared for the project that reiterates no significance in the beach house on the property due to its multiple modifications; two emails from Jerry Richardson expressing his support of the subdivision; and an email from Remy, Thomas, Moore and Manly, the applicant's attorney.

Commissioner Lee disclosed he had spoken at various times to several affected residents and the applicant. **Commissioner Harris** disclosed that he had spoken with the applicant.

Whit Manley, attorney, Remy, Thomas, Moore and Manly, said they have always understood that the fundamental issue associated with the application and neighbors have to do with the design of the houses constructed on 3 lots. However, the application to create the lots was before the Commission and not its design. He said the Commission should determine whether the project complies with standards of the zoning ordinance and the subdivision ordinance and he felt it did. He noted two maps were submitted; one dated July 6 and another dated July 12. The July 12 map is the subject of staff's recommendation. On the July 6 map, there is some question about whether minimum lots sizes are adhered to based on whether access roads count or not. The applicant and neighbors prefers the July 6 map; however, they were amenable to the July 12 map and, depending upon direction from staff of the map not requiring a variance, they would support approval of the July 12 map.

Regarding the CEQA process, staff originally processed the application using a mitigated negative declaration. The earlier original map required a variance, thereby disqualifying it for a categorical exemption under CEQA and the next step was to file a mitigated negative declaration. He said neither of the two maps in place requires a variance so the project does qualify for at least three categorical exemptions under CEQA. The best fit is the Class 15 categorical exemption and he read it into the record. He said the project is 3 parcels, residential zoning, no variance is required and it also falls into the Class 3 and 32, but he felt Class 15 was the best fit. He said the project did not have physical and environmental effects and recommended relying on the categorical exemption which would mean the Commission would not need to adopt the mitigated negative declaration.

Regarding mitigation measures recommended by staff and Commissioners, he recommended those be incorporated into and applied to the project as conditions of approval. If the Commission were, however, to rely on a categorical exemption rather than a mitigated negative declaration, there is no requirement for public circulation of the decision and staff could be directed to return with a finding that the project is categorically exempt. He emphasized also that none of the conditions needed to be imposed for the project to qualify or fall within the underlying categorical exemption because it is only 3 lots in residential zoning without the need for a variance.

Regarding public access, if the Commission is disposed to approve the project, he asked that staff be directed to return with a resolution adopting the finding required under the ordinance. They do not support public access across the site and he urged the Commission to make a finding that it not be required because reasonable access is located nearby and there are problems with providing access here.

Mr. Manley felt the matter had been thoroughly explored by staff, the Commission, the public, said there will be many people to speak against the request and felt it was time to call the question, as there has been discussion and energy between the applicant and neighbors who have not come to agreement. He reiterated the applicant's recommendation to approve recommendation 3, recommend that the mitigation measures and Commissioner Harris' recommendations be incorporated as conditions of approval; that the project is found to be exempt under Class 13, 3, 32 and mostly Class 15; that the Commission approve either the July 12 or July 6 map and, if ultimately the Commission was disposed to adopt the mitigated negative declaration rather than relying on a categorical exemption, they were okay with it.

Commissioner Lee questioned whether or not in effect there was any significant difference between a mitigated negative declaration being attached to the tentative map approval or approved as they are in the document. Mr. Manley said it made no difference—they would still need to comply regardless of whether conditions or a mitigated negative declaration was approved.

Public Comments:

Christina Zirker asked to approve the proposed minor subdivision, said she spoke two previous times in support of the project, reiterated that the proposal asks for no variances and falls entirely within the guidelines of the city. She asked to uphold property rights and equal application of the law without further delay.

Elizabeth Tarn said they live by the beach on similar sized lots as those proposed by the applicants, felt the request was in keeping with the neighborhood, conforms to ordinances with no variances needed, and if not approved the City will send a message that groups of neighbors have the ability to deny anyone their right to equal application of the law in Richmond, which she felt would be a dangerous precedence.

Martin McNair spoke in favor of the project, said it was time to make a decision, thought the issue comes down to the question of whether the lot is large enough for 3 homes, he felt it was large enough and urged the Commission to approve the subdivision.

Opponent – 10 Minutes

Jean Knox referred to the Planning Department's response to the response of the mitigated negative declaration, stating they prepared a document which states, "It is worth noting that the neighborhood is not overwhelmingly opposed to the project. In objectively reviewing the comments, it is fair to say that some neighbors support the project and others are opposed. The PRNC voted to recommend approval of the project. The Council's vote is an important indicator of the neighborhood's views." She felt this statement did not acknowledge that the PRNC approval was one with conditions and those conditions have not been met or referred to by the planning department. She also felt that what is meant by "neighborhood" in staff's statement was also not clear. She said out of 48 households, only 3 had support, with 4 voicing no opinion. In the minutes of the PRNC of November 29th, approval was, by no means, unanimous and more significantly, no votes were not registered. She strongly recommended that the Planning Commission advise the applicant to go back to the PRNC with the present proposal and conditions for a renewed consideration of the proposal as it now stood, which would be the quickest route to an amicable settlement of the controversy. She acknowledged that the PRNC does not have legislative powers; however, it has a strong mandate to work out neighborhood issues in a genuine dialogue involving a give and take process, which is not hampered by two minute presentations for or against, or by the introduction of last minute changes which cannot be considered in time for reasonable and open discussion.

She said there have been very few discussions and exchanges between the applicants and the immediate neighbors who oppose the project. There was a meeting on November 25th at the Mac Hotel and it was suggested that the applicant not go to the November 29 meeting of the PRNC, but they did. Following this, there was a meeting between Roger Craine, Jonathan Livingston and the applicant for the purposes of discussing the issues that those opposed had presented in the petition filed with the City of those opposing the project. The applicant at that time said she would call another meeting with neighbors which did not happen. On January 21st the PRNC declined a request to reconsider the PRNC approval of November 29 and there is a long gap between then and the next contact, and the PRNC never has taken the opportunity to work toward a genuine exchange out from under the pressure of time and before the Planning Commission.

Patricia Herron urged the Commission to consider the opponents' positions that have been presented over the last months.

John C. Knox said the dispute is something that should be taken to heart. He said proposed is the trashing of most likely the most beautiful piece of property in Richmond by crowding in three substandard lots. He said the applicants ignore the fact that homes around them will be affected by this and felt this was a very bad thing.

Eric Moe said he owns property directly south of the area and they share about 232 feet of property line. His immediate neighbor asked him to speak on his behalf and indicate that he is opposed to any subdivision, that a subdivision would increase density and crowd the beach, the development encourages higher structures due to lot sizes, encourages crowding toward the beach and neighbors, was worried about the precedent for the density on future building of the lots, was worried about the fence condition as their fence was over 17 feet on their property line, felt there was no way to get 60 feet and was opposed to flag lots.

Douglas Zesiger said he is concerned about congestion, height restrictions, felt the beach would be compromised and said he was putting his trust in the Planning Commission to take care of the neighbors.

Luke Wings said he has not problems with 3 lots, felt there was not enough discussion between the applicant and neighbors and hoped for conditions to be imposed for building on the lots.

Carla Bowman said she lives across the street from the proposed subdivision, agrees with everything said in opposition, she has an environmental science background, looked up the issues that would involve four endangered species, cited additional run-off created by houses, felt the houses would be massive and between 29-30 feet high and not in character with the current neighborhood.

Stephen Schaefer said he lives directly across the street, signed a petition in opposition to the application, said nothing he has heard since then had changed his position and said all 48 neighbors also have not changed their opposition. His home was built in 1989, designed to take advantage of an unobstructed view of the bay which is from the house directly over the proposed subdivision and he felt the end result would be a wall of homes stretching across the property. His views as well as neighboring homes' views would be substantially reduced and compromised and asked the Commission to deny the application.

Kathleen Cole Smyk strongly urged the Commission not to approve the subdivision, said she has worked extensively in the design field in southern California and witnessed countless times in Emerald Bay the effects of huge structures in front of the beach, taking away views and destroying neighborhoods. She suggested taking fabric and placing it on the lots to see what the effects are, as well as 30 foot high poles.

Silva Roker said she was against the project because the cove is a special place, said the area below the 5 foot tide line is actually a park and is frequently used. She felt the fundamental issue was not the design of the homes but the potential approval of the subdivision which most certainly will turn one lot into three and will result in three multi-story structures, changing the cove and all neighbors' enjoyment. She felt the approval will set a precedent for those living in the cove who have larger lots with small structures and felt it was ashamed that multiple, long-term residents would be forced to live with the fact that someone could turn a lot into multiple lots.

Nancy Foss said she lives next door to the proposal and said given the overwhelming opposition there are many issues that speak to the fact that 3 lots do not fit on the site, such as usable square footage of less than 1.43 of an acre. She felt the remaining land is un-buildable sand and water. When the access easement square footage is removed, the remaining buildable land is less than 6,000 square feet for parcels B and C and in violation of the general plan and specific plan. Flag lots are inconsistent with the current neighborhood and are not the only way the property could be developed as the cove requires. Property lines of parcels B and C are zig-zagged in order to attempt to meet the 60 foot width requirement which is also a code violation, inaccurate measurement of the width of parcels B and C are not taken from the mid-point of the lots as required by code, tight building sites will likely be built at maximum site, there will be blockage of views, homes built in the BCDC jurisdiction line which has not yet been granted, the BCDC mandated view corridor which will be impossible to create, and it will create the removal and impact to openness, aesthetic beauty, waterfront recreational areas, open space lands, fish and wildlife habitats, historical and cultural areas, and scenic vistas. Many neighbors oppose the request, it violates zoning codes and shoreline requirements, has not been approved by the PRNC without substantial conditions, and asked the Commission to deny the request.

Roger Craine challenged the basic premise that the subdivision calls for no variances and said if the Planning Commission grants variances, it also has the ability to impose restrictions. Under the original June 6 lot plan, Lot A is less than 6,000 square feet as required by the municipal code, when subtracting the easement. In the new plan, Lot A is made bigger and Lots B and C are smaller in order to meet the 6,000 square foot minimum. However, Lots B and C do not meet the 6,000 square foot requirement as measured from the midpoint. Therefore, this would require a variance. Also, Lots B and C are designated as flag lots and do not meet the definition of such in the municipal code. So, there must be variances granted. If no restrictions are imposed, the assertion is that the housing design review will take place later. The housing design review would allow houses with no variances up to 35 feet. So, he asked the Planning Commission to understand there is the need for variances implicit in the subdivision.

Anna Kirstine Froker said she lives five homes up from the proposed subdivision, asked the Planning Commission to maintain the integrity of the cove, said the existing houses integrate with the landscape, the proposal will create a 35 foot high wall and voiced concerns with setting a precedent.

Rod Satre said the PRNC did hold a meeting and did have an agreement that perhaps it was not such a bad position they took in November in 2006 to come back to the neighborhood council and asked that this be done.

Martha Bielowski echoed Mr. Knox and Mr. Satre's comments, believed Richmond's system of neighborhood and coordinating councils is unique and a great achievement, urged that in any actions taken in this case or in other cases, the Commission keep in mind that the Commission will not be minimizing actions of the neighborhood council but will be involving them to the fullest extent possible.

Ben Landon said he was adamantly opposed to the request, felt variances and the code would be decoupled, voiced opposition to overruling the position of the PRNC, felt it would send a precedent that the neighborhood councils are not needed and are ignored.

Rebuttal – Applicant

Paige Poulos, Applicant, thanked the Commission for their consideration of their application for a minor subdivision. She said for nearly 18 months they have worked to create 3 lots from a single large parcel, felt there was great debate and they are sensitive to comments. They have had a lot of genuine dialogue with neighbors to the degree it was possible to have such dialogue with people who do not want subdivision regardless of what ordinances and codes allow, felt they have not heard their dialogue, she has heard theirs, have proposed height restrictions greater than those of the City as well as setbacks from the beach, and nothing has been accepted because the group does not want subdivision. In many cases, lots are larger than neighbor's own lots and they worked close with planning staff and experts who have shaped their vision for the current project. There will be design review, view corridors and height restrictions and the spirit of everything proposed, the neighborhood council will come into play. She felt the neighbors are trying to move neighborhood council recommendations to an early tentative map phase instead of letting each come where they properly will in the design process. She agreed Cozy Cove is a special place, but later it was a private residence for several different families and prior to them purchasing it, it was a commune. They took more than 140 yards of trash from the property and from the beach and now has the chance to become homes to 3 families who will make a significant investment in the community and bring a new vision to the site.

Nancy Foss said the opening statement by the applicant's attorney said the design of the houses was the neighborhood's concerns, which is true, but this is not on the table currently. She is, however, very much concerned about the subdivision in general. They do not want a subdivision where 3 houses are jammed onto lots that have little room, backing up against neighbors, against the street, and completely changing the environment of the neighborhood. The issue is the existence of a 3 lot subdivision and not just the design of the subdivision. Secondly, she asked the Commission if they think the applicant is suggesting the CEQA document be thrown out at this point and she felt this was strange. Commissioner Harris' comments that go into the mitigated negative declaration are valid and should be incorporated into the mitigated negative declaration. The issue of houses on the west side of Western Drive is very important as all are one-story homes. What is possible is a 35 foot high house right on the edge of the street at Western Drive which is completely out of context of the neighborhood, will block major views, and she asked the Commission to refuse the application.

Ms. Harbin gave staff summation stating there are several options available to the Planning Commission which are presented in the staff report. The mitigated negative declaration is being amended by Commissioner Harris' comments with a few conditions added.

Commissioner Harris asked for an opinion regarding the new issue of the notice of exemption being applicable to the project. City Attorney Mary Renfro said Mr. Manley made the exact same argument in February and on February 25, 2007, she issued a letter analyzing the situation and saying, because the project is not nearly a subdivision but it envisions subdivision sale, redevelopment and several phases, it does not fit neatly into any exemption and therefore, an Initial Study needed to be prepared. Following the Initial Study, staff determined that a mitigated negative declaration was appropriate rather than an EIR. She stands by this decision and felt nothing new has been added to the record that would indicate it should now be classified as being categorically exempt. One of the resources she used to reach her conclusion was a book called, "Guide to CEQA" and interestingly, one of the authors was Mr. Manley. On page 76 of which it says, "Early Courts of Appeal decisions understood the term, "project" to have a sweeping definition. As recently as 1997, one Court of Appeal stated CEQA defines a project extremely broadly." So, she stood by the decision that a mitigated negative declaration or some form of CEQA document needs to be prepared and this is not a categorically exempt project.

Commissioner Lee asked if there was a way to adopt the July 6 map without requiring a variance. Ms. Harbin said the July 6 map does not conform to the City's ordinance, which states easement areas are supposed to be outside of the amount of square footage taken for lot area.

Ms. Renfro said the applicant has said they would accept consideration of the July 6 map only if the Planning Commission found no variance is required, and she said a variance was required for the July 6 map. The other issue and concern is that the July 12's map should have been accompanied by new utility plans and how it is to tie into the beach sewer interceptor, and this information has not been analyzed in the CEQA document. She cited Code sections 15.08.120, 15.08.130, 15.08.250 and 15.08.260. Prior to this July 12 map and it being eligible for consideration, it had to be filed which has not been done, nor has it been analyzed in the CEQA document and this is of concern to her with the project moving forward at this time.

Vice Chair Rao questioned if the lots meet the code in relation to their width. Ms. Harbin said they meet the code related to lot width and lot size for single family dwelling units in the area.

She said there were also other lots in the area that were at one time 6,000 square feet and they have been split to 3,000 for each half.

Commissioner Lee noted there were no variances required for the July 12th map, and Ms. Harbin said staff had previously addressed the issue of utilities, the sewer location, connections and laterals.

The public hearing was closed.

Commissioner Harris voiced concern in that although the issue of minimum lot width was accomplished using a zig-zag procedure, he still was not sure this was the best revision. However, there are still many lots in the area that are actually 50 x 100 foot lots and many meet the provision. So, he felt he would be agreeable to the minimum lot width meeting the zig-zag provisions because a straight fence would be installed and the lot widths will still be in keeping with most of the area. Regarding the issue of the flag lot, he was not sure the flag lot was the best way to proceed and referenced Section 15.08.410 which was a better way of approaching it. So, if the project is approved tonight, a final resolution will be prepared. The resolution will not return to the Planning Commission but simply signed by the Chair. Therefore, if this is done, he would like the item of waiver of direct street access re-visited and said he would stand behind whatever conclusions staff stood behind.

Regarding the amendments made to the CEQA documents, **Commissioner Harris** felt these provide more definition as to what is at the property. He said he changed mitigation measures dealing with Part I, Aesthetics; Part III, Air Quality; and, Part IV, Biological Resources and read each section into the record.

Regarding utilities not being presented in the map, **Commissioner Harris** felt the utility plan does not need to be presented as part of tentative map approval and this will be included in the final map approval.

Commissioner Lee felt that based on staff's findings that there are no variances required, it makes it almost impossible for the Commission to arrive at findings for denial. He made an attempt to put together some conditions which would allay some fears about the unknowns regarding height and setback for the future and it appears that he is somewhat constrained based on verbiage in the staff report; "It should be noted that the City's zoning ordinance does not contain regulations related to preserving views." It appears also that the only way to come to some resolution here would be to take Mrs. Knox's recommendation for a neighborhood council-based shurrett and see if some issues could be resolved through that process and he wondered if the appeal period could be extended to allow that to happen. He felt the only option at this point was to try and come up with some compromise relative to the key issues which he felt must happen outside of the Planning Commission.

Commissioner Williams confirmed that the utilities discussion was an accurate statement on the part of staff. Ms. Renfro said prior to the item being brought up, the City Engineer gave the Planning staff a list of things he wanted to see, said each lot must have its own sewer lateral, if using an existing lateral, it must be cleaned, and it is questionable how drainage would work if the tide is above 6 foot level. An HOA is required, the owner needs permission to tie into the trench drain and erosion control must be addressed. She reviewed the code regarding what must be turned in for a tentative map and said her concern is the environmental review. The mitigated negative declaration must look at the new map, but it only looked at the previously submitted map. So, one of the findings which the Commission must make is that there is no

substantial evidence that the project, as mitigated, will have a significant effect on the environment. She does not know whether this can be done or not, as well as other findings which must be explicitly made prior to approving the mitigated negative declaration. The project cannot be approved prior to adopting the mitigated negative declaration, specific findings must be made in approving the map, and any conditions should be stated tonight into the record and a resolution would outline those conditions and findings.

Commissioner Harris referred to the draft resolution from the August meeting, page 4, and said, "A combined storm water and drainage improvement management plan for the parcel shall be submitted to and approved by the City Engineer prior to the issuance of building permits. Each parcel shall have its own sewer line, utility plan for a parcel shall include the location of the lateral sewer line on the properties, which shall be subject to review and approval by the City Engineer and the Sewer District. If the applicant is to use the existing lateral, it must be cleaned, CCTV'd and passing a test prior to approval." He confirmed with Ms. Harbin that these items are not a part of the Tentative Map approval.

Ms. Renfro said the proposed resolution was not contained in this packet and said the resolution she has also has a condition H; "Access to the shoreline will be provided to a pedestrian access way easement" and this is one the applicant had asked to be removed and specific findings therefore would need to be made.

BREAK

Vice Chair Rao called for a brief break and the Commission thereafter reconvened the regular meeting.

Commissioner Harris said before the Commission was the approval of a Tentative Parcel Map and approval of a mitigated negative declaration for compliance with CEQA. With respect to the findings required for approval of the mitigated negative declaration required in conformance with CEQA guidelines paragraph 15.07.4 and the Public Resources Code, paragraph 21081, the guidelines for adopting a mitigated negative declaration requires the finding that there is no substantial evidence that the project, as mitigated, will have a significant effect on the environment and that the mitigated negative declaration reflect the City of Richmond's independent judgment and analysis. He felt this could be accomplished relative to the mitigation monitoring and reporting program for the Cozy Cove parcelization project, dated April 2007 and presented at the July 2007 meeting.

ACTION: It was M/S (Harris/Williams) that the Planning Commission approve the mitigated negative declaration accepting the finding that there is no substantial evidence in the project as mitigated due to the April 2007 mitigation monitoring and reporting program, including the additions to the mitigation monitoring and reporting program which was included as part of today's packet in his letter, that the mitigated negative declaration reflects the City's independent judgment and analysis, that the custodian of record is the City of Richmond Planning Department, located at 1401 Marina Way South; unanimously adopted.

MOTION: Commissioner Harris moved that the City prepare a final resolution for the Planning Commission approving TPM 1103631 to subdivide a 24,479 square foot parcel into three single family residential lots subject to the findings stated in the draft resolution; and adopt findings 1, 2A, 3G, and 3 included as part of the Commission's August 2, 2007 packet subject to conditions

A, B, C, D, E, F, G, H, J, K, L and M as stated in the draft resolution; and request that the City re-evaluate condition L relative to the access to flag lots as stated in the document

DISCUSSION: **Commissioner Lee** said Commissioner Harris was directing staff to draft a resolution and he asked what date did the appeal period begin. **Ms. Renfro** said the appeal period commences today; or the date of the decision. She questioned re-evaluation of condition L and said in order for the appeal rights to commence tonight, this should be clarified.

Commissioner Harris recommended the resolution be amended to state that the applicant agree to a waiver of direct street access to allow for access to Lots B and C as laid out on Exhibit B on the July 12th parcel map.

ACTION: It was M/S (Harris/Williams) that the City prepare a final resolution for the Planning Commission approving TPM 1103631 to subdivide a 24,479 square foot parcel into three single family residential lots subject to the findings stated in the draft resolution; and adopt findings 1, 2A, 3G, and 3 included as part of the Commission's August 2, 2007 packet subject to conditions A, B, C, D, E, F, G, H, J, K, L and M as stated in the draft resolution; and request that the City amend the resolution to state that the applicant agree to a waiver of direct street access to allow for access to Lots B and C as laid out on Exhibit B on the July 12th parcel map; unanimously adopted.

Vice Chair Rao noted the item may be appealed in writing to the City Clerk by Monday, September 17, 2007, by 5:00 p.m.

4. CU 1103339 – Relocation of an Alcoholic Beverage License Type 20 at 544 Harbour Way - PUBLIC HEARING to consider a proposal to relocate an Alcoholic Beverage Control Off-Sale License Type 20 from the convenience store located at 564 Harbour Way to the grocery store located at 544 Harbour Way (APN: 534-340-023). C-1, Neighborhood Commercial Zoning District. Nagi Almang, owners; Mazen Elmashni, applicant. Tentative Recommendation: Denial

Vice Chair Rao referred to Item 4 and said the applicant has provided a letter and read it into the record, dated September 6, 2007, which requests that the Commission hold the item over to the next month's meeting.

Commissioner Harris felt the item must be held over by motion, and **Ms. Renfro** said she was concerned that if speakers were present for the item may not be able to return at the next meeting, and she felt they should have an opportunity to address the Board. **Vice Chair Rao** confirmed with those speakers present that they were able to return at the next meeting.

ACTION: It was M/S (Harris/Lee) to hold over CU 1103339 to the October 4, 2007 meeting upon request of the applicant; unanimously approved.

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). The project proposal includes a request for an exemption to floor area ratio (FAR) development standard. Knox-Cutting Specific Plan: R&D/Business, Light

Industrial and Sub-Area D. David Spatz, owner/applicant. Tentative Recommendation: Various.

Hector Lopez gave a brief description of the request as outlined in the staff report, said the development proposes 64 live/work units, accessory buildings, he discussed site amenities, said 154 parking spaces are provided for the entire project, an initial study and negative declaration has been prepared for the project, mitigation measures have been incorporated to reduce any potential significant impacts to a less than significant level, said the specific plan is not clear as to the nature of live/work units, and staff has developed three options for the Planning Commission and recommends that 1) the Commission approve CU 1103502 and exemption to the floor area ratio, approve the mitigated negative declaration; or 2) to modify the project by approving the conditional use permit and the floor area exemption request; or 3) to deny the conditional use permit and request for floor area ratio exemption.

Commissioner Harris said he sent an email requesting that certain portions of the Knox-Cutting Specific Plan be referred to, especially relating to the issue on the definition/interpretation of how live/work is permitted within the specific plan and within the City as a whole. He asked to look at Appendix F, dated September 1991. Page F-1 states that live/work uses will be permitted in all commercial districts and conditionally permitted in all industrial districts. Additionally, applications for live/work units subject to a conditional use permit will be subject to procedures the same as indicated in Section 15.04 of the zoning ordinance. He said it also states at the end of the Appendix that, should conflicts occur between live/work standard and future revisions to the Richmond Ordinance, the revisions to the zoning ordinance shall apply.

Secondly, he referred to page E-1 of the specific plan, stating there is a list of impacts and mitigation measure listed. Among those is Mitigation Measure 3.12; where there is conflict between the specific plan and adopted policy plans, there is provision for allowing residential uses with the approval of conditional use permit in areas predominantly designated for research and development business. The policies of the Richmond General Plan do not provide for both light industrial and residential uses under the same land use designation. The mitigation measure for that policy is: Amend the policies of the Richmond General Plan to allow, under controlled circumstances, e.g. conditional use permit approval, the development of residential uses within specific industrial areas. The general plan does not mention comparable to the specific plan designation of research and development business.

He said it appears that live/work is permitted in commercial districts and is conditionally permitted in both districts M-1 and M-2 and he said there is a mixture of light industrial and office/flex.

David Spatz, Applicant, described a 64 unit light industrial development with a live/work designation, felt it was the right development for Richmond and the Ford peninsula, said Silvia Magget was present who could address legal issues; landscape architect Marcia Vallier could address the landscape plan and Robert Alvarado of Charles Salter Associates had conducted some sound and vibration analysis. They also have the City's CEQA consultant, Michael Kent, in the audience, who could answer questions regarding the mitigated negative declaration and Michelle Seville, the City's Arts and Cultural Manager was also present, who is experienced with live/work in the arts community.

Mr. Spatz said the development is focused on the artist and artisan, the design has been well vetted by the Design Review Board and a letter in the packet describes this. Final Design

Review Board approval is subject to the Planning Commission resolving a key land use issue; whether live/work is allowed and meets the necessary findings for a conditional use permit. He noted the development is in an M-2 light industrial area, in all zoning designations live/work is a conditionally allowed use, and the City's ordinance is distinct and different from residential. The Knox Cutting Specific Plan states the area is a buffer zone and they agree, however, what is a better buffer than live/work, light industrial. Language on pages 4.3 and 4.4 stated that uses on the western portion of the area be more like heavy industrial uses to the west. He presented a site plan and said none of the development was to the west of Marina Way and Harbour Way, most of it was to the east which was high density residential.

He said opposition would argue that live/work is not allowed; however, it is conditionally allowed in this part of the Ford peninsula. Opposition will argue there is too much noise, dust and pollution; however, he guessed it was okay for people to work here, so he asked everyone to remember the BAAQMD regulates emissions from industrial areas and businesses must comply. The negative declaration also points out that the wind blow north 93% of the time and he is south and east. Opponents will also say live/work it too close to the railroad, but in fact, within the City of Richmond, San Jose, Oakland, and Emeryville, there are many high rise residential developments very close to the railroad. The negative declaration shows we can mitigate for all issues, and they have taken a step further and has had Salter & Associates prepare some recommendations if the City wants to impose higher standards for mitigation as far as railroad noise, sound and vibration. He said the architecture is industrial revival and he presented a display of an example of what a building would look like along Marina Way South. He said the parapet walls are at different heights, are articulated, and some of the units pop out and recess, which was recommended by the Design Review Board. There is a beautiful entrance to this property and in looking at a streetscape view, you will see what people driving up and down Marina Way South will see. He showed a view from the property directly south; Harbour Business Center looking north and said they were very articulate looking, as well.

The units themselves have an upstairs living unit, have a downstairs 1080 square feet work area, 40% of which has a 23 foot high ceiling, with the balance as a 12 foot high ceiling. He noted it is an interesting and innovative light industrial work development, felt the units meet the needs of today's artisans and artists, there is a strong mitigated negative declaration, it requires CC&R's that establish live/work occupants know they are moving into an industrial area. The negative declaration shows clearly that they can mitigate to a less than significant standard for all CEQA issues. They also propose to add that occupants have a valid City of Richmond business license and this will be a requirement in their commercial lease. They have also agreed to meet all required mitigations in the negative declaration. The residents of this complex will be 24 hour residents and will enliven the area, and when artists and artisans move into an area, the community thrives, people come and they enjoy the area. The City has selected near the site a ferry terminal and Artisan Cove helps make that terminal more viable by rooftops, by workers there, by visitors to frequent the wares of those artisans/artist's users.

Commissioner Lee asked if there was any way to ensure this is a uniquely a working environment project as opposed to a living space with a big garage under it. Mr. Spatz said they are requiring a business license which requires them to describe their business and submit certain documentation. It also states clearly in the Richmond Code that you cannot separately lease or rent the live portion from the work portion and they must be done together. He felt this could also be inserted in the lease. **Commissioner Lee** confirmed this was not yet incorporated into the CC&R's and Ms. Harbin said they are usually prepared afterwards to be submitted to Public Works with the final improvement plan.

Public Comments:

Sylvia Magid, Stein, Rudger, Cohn & Magid, LLP, Attorney for applicant, said live/work is not a residential use, California law recognizes that individuals engaged in the arts require larger amounts of space than a dwelling unit provides and any residential use of that space is accessory to the primary use of the space as a place of work. The General Plan puts live/work environments under commercial categories and industrial categories and not residential categories. The general standards of the zoning ordinance identify live/work as its own category of use drawing from state definitions. The Knox Cutting Specific Plan simply reiterates the definition of live/work that is found in the zoning ordinance. Representatives have made the argument that live/work is placed in the Ford peninsula because the specific plan says no residential use; however, live/work is not a residential use in the City of Richmond and the city has not treated it as such in any of its governing codes. Moreover, work environments have been approved in the Ford peninsula, namely the Ford Assembly building.

She said the zoning ordinance contemplates live/work environments will exist in industrial districts and specifically states that the occupancy of a live/work space, by selecting this type of occupancy, accepts the conditions found in the area including but not limited to industrial noise, pollution, traffic and odors to the extent they are permitted by law in the base district. Regarding the applicable floor area ratio for the project, she said the FAR set forth an M-2 zone is .65 and FAR for the project area set forth in the general plan is both .65 for light industrial and .60 for industrial/office flex, and the project's FAR is .48, and therefore it complies with both the general plan and zoning ordinance, and we believe the general plan FAR that should govern the FAR for the project since it was amended in 1994, making the FAR set forth in the 1991 specific plan outdated, inconsistent and superseded as a development standard. However, even if the specific plan FAR is found to be applicable, the project meets all necessary findings required for a variance. She noted there were many projects in the area with higher FAR than that allowed in the specific plan and granting the FAR here would not be a granting of special privilege. To deny the exemption would deprive the property owner of privileges enjoyed by others in the vicinity.

She said only 31% of the site is actually covered by building and it has scenically more landscaping than required, so there is no injury or detriment to public safety or general welfare if there is a grant of the FAR exemption. Lastly, the project meets the standard conditional use permit findings under the zoning code and under the Knox Cutting specific plan, the project is located within the general plan land use category that permits live/work, it meets zoning requirements of the M-2 zone, the zoning ordinance live/work standards, it would serve Marina Way South and there are public facilities nearby including a public marina, a community center and City Hall, and the project was mitigated by the negative declaration, is compatible with the public health, safety and welfare of persons residing or working nearby. Mr. Spatz is even willing to install mitigation measures beyond the City's requirements in accordance with the Salter study. Further, the zoning ordinance and specific plan requires recording title that future owners are aware of the heavy industrial use in the area.

Robert Alvarado, Charles Salter Associates, said they have significant experience in noise and vibration studies, they work on about 900 projects a year many of which are sites with similar sensitive uses or residential uses near trains and other noise/vibration-generating activities, they have significant experience in Richmond with the Richmond Transit Village, Anchor Cove and the Anchors at Marina Bay project. He congratulated the City for the quiet zone and felt it was a movement in the Bay area. He has been working with Mr. Spatz' earlier design and the current project has had significant modifications to minimize the amount of impact from noise and

vibration from the train line, consistent with the noise element language in the general plan. He said they did comment on the sound wall, its location and height, connecting buildings E and F which are near the crossing and extending the sound wall to the other portion's side would not be needed because there is no outdoor use area and with noise changing throughout the site being not as significant as it is at the crossing, it would not need to meet the city's outdoor and interior goals. Although the quiet zone has been implemented in areas, they did not take that into account for this site but would be able to re-analyze the benefits of the quiet zones if this does present itself to be a design decision by the City. They have also done significant amounts of noise and vibration testing including 10 days of continuous monitoring on the site and they are confident that with incorporation of acoustical features, the interior and exterior noise levels will be in compliance. If additional recommendations are needed, they are also amenable to considering these, as well.

Commissioner Harris said there is no yard space on the properties and something he did not see in the plans was a description of noise reduction criteria that Salter Associates has adopted for both the window systems as well as wall systems between units. Mr. Alvarado said at the current stage of their analysis, they are looking at the matter as one of land use compatibility. Regarding party walls or mechanical noise, this has not been included, which is typically done in multi-family buildings and is a code requirement. But they are only looking at noise generated from traffic and trains into the dwellings as well as noise affecting the outdoor areas that are interior to the portion of the project.

Commissioner Harris questioned train noise on the interiors of the units. Mr. Alvarado said in the July 23rd report, Attachment 3, it includes STC recommendations for the windows as well as comments in regards to the exterior walls. For this project, they are proposing to use CME walls which is uncommon. The report includes minimum standards to meet the city and state as well as added recommendations in the case where the City wants to be more conservative.

Commissioner Lee questioned if the issue at hand is that we are worried about people inside the units making too much noise or that they should not be allowed to live there because of noise generated from other sources. Mr. Alvarado said there should be no concern about either one; the purpose of the study and discussion is to determine if the recommendations can be incorporated to reduce the outside noise to interior levels consistent with the city and state standards, and his conclusion is that yes, they can, and recommendations have been made to the exterior of the building to incorporate features to reduce noise. After mitigation, he does not feel there is a concern that noise levels inside would result in an unreasonable level or one that is inconsistent with the City of Richmond. He felt that with adjacent, similar uses, this is a more common development seen in the Bay Area due to available land and he would characterize this as a spur line and activities are of slow moving trains without significant numbers, as opposed to main line high speed trains.

Marcia Vallier, Vallier Design Associates, described the overall site plan, stating 30% of the site is landscaped which is doubled what is required in the zone. The area will have automatically controlled landscaping, it will be low maintenance/drought tolerant plant species appropriate for the climate, it complies with the Green Point checklist, which she reviewed in detail, said the irrigation controller will be high efficient water system which will have bubblers and low flow irrigation and it will be hydro-zoned so that the exposure, it complies with the City's landscape design and development guidelines as well as the EBMUD and state-mandated model efficient water landscape ordinance. There are 161 trees on site; there are 18 medium-scaled street trees that run along the frontage, 12 palm trees at the entry point to accent the entry, 75 parking lot trees with two alternating species, which is double the requirement, each unit has two

dedicated parking stalls separated by either a 4 or 8 foot landscape strip, there are 28 shade and accent trees that surround the site as well as 28 trees added to the southern side of the property in order for shading. There is 12,200 square feet of open space that functions as infiltration areas that is part of the site storm water management plan and she displayed accent pavers, an arch, accent planting, and common areas for public art. There are walls on all three sides which are landscaped and would buffer sound, one being taller to mitigate sound. Fencing will have a concrete wall made to look like land or earth along the frontage.

Public Comments:

Jim Cannon, Levin Richmond Terminal and Richmond Pacific Railroad, said they are opposed to the project, said residents will most likely complain to the City and possibly the courts about the effects of the industrial and transportation activities on their living environments. The effect will be to hinder industrial activity and ultimately drive industry out of Richmond. He said industry is essential to the economic well-being of Richmond and it must be preserved. Industries threatened by the project are California Oils, Lubrication Specialties, BNSF, Richmond Pacific Railroad, Levin Richmond Terminal, Semex, Eagle Rock Aggregates, Pacific Atlantic Corporation, Simms UNU, the Port of Richmond Terminal Three, Golden Bear, the Cannery and even the Ford Building. These uses generate significant noise, light, truck and rail traffic. LRT's operations are loading and unloading cement, concrete aggregates, petroleum coke and scrap metal and in a typical year, 45 ocean going ships dock for a total of 227 days, loading and unloading continuously 24 hours a day, using cranes, conveyors, front end loaders and trucks which beep when backing up. At night, the terminal is lit up, trucks go through Harbour Way and Wright Avenue intersection at the project's corner location, the Richmond Pacific Railroad operations stage railcars for nearby industries, the typical commodities are hazardous and non-hazardous materials. The project would bring sensitive populations, including young families with pregnant mothers and small children into the project, City officials would find it difficult to ignore complaints about noise, lights, and truck traffic. The warning notice to the fact that the project is an industrial zone would not prevent residents from complaining. Live/work residents in the Port of Benicia successfully sued to keep industries out of the port after they were residing there as live/work.

He felt the Commission should prevent such conflicts from occurring in the first place by denying the project and because it is inconsistent with the Knox Cutting Specific plan which prohibits residential use in the buffer zone. The specific plan designates the buffer zone between industrial and residential uses. He said he was on the team that worked on the specific plan and discussed language specifically used to avoid conflicts. He felt the specific plan and zoning ordinance mention live/work as a type of residential use. Appendix F of the plan regarding live/work speaks of live/work as a "residential use" which is included verbatim in the zoning ordinance. Also, the staff report talks about units having both work and residential components. On page 3, it states, "The second floor provides the residential use function. The residential component consists of a living area, kitchen, bedroom and bathroom." Again on page 7, "The most significant concern related to the project is the project's residential component's proximity to heavy industrial uses and the railroad track." On page 4 it states, "The noise impact study provides specific measurements to reduce interior and outdoor noise levels to the residential portion of the units." Public policy concerns also dictate that live/work be considered a type of residential use. Because live/work is a type of affordable housing, it may attract the economically disadvantaged, young families with pregnant mothers, small children and the City cannot ignore this possibility. On page 8 of the staff report, staff intentionally misrepresents the Knox Cutting specific plan's page 4.4 and states that "pure residential use is not allowed" which is substituted with "all residential use". Finally, there is no guarantee the project will not be used

exclusively for residential purposes, as no restrictions are in place to preserve this and once sold as condominiums, nothing prevents the owner from remodeling the units so that they may be exclusively residential and the entire project may end up being exclusively residential. Unless the city is willing to prevent the conversion of work space to residential use, it should consider the real possibility that the project will become completely residential. Permitted uses within 10 generalized land uses shall be stated in the text of the land use element and he referred to section 4.3 of the specific plan which talks about the area being a buffer zone.

Commissioner Harris said he understands the argument and reference made to residential uses not being permitted in transition buffer zone, but aside from this, he asked if Mr. Cannon accepts the provisions of the live/work provisions in the specific plan; that they be permitted in commercial areas and conditionally permitted in light industrial areas. Mr. Cannon said this was added later and he did not have anything to do with this. He noted this was a specific area of the specific plan which said no residential.

Commissioner Harris said relative to the map of sub-base area D which was provided by Mr. Cannon, immediately northwest of the transition buffer zone there is a highway commercial area adjacent to the Port Maritime area, bordered by Cutting Boulevard to the north between 5th and 7th Streets, and by Harbour Way to the east. Mr. Cannon said the buffer zone did not go up into that area. They were talking about I-580 to Hall Avenue and between Harbour Way and Marina and this was to always be the buffer zone, and the highway commercial area above already is.

Commissioner Harris said if that is highway commercial area and Appendix F of the specific plan states that live/work is permitted and conditionally permitted in industrial areas, it would be permitted adjacent to the Port Maritime area, and he asked Mr. Cannon if this was not valid. Mr. Cannon said it appeared that it is valid. **Commissioner Harris** said there are plenty of other locations in various sub-areas where there are commercial areas where live/work would be permitted that is adjacent to Port Maritime uses as well as heavy industry uses in the southeast side of the City. He understood the argument, but it does not appear that this is what the group was leading to at the time. In his opinion, he felt a mistake had been made on page 4.4--that when they said no residential uses permitted, they meant no residential uses except for live/work, or they were making an assumption that live/work was not a residential use.

Vice Chair Rao said Mr. Cannon provide a list of industries affected or threatened and he asked specifically how the port would be threatened if the project is approved. Mr. Cannon said there will be lights, glare, they are able to operate 24 hours a day, trucks going in and out, they are bringing in cars now and loading them on the rail carriers and on the truck carriers that go up and down those streets. Soon, people will complain they do not want that many trucks going through the area.

Paul Minault, counsel for Levin Richmond Terminal and Richmond Pacific Railroad, said they believe that the Commission should defer action on this matter or should deny the project until the buffer zone study process is complete. The process began in June of 2006 when the Council ordered the Planning Director, within 60 days, to clarify land use regulations applicable in the buffer zone. In the resolution, the Council noted that the M-2 zoning applicable in the zone allowed live/work units under a conditional use permit and because of the question; "whether these regulations are fully consistent with the intent of the specific plan." The Council stated that the City needs "clearly defined land use policies" and stated that the zoning ordinance "must conform to those policies". The Council ordered staff to review, clarify and recommend changes to the zoning ordinance and subsequently, staff and the Planning Commission made a recommendation prohibiting live/work in the buffer zone and forwarded the matter to the Council

and ordered staff to revise the zoning ordinance accordingly. Clearly, therefore, the staff, the Planning Commission and the Council all agreed that the present zoning in the buffer zone is not consistent with the specific plan and does not carry out the mandates of the plan and that live/work should be prohibited in the buffer zone. So, he felt this seemed pretty simple and clear. Until the zoning ordinance is amended, he does not see how the Planning Commission can responsibly approve the project because you would have to find that the zoning ordinance is consistent with the plan which it is not and that the residential use is in conformance with the specific plan, which is not. So, he asked the Commission to either deny the project or defer action on the project until the buffer zone process is complete, the City has clarified its zoning ordinance, as the word "ambiguous" has been used to clarify the relationship between the zoning ordinance and the specific plan, and he believes the Commission is struggling with it now for good reason.

Commissioner Lee questioned if there is a buffer zone that is being considered that is not clearly defined or complete yet, and Mr. Minault said the revision to the zoning ordinance as it affects the buffer zone is what is in process. **Commissioner Lee** asked how the City could hold somebody to a zoning clarification that has not yet occurred, and Mr. Minault said he is asking the commission to consider if there is a need for a clarification. His point is that he questions how a decision could be made that is clear and reflects a concise direction if the City has already decided that the planning authorities are not clear and that there is no solid basis on which to make a decision.

Ms. Harbin said during the Council hearings on the buffer zone clarification issue, it was also stated that it was known that this particular project would not be subject to the issues related to clarification of the buffer zone because it had been in process before this was proposed.

Melanie Seng-ota, Simms Group, urged the Planning Commission to deny the conditional use permit and the mitigated negative declaration because of substantial evidence supports a fair argument that the proposed project will result in significant environmental impacts. The City, therefore, cannot fulfill its CEQA obligations with a mitigated negative declaration and must prepare an EIR. She submitted a comment letter tonight, which details that placing a high density residential development near existing heavy industrial use will result in significant impacts in the areas of aesthetics, public safety, hazards, traffic, health, public services, and wanted to focus on noise and incompatible uses. She said the initial study properly uses the 45 decibel level as the interior noise significance criteria and also the supplemental noise study provided by Mr. Alvarado. The average noise level in the interior sleeping quarters should not exceed 35-40 decibels and the maximum noise level should not exceed 45 decibel levels to minimize sleep interference. The initial study data also shows that there are at least 3 trains that pass during evening hours. The Federal Railroad Administration regulations require that trains sound their horns for 15-20 seconds prior to entering an intersection and requires the horn to be repeated or prolonged until the locomotive occupies the crossing. She said this means that since the proposed sound wall and buildings block the engineer's view, horn blasts would likely be longer than the requisite 15-20 seconds. The applicant's proposed configuration of the buildings puts the closest bedroom window at 100 feet from the railroad tracks. The nominal exterior noise level will be about 105 decibel levels at that point and no practical window assembly will reduce this level to the 45 decibel interior noise level. Even if an airport type window is used with ½ inch of laminated glass and then 4 inches of air and then another ½ inch of laminated glass, it would only bring the interior noise level down to 61 decibels, which is significantly above the 45 decibel level laid out in the mitigated negative declaration, which does not explore this as a mitigation measure. Therefore, she reiterated the need for the City to consider an EIR instead of a mitigated negative declaration.

Fred Glueck, President, Council of Industries, said the Knox Cutting Specific Plan was developed with the specific intent of not allowing residential uses within the buffer zone. Their position is that the specific plan denies all residential uses including live/work. Staff has interpreted the general plan to favor its position with regard to this development, the developer will be able to make contradictions to their statements for those opposing the project, which does not mean that the project is appropriate for placement in the buffer zone. In November 2005, the Council of Industries sent a letter to the Planning Department stating our opposition to the project. In the staff report, it states, "Page 4 of the Knox Cutting Specific Plan states pure residential is not allowed in the buffer zone" which he felt was incorrect. He referred to the Knox Cutting Specific Plan on page 4, it states, "no residential uses would be permitted conditionally or otherwise." It does not say anything about "pure" in the specific plan, which has been intentionally placed in the staff report to misrepresent and mislead the Commission and he asked the Commission not to be misled or misrepresented by this statement. Therefore, he respectfully requests the Planning Commission to deny the live/work project encroachment into the buffer zone and feels it is inappropriate within the purview of the Knox Cutting Specific Plan.

Rebuttal – Applicant

David Spatz, Applicant, said live/work is not a residential use by either the City or State standards, the project is not expected to bring large numbers of pregnant women or children, especially compared to the high density residential development that is all around the area in the Marina, and live/work is allowed and is the best buffer available. Residential is a component of live/work but it is incidental to the work areas. He said they are not asking for approval of a residential development here. The negative declaration requires strong CC&R's that run with the land. They are there forever and those CC&R's will have to be drafted but will disclose to residents of the project that they are in an industrial area. The project does not front on Harbour Way South, it barely makes it halfway between Marina Way South and Harbour Way South and contentions about trucks on Harbour Way South somehow affecting the project are simply not realistic. The City Council, in its discussion regarding clarification of the buffer zone in Knox Cutting clearly stated that the project was exempt and could move forward. He felt the project was wonderful for Richmond. In the future people in the Signature Property homes looking west will see a light industrial live/work that is a buffer. If the industrial community to the west looks east, they will see live/work that is a real buffer, as well. The Council of Industry would say the buffer should just be more industrial but then it simply is a median strip of Marina Way South.

Commissioner Lee questioned if the units would all be owner-occupied or would some be owned by investors and then rented out. Mr. Spatz said at this point, he plans to own and operate the property. It is not a for-sale condominium property and he will control it. Regarding whether it could become condo's in the future, it could, but his current plan is to own it and operate it.

Rebuttal – Opponent

Paul Minault, counsel for Levin Richmond Terminal and Richmond Pacific Railroad, said he understands the Council's concern when they required the process to be considerate of the project proponent, but he urged the Commission to consider this was ill-advised for the following reasons: This residential prohibition in the specific plan has been in place for 15 years, it has protected industries that have been in the city for decades who are the heart of the City's economy, the project proponent had advanced notice of the residential prohibition in the specific plan and has no rightful expectation of his project being considered under the existing zoning

until it has a permit and has expended substantial sums and reliance on that permit. He said the Council's concern, while well-intentioned, fails to reflect the balance of interests, there are a number of industrial enterprises and economic activity and their concerns are thrown out the window to address the concerns of a single project proponent who is aware of risks he faces, which he feels is a mistake.

Planner Hector Lopez noted the three options staff has developed for the Planning Commission include: 1) the Commission approve CU 1103502 and exemption to the floor area ratio, approve the mitigated negative declaration; or 2) to modify the project by approving the conditional use permit and the floor area exemption request; or 3) to deny the conditional use permit and request for floor area ratio exemption.

Ms. Harbin said the question also the Planning Commission needs to decide is whether it is appropriate to have live/work uses in this area, and if it is, then the Commission would approve the conditional use permit. If not appropriate, then the Commission would deny it, or could modify the conditions as presented in the report.

The public hearing was closed.

Commissioner Williams said he spends a significant amount of time in Oakland and the entire corridor incorporates railroad trains, an extraordinarily vibrant port which is sometimes referred to as the economic engine that drives the East Bay, there are numerous high rise and mid rise condos and live/work spaces that are fully occupied, as well as some under construction. He said the I-880 corridor is filled with large vehicles making noise most of the time, and this observation is made by him regularly. **Vice Chair Rao** said his observations in San Francisco are similar.

Commissioner Lee felt one of the key issues here is to make sure the project stays differentiated from a purely residential use and maintains the work element of a live/work space long-term. He felt the applicant has made references to business license requirements and other requirements and if the Commission approves this, it is critical that in the CC&R's, there are elements that guarantee that those who occupy the units are performing work in them and therefore, they are in fact live/work units and retain that character moving forward. He was open to suggestions on how this might be done over and above the business license regulation, and felt it was critical.

Commissioner Harris said not discussed is the issue of the FAR. Based on the information before the Commission, it exceeds what is in the specific plan. Therefore, he questioned if this was conditional use or is it not a variance that the Commission would need to be granting. Ms. Renfro said she has opined on several occasions to the Council of Industry about this and other projects and to Mr. Spatz' attorney about this project, that the Knox Cutting Specific Plan was adopted in 1991. It sets forth certain development standards. The General Plan was adopted in 1994 to the extent that it is different than the specific plan, the General Plan standards would govern. The zoning ordinance was updated in 1997 and subsequently and to the extent that the later development standards of the general plan and the zoning differ from the specific plan, the later standards govern. In the past what this body has regularly done; however, on this particular FAR question, is they have granted variances consistently. So it was a question for the planners of what was historically has been done and what the new attorney has been opining for two years as to where we go with this. She thinks the applicant's attorney did a nice job of segwaying this for everyone as to how to address this. In her opinion, the correct FAR is the .5 out of the general plan because this property has two land use designations which

provides for two different FAR's. The planner correctly applied the more restrictive standard. He then was faced with the question of people relying only on the specific plan and the granting of variances in the past. So, findings can be made because the findings require that to not give the applicant the variance, he would be denied privileges enjoyed by others. She opines that the .5 is the correct FAR, but if the Commission feels more comfortable with the historical actions, then it could go the variance route.

Commissioner Harris said another project done in the past was the 9 warehouses built right off the Regatta Way exit from the freeway. He was sure the Commission applied the variance for this project. Also, going to the zoning ordinance provisions listed, it is true that live/work is permitted without conditions in commercial zones and said in M-1 office flex, live/work is conditionally permitted; in M-2 light industrial, live/work is conditionally permitted use per Section 15.04.320 of the zoning ordinance. However, according to the specific plan and based on the undefined language the City has in the transition buffer zone, there is an argument for it not being valid. So, it is his contention that the live/work issue, when looking at the totality of the specific plan, live/work would be permitted in the transition buffer zone, although there is clear language on page 4-4 that states it is not permitted, feels this should fall under a variance application consistent with what the Commission has done on some other recent projects relative to the FAR and his motion would be to continue this item to have language be prepared regarding this statement, incorporating the variance findings relative to the FAR issue.

Commissioner Lee asked for clarification from the City Attorney and asked whether technically, the applicant needs a variance to have acceptance for the FAR. Ms. Renfro said yes; if the Commission feels that the governing principle is that of the specific plan because historically this is what has been done. The FAR permitted under the specific plan is .35 and their FAR is closer to .48 or .5. In order for them to achieve the density applied for, they would need a variance from the Knox Cutting Specific Plan, which has historically been followed by this commission.

ACTION: It was M/S (Harris/Williams) to continue the item to October 4, 2007; that the live/work issue, when looking at the totality of the Knox Cutting Specific Plan, live/work would be permitted in the transition buffer zone, although there is clear language on page 4-4 that states it is not permitted and therefore should fall under a variance application consistent with what the Commission has done on some other recent projects relative to the FAR; and direct staff to prepare language regarding this and incorporating the variance findings relative to the FAR issue; unanimously approved.

EXTEND MEETING

ACTION: It was M/S (Harris/Lee) to extend the meeting to 12:00 midnight; Vote: 3-0-1-1 (Lee abstained; Finley absent).

- 3. EIR 1102923 – Forest Green Estates: Comments on the Draft EIR - PUBLIC HEARING** to receive comments on the recirculated/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.

Vice Chair Rao said the item is to hear comments on the Draft EIR for Forest Green Estates, and Planner Joe Light gave the staff report, stating the re-circulated draft EIR was released on June 22nd for an original 45-day response period ending August 6th. The City Council extended that response period for an additional 45 days ending on September 20, 2007. The Commission will accept oral comments tonight on the draft EIR which does not preclude the opportunity to have further comments received in writing by the September 20th deadline. Unlike other items heard, there will be no decision made by the Planning Commission on the item and there will be no discussion on the part of Commissioners on the item either. The purpose of the comment period is to only receive comments on the draft EIR itself and not on the general merits of the project. He asked those making comments tonight to hone their comments only to the EIR itself and to save comments on the larger project merits for subsequent hearings when the Tentative Map and Conditional Use Permit are reviewed.

Public Comments:

Joanne Spalding, Staff Attorney with San Francisco Sierra Club, am not speaking not to discuss the defects of the environmental analysis in the re-circulated draft EIR which she felt are serious and numerous, noted many speakers have left unfortunately, and they would submit extensive comment on those issues. She said the environmental review process is fatally flawed which violates California Planning law and CEQA. The environmental review has been defective from the outset and the latest incarnation of the re-circulated draft suffers the legal defects that doom any actions that the City may take to approve the proposed project; 1) the EIR only addresses the tentative map without considering the project as a whole which is improper segmentation under CEQA; 2) if the City uses this EIR to approve the tentative map, it violates planning law because the document itself provides no basis to determine the consistency of the project with the general plan and its relevant ordinances. In order to approve a tentative map, you must make those consistency determinations; 3) if the City approves the tentative map, it will be too late later to evaluate the consistency because the approval of the final map is a ministerial act. She reviewed the history of the environmental review of the project, stating in April of 2006 a draft EIR was intended to serve as environmental review for the entire project, the City received over 150 adverse comments pointing out serious deficiencies of that document and subsequently withdrew that document, made some changes in the re-circulated draft EIR, but the main change is that it is now saying they are not requiring the project applicant to submit enough material to review the entire environmental project, but just look at the tentative map. There were many comments made on the sensitive eco-systems, unstable geology, and complex hydrology of the site that are being deferred to some later time. The re-circulated draft EIR now defines the project much more narrowly. This invokes a process that would turn California Planning law on its head. By having the City approve the Tentative Map, it would later consider consistency with the general plan and things like the hillside and fire physical constraint ordinance. It does not even purport to support consistency findings, but simply requires the applicant to submit information that would enable the Commission to make those findings. Without proper environmental review, the City cannot legally make the required consistency findings and without making those, it cannot legally approve the tentative map. So, the re-circulated draft EIR is useless for any valid purpose. If the City approves the tentative map based on the re-circulated draft EIR, it will be too late to evaluate consistency with applicable plans and ordinances or to perform environmental review required to support those findings. While the City may be able to impose some conditions on the tentative map, those are conditions that must be set aside before the final map is approved, where this project contemplates conditions that would not be satisfied until during construction, which is not legal. This violates CEQA because it segments the project, violates general planning law and the City should not move forward with the project and should require that the draft EIR be redone again.

James McDaniel said he went through the first process, sent his letters in and attended meetings, and he felt the process was starting to get expensive. The suppositions contained in the re-circulated EIR are not fact, and the document does not indicate mitigations will necessarily work, such as digging a hole in the ground, shot-crete it, which would take care of the water problem. He disagreed and said the hole will fill up in sediment. Regarding easy access going in on Wesley and Clark, if you look at the plan there is only one road in the project to get in and out. If there is a fire on the hill, the Oakland Hills Fire will happen all over again. Regarding core drillings which went down 100 feet, you can see where there is current, water flows, current slide prone areas, and this is not even addressed, and their own core samples say that it is unstable. Regarding public services, Richmond does not have enough police force to take care of 120 additional homes, the area's added traffic, additional crime, and the traffic on San Pablo Dam Road was already at its maximum because of high commuting traffic. Regarding the hillside ordinance, he asked that it not be changed and felt it is a protection for all residents who live in the hills. It is working well and asked the Council to keep it as is.

Irene Davison said many people in the audience are still here, many had to go home and she felt there was something valid to address. She cited problems with the site for the development, it has become clear that the site cannot support a project of this size, she has a petition with over 150 signatures, the petition will change the general plan designation of the site to extremely low density and she read the petition into the record; "We, the undersigned, request that the new Richmond General Plan which the city is now preparing follow the lead of other communities who recognize that development on landslide prone hillsides should be severely limited. We request that Forest Green and the Clark Road project (which would follow) be limited to a density of one unit per 40 acres. Higher density development on these sites could result in disastrous landslides and other geological catastrophes that could affect neighboring properties, as well. The current General Plan designations, which have been in existence for many years, are outdated and do not take into consideration the severe geological instability that exists on these sites."

Daena Ross expressed concerns for the disregard of the hillside ordinance for the project as well as the concerns for fire response times, the lack of stability for the hillsides, unsafe access roads and the extreme traffic problems which will be created. Her main reason for attending the meeting is to represent their school. She is an educational support teacher, she works with the learning challenged children and must consider what the environment does for those children. They have almost 300 students, they do not use handouts, textbooks, and the primary way of education is through oral presentations of the teachers. It is important that children be able to hear those presentations. Without that possibility, she cannot imagine this form of education could exist on its present site, which is of extreme concern. At the other public presentations, we have been referred to as the nearby Waldorf School, however, they are not a nearby site but their fence line is the property line. Some classrooms are 10 feet away from where the project would be and their lower grades are less than 50 feet from the project and students will not be able to hear anything over the heavy earth moving vehicles and electrical equipment used in construction. It would be similar to an experience where one would not be able to hear themselves think. They have approximately 14% of students who have major attention deficit disorders for various reasons and they are able to accommodate them because of their hands-on curriculum and the close relationship with their teachers. So, this would extremely affect those students and more than those who are healthier. 11% of students have difficulties with asthma and allergies and the dust created would be an extreme health risk to them. Lastly, it would cause an economic impact. She cannot image as a parent that I would keep my young child at a school with noise levels of a major construction site lasting for such a long time. This

would have an extreme detrimental effect on their school and may even close the school, there are 50 staff members, many parents support local services and business in Richmond, and strongly requested the Commission to look at this project and consider what it would do to their school.

Eleanor Loynd, said she is Chair of the El Sobrante Planning and Zoning Advisory Committee, which is co-sponsored by the Richmond May Valley Neighborhood Council and by the El Sobrante Chamber of Commerce. She submitted comments on the draft EIR, from page 3-15; "The subsequent approvals may entail additional CEQA review such as a supplemental or focused EIR." It seems the City is making decisions based on partial information which could lead to massive headaches for the City and area residents. This implies that there will not only be a Volume II EIR but also an additional focused EIR. From page 4.137 to 4.157 regarding the compliance of this project with land use development standards and policies, they were rated with statements of, "potentially consistent 29, consistent 37, potentially inconsistent 77, inconsistent 2, impossible to determine 20." What this means is there a subtotal of 106 land use standards and policy investigations that need to be completed. There are 20 statements of City land use standards and policies that are impossible to determine now, so obviously they need to be looked at again. This means a total of 126 investigations on different policies to be yet completed to determine if this project actually meets the City's land use standards and policies. On page 4.9-3, "the growth management element of the City's general plan includes performance standards which require verification by EBMUD that adequate water supply and quantity can be provided for project approval. There is no information from EBMUD on the quality of the water or the quantity. She said she provided some information that the Shapiro Reservoir down the hillside now holds 4 million gallons of water, it is not seismically safe, EBMUD will be rebuilding it to a smaller size and hold 1 million gallons. So, in summary, the project will have a never-ending effect on the neighbors. They do not feel that the re-circulated EIR contains enough information on geology, soils stability, landslide, drainage and other project impacts to allow the project to move ahead and said the re-circulated EIR needs to be started all over again.

Rachel Preiss said she is a professional geologist who lives in El Sobrante, cited the many deficiencies in the original Draft EIR and implored the Planning Commission in providing flexibility to facilitate a re-circulated document. She said she spoke in the past about geological issues, subsurface issues, and said the applicant recognizes in text at least that there are significant sub-surface geological issues on this site; however, they remain unaddressed in technical content. Mitigations are subject to further study and analyze, which she feels is insufficient to make a decision upon, it is insufficient from a project planning perspective, and insufficient from a technical content perspective. She finds it reprehensible that the applicant states there are "no active faults mapped within the project boundary." The East Bay Hills are a surface expression of the Hayward fault, which is large, and conduces this as a justification to downplay any seismic risk. The Hayward fault has a 1:20 and 1:4 chance of moving within the next 25 years and by the applicant's own admission, when it does move, it will measure between 6.6 and 7.9 on the Richter scale. The recent quake as seen on the news was also 6.9, but the epicenter was 100 miles off shore. In conclusion, while monitoring the site and conducting studies is prudent and well-advised, it will not mitigate against an inevitable landslide. She felt sub-surfaced issues when encountered are a significant and unmanageable risk. For a full peer review on management plan, you must have a mitigation strategy, which is necessary prior to the development process, and without it, there will be an extremely high risk and unfeasible project.

Morgan Cleveland, Administrator, East Bay Waldorf School, joins everyone concerned and reasonable citizens in speaking against the re-circulated DEIR, said at the most recent meeting of the City Council, Vice Mayor Bates made reference to that seemed to characterize community members as anti-defacto development. She said they are not against development, but felt if a reasonable, sustainable development was proposed, the process would not be as long and contentious. The fact is that as responsible and conscious citizens at this juncture, they cannot support the proposal and it would be irresponsible. The mass degradation of the hillside, local eco-system, buttricing techniques, slides, added gridlock, potential danger of fire and safety, long term financial impacts to citizens and the City, and exposure and young children and school staff to dust, fumes and other toxins cause us grave concerns. A significant concern is noise levels and she had envisioned the Commission straining to hear her by playing construction noise in the background and said the developer has not been willing to commit to a clear noise standard in the DEIR, accurately establish what noise levels will be, there are numerous legitimate concerns about the noise study in the DEIR, it is not clear which standards will be used, projected interior levels are 51-77 decibels which will exceed the Richmond ordinance standards and at other times mitigation measures are mentioned with unknown corrective effects. Ambient levels are done at play times so the projected gap does not really reflect true levels. They did not measure classroom interiors, it assumes dual pane windows are used, lots 1-33 are proposed to be worked on during the summer, and we want them to work when no children are present. They have a summer camp and through the entire month of July, children are on the campus. We cannot properly plan for mitigation measures and assume they would need to move all of their classrooms when there has not been identified a feasible location, so they must plan for this fact. Lastly, the Commission should not allow the DEIR to go forward and should require the applicant commit to appropriate noise standards at the lower levels and provide for real studies on impacts

Gary Bridges said he is a parent of two children at the Waldorf School, said the developer promised to provide a phone number when dust and pollution would be in effect, said the developer was not planning to stay through the entire development process and sell off lots, and this would lead to many different people who residents will not be able to contact. He asked for more control if this occurs. Also, regarding sound, there is a chart in the EIR that shows that for the construction of 15-25 feet away from the school, the noise is above the standards, and if this is above this, it should not occur and is against the law. The Waldorf school is focused on the appreciation of nature, they take hikes, enjoy trees and birds and the developer wants to build a wall around the school, so they will no longer be able to appreciate nature which affects their purpose and learning.

David Allenbaum said he has two children at the Waldorf School, has a Ph.D in Geo-Physical Engineering from UC Berkeley, he was a Professor at University of Wisconsin and he currently holds Professorship at UC Berkeley Earth and Planetary Sciences Department. He said the scope of the project disturbs him; steepness of slopes, landslides, unstable soils and the proximity to the Hayward fault and others has a 25-30% chance of rupture in the next 25 years. He wrote a letter to the original response and pointed out these hazards, many of the remediation processes had not been tested to the scale implemented especially given the timeframe they will be actively working. He hoped a new EIR would answer these questions, was very disappointed in the re-circulated EIR, all geotechnical studies that could be done are deferred until after the project has been approved which is not smart, even though the applicant has said the project can stop and further CEQA review can take place. There was a geo-hazard section eliminated dealing with co-seismic slip in the inactive bedrock faults; if Hayward were to rupture, it could affect this which was disturbing. It provided some examples of remediation techniques that had worked, but few if any were the magnitude and size proposed from the site.

There is no proof these things could run out to 30 years. One of the most disturbing things said the geotechnical surveys were state of the practice for the State of California. This site requires much more extensive surveys and study before approval and he implored the Council that it be redone and studies be done upfront. Lastly, in the DEIR, it mentions the possible creation of a geologic hazard abatement district funded initially by the applicant and developers and later picked up by homeowners. The purpose of this would be to remediate or provide directions to remediate hazards or problems during the project's lifetime. In a worst case scenario, he implored the city to require the district to cover the development, the school and surrounding neighborhood at not cost to those institutions and they should pay for problems they create.

Michael Teraski, professional and licensed geologist and hydrologist, said he lived in the area for 11 years, echoed many points of previous speakers but wanted to focus on two aspects within this DEIR 1) regarding the depth of groundwater measurement and 2) the massive dewatering shafts described in the document. Regarding the groundwater depth measurements, he applauded the developer for installing the monitoring wells; however, the DEIR was deficient in evaluating the data. These are basic things that should have been included in the DEIR and have not been. When the consultant's own drilling logs clearly indicate disturbed soil and slipped plains down to 120 feet, there is a clear importance that the groundwater analysis be an important element of the site. When data is not evaluated by basic standards, it is deficient, and he presented this analysis in his letter. Regarding the dewatering shafts, the consultant mentions Caltrans has installed one of these and they are installed as a matter of course, which is not the case. These are massive and complex structures that are rarely installed and they do not mention that the facility cost \$8.8 million to install and took Caltrans several months to install. This project describes two structures. They also have no basis provided for the 1,000 GPN estimated to be pumped out of the system and in his industry he would come up with the estimate based on a lot of field testing, hydrologic testing and numeric modeling which is not contained in the report. There are many questions not answered or even resolved, such as if you install the shafts and more water is pumped in where is the water going to go, slope stability fallback if houses have been built, water quality and water coming out of the shafts are supposed to go to the wetlands and it will fill in no time. So the combination of the groundwater elevation data and civil engineering "gone wild" with dewatering shafts, the EIR is severely efficient deficient. There are many other issues equally important and asked the Commission to have the project terminated.

Joanne Helvig said she has a 7 year old son attending the Waldorf School, he has a learning challenge, has many concerns about the project as discussed previously, but she wanted to focus on the noise aspect. There is so much that has not been discussed in the re-circulated DEIR and no new noise studies have been done and the ones in place are from 2000. The project applicant has not also provided a noise standard. She said the applicant is adhering to the Richmond noise standards but does not take into account noise in the school's learning environment while children are trying to learn. There are children as young as 3 years old, a nap time of 2 hours, which has not been taken into account, the applicant has indicated between 51-77 dBA's inside the classrooms which would exceed the Antse standards and Richmond ordinance standards. They did not go to the buildings which are plywood modular buildings to measure noise, the high school classrooms do not have dual pane windows and she felt the entire school would need to be moved. She referred to numbers on Table 4.7-5 which are based on generalities and not specifically for the school site. Another issue is the barrier noise reduction which was 5 dBA's everywhere and it has transformed to 10 dBA's without explanation and many of the numbers will even exceed the EPA standard for hearing loss. We do not know which classrooms need mitigation, which are feasible, the project applicant asking to build now and ask questions later is not appropriate.

John Ryan, teacher at East Bay Waldorf School, felt the applicants did not do their homework over the last year, another study has been returned which is incredibly weak in data, weak in promises, read that barriers could be built out of wood and would likely be 6-8 feet tall but this would be refined due to construction, questioned construction practices, lack of information on noise and felt the studies did not mean anything. He said the topography will also need to be considered in the final determination and he asked how this made sense and felt the entire study was riddled with uncertain language. He said there is no alternative which is required under CEQA and he felt the project was dead on arrival, and asked the Commission not to approve the project.

Damon Nelson echoed previous comments, said he was awed by the Commission's responsibility which seemed more and more simple to him when lining up pro's and con's.

Don McQuestin said he has a child at the Waldorf School, said he reads testimony for a living, said many people have restated the fact, everyone who commented must submit comments in the re-circulation which was disappointing as a resident. He spoke with Larry Kennings and asked him about the finance issues of the project and he has no answers, which he said is forthcoming. The liability issues to those immediate adjacent to the project are real, he drove to a development in Martinez where 7 families had to be evacuated where the adjacent development fell into the hill and into their homes. With this situation and the water, when his footings and foundations start to be undermined, the applicant will squash people like bugs, he has so many specialists, while he respects property rights, the applicant has not shown up at any meetings and residents are forced to collect comments again. He has three 70-foot pine trees, the geologists have discussed the water issues, they could come down on his house, there are noise, water, hillside, drainage, and many other issues that have not been addressed, said there are 126 outstanding issues and he is very disappointed. This is a flagrant abuse of public process and said there is no other clear way to deny the project or come up with an alternate proposal.

Sue Budrow spoke to the fire response time because of a horrific occasion at 4:30 a.m. at Clark Road adjacent to the Forest Green property. She said she heard car alarms, explosions and a fire ball at the top of Clark Road where a car had exploded. The fire department did not arrive for 15 minutes, they were very frightened and had evacuated their valuables. They are in an extremely high fire risk area and this will worsen as well as the water pressure. She said if the project is approved, it is likely Clark Road, which has a landslide, will threaten properties. She read from Janet Katulis; as with the prior draft, this one brings up more questions than answers, it proposes to relocate creeks, destroy a woodland and cut and fill and grading operations and describes environmental destruction inconsistent with the hillside ordinance and general plan. It represents outdated thought with modern growth principles and the draft presents a summary of why the project is not an appropriate place to build 120 homes. She describe a picture of the Waldorf School and creek and slide on the property itself, echoed other's comments, and she presented a photo essay about the bio-diversity and beauty of the site, along with a list of 80 endangered species.

Steve Grand, said his 6 year old son attends Waldorf School, is one of many students with asthma, is concerned with dust implications, said the draft EIR is inconclusive, incomplete and riddled with vague language. He read from Section 4.4.11 regarding geotechnical confirmations on words like "conceptually and generally", felt the EIR has not been well developed, it is irresponsible, there are many dangers and fears amongst people that the applicants are just trying to get the development right, they will not keep the responsibility for it down the road and

will hand it off to another developer. For these reasons and many others, he asked the Commission to deny it.

Jorge Alberto Guerverro said he is against the project, the re-circulated draft proposes no solutions for gridlock, exposure to noise, vibration, toxic releases, and dust for a long duration of 2-3 years. There is no solution for losing open space, beauty, animals and plants. His experience working in construction is that they will give you the minimum and issues are worked out and addressed in the future.

Planner Joe Light noted it was 12:00 midnight and said there are 10 more speakers.

EXTEND MEETING

ACTION: It was M/S (Harris/Rao) to extend the public hearing to 12:45 a.m.; unanimously approved.

Prescott Cole said he has two children at the Waldorf School, cited potential danger of fire, said the report recognizes the area is a high fire hazard severity zone, mitigation is modest with a 3-year maintenance bond to handle vegetation control and he questioned what happens after that, they have a mutual aid agreement between fire stations, and Forest Green fire experts talked about the vegetation in a way to downplay this as a hazardous area and did not seem to want to talk about the fire zone severity in the area. He was asked about responding to Oakland, he said it was unusual because there were 3 hot days in a row, and residents know this is not an unusual situation. We know there is a potential for fire to roar down the hill, there are over 300 students at the school, and 120 homes proposed, and felt there would be a tragedy given the fire response. Homeowners will need to have their own fire barrier and puts all responsibility away from the fire district and developer. The proposal is less than wishful thinking for fire response and this did not help those in Oakland.

Jennifer Shaw Bautista said she would speak about air quality, noise, open space, and hillside instability, said her backyard fence would border the development, she is a nurse practitioner studying environmental impacts on reproductive health, she is an asthmatic, her daughter has an increased risk, said there are environmental pollutants in building material which would be extensive, immediately behind her would be a road and earthwork and asphalt would be particularly could trigger the onset of asthma. Another issue is the loss of open space which was her main reason for purchasing the house two months ago. She said the EIR addresses open space public views but not resident views, and privacy would be lost and is not addressed. She felt the noise due to construction has been clearly articulated for students, the school and residents, but she took issue with the discussion that the EIR gave on traffic noise once construction was completed, and she felt it improbable that 140 cars would be unnoticeable. Regarding the instability of the hillside as they had to delay their move due to the front part of their home sinking noticeably and they spent time and money investing in a drainage system and consider replacing the foundation and as part of that process, they looked at geologic surveys and hydrology. They would be subject to water running from the development and their remedies would now become insufficient and sliding would occur. She was at the meeting where those in opposition are in opposition to all development; she thinks that a wise, green development would improve her neighborhood, and her objection is to this particularly large development, which is improperly planned and environmentally unsound.

Jeffrey Novick said his wife discussed his points, when they bought their home they had a structural engineer obtain a geology report of the area and he was shocked to see the entire area as well as the project development area is landslide, and this is still unaddressed in the re-circulated EIR and to be deferred it is troubling. We talked extensively about noise, pollutants, children all over the neighborhood and in schools, residents, and others which is not addressed, and not addressed is roads not being built to current codes, increased traffic would need to go through one-way residential streets where there are children playing and there are no plans to mitigate this.

Deby Plaza said she lives three houses down from the gate of the project where all cars would enter and exit, when they looked to buy their home, they looked at the calm and quiet area, views, hiking, the school is one block away for her daughter, and she read into the record her 8th grader's speech, who was asleep in the audience. The letter reiterated the need to keep her living environment the same and for the project not to be approved.

Sabrina Chase works at the East Bay Waldorf School, has a daughter who attends the school, said she was very concerned about the development when she heard about it, felt it was part of the world's global weather problems, felt the project is a direct result of pollution and degradation, unsustainable lifestyles, recognized the need for housing, but not at the cost of the natural eco-systems, felt solutions cannot be solved by the same business as usual, asked people to change their lifestyles and protect remaining eco-systems. She felt it would be a horror to see the majestic oaks killed, animals killed, felt it was akin to telling children society does not care for the earth and their health, but more for profit.

Doug Corbin said there are engineering solutions to slide problems, but they do not permit one to make any money, said the advisors for the proponents have indicated there are engineering problems, felt they did not intend to make any money, said he owns an apt. building on the San Pablo Dam Road close to the project and discussed a situation where an apartment flooded, and punched a bunk of holes in the concrete parking areas and each time he got through the concrete, up came a geyser 18 inches to a foot high, and he had a field of geysers coming right up through the surface and if he were down underneath, he would be able to see a river. This is what happens when rains occur and he asked the Commission to imagine if homes were built on the parcel. Those living there will be in serious trouble, the Clark project has been shut down due to engineering costs and asked the Commission not to approve it.

Herk Schusteff agreed that residential subdivisions do not pay for themselves, said at midnight there were over 40 people to speak and thanked the Commission for the time, hoped people will speak at Council meetings on the project, felt the EIR process is an attempt to assess what the developers can do for the community, questioned if there was a way for neighbors to query neighbors better, and is there a way to have serious correspondence incorporated into the project to avoid the take it or leave it conclusions. This would avoid lawsuits. He felt manufactured homes could be used on the site, said his interest is land use and felt the area could be used as a retreat center, tourism has not been discussed, asked if a compromise would consider this, suggested a theme park for golf and families, said El Sobrante needs culture, and felt ponds should not be considered as open space.

Donny Winston said the project would be in his backyard, does not want to see his yard destroyed or ruined, cited problems with the slides, groundwater, road congestion, lack of police and fire and delays in response times, given the fact fire is only 5 blocks away and suggested it be made part of Wild Cat Canyon.

Mr. Light said the comment period will expire on September 20, 2007 at 5:00 p.m. and further comments can be addressed to the Planning Department.

The public hearing was closed.

COMMISSION BUSINESS

7. Reports of Officers, Commissioners and Staff

Staff had no reports.

Commissioner Lee noted that for the record, he is the Secretary and Commissioner Rao is the Vice Chair. Vice Chair Rao thanked staff for their work and thanked the public for attending the meeting and providing comments.

Adjournment

The meeting was adjourned at 12:30 a.m.
