

**PLANNING COMMISSION REGULAR MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL**

450 Civic Center Drive, Richmond, CA

November 1, 2012

6:30 p.m.

COMMISSION MEMBERS

Sheryl Lane, Chair
Roberto Reyes, Secretary
Ben Choi
Melvin Willis

Andrés Soto, Vice Chair
Andrew Butt
Carol Teltschick-Fall

The regular meeting was called to order by Chair Lane at 6:35 p.m.

Chair Lane led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Lane, Vice Chair Soto, Secretary Reyes and Commissioners Butt, Choi, and Willis

Absent: Commissioner Teltschick-Fall

INTRODUCTIONS

Staff Present: Lina Velasco, Hector Rojas, Richard Mitchell, Jonelyn Whales, Hector Lopez, and Carlos Privat

MINUTES

September 20, 2012:

Chair Lane referred to page 2 of the minutes under the Consent Calendar and confirmed that Item 1; EID1100513: Knobcone Development is reflected as being held over.

ACTION: It was M/S (Butt/Choi) to approve the September 20, 2012 minutes, as amended; unanimously carried.

AGENDA

Chair Lane provided an overview of meeting procedures for speaker registration, public comment and public hearing functions. She said items approved by the Commission may be appealed in writing to the City Clerk by Monday, November 12, 2012, by 5:00 p.m. and as needed, announced the appeal process after each affected item.

CONSENT CALENDAR

Chair Lane reported there are three Consent Calendar items. She asked if there were any members of the Commission, staff or the public who wished to remove any items from the

Consent Calendar. Commissioner Butt noted Item 6 is a tentative recommendation to “Hold Over” and he asked and confirmed with Ms. Velasco that if the Commission approves the Consent Calendar, the motion to Hold Over carries.

Ms. Velasco noted there were public speakers for Items 1 (New Item), 3 (New Item) and 4 (Consent Calendar). The Commission requested removal of Item 4 from the Consent Calendar and approval of Item 2 (Hold Over) with Consent Calendar items to be approved.

ACTION: It was M/S (Soto/Butt) to approve Items 2 (Hold Over item), 5 and 6 (Consent Calendar items); unanimously carried.

Consent Calendar and Other Items Approved:

2. **PLN12-207: Richmond Hand Carwash and Xtreme Tacos** - PUBLIC HEARING to consider a Conditional Use Permit to establish a new hand carwash and taco truck at 1006 23rd Street (APN: 528-080-019). C-2, General Commercial District. Atta Sardar Mohammad, owner; Sergio Nuno, applicant; Planner: Hector Rojas; Tentative Recommendation: Hold Over to 12/6/2012.

5. **PLN12-247: Sprint Wireless Facility Modifications** - PUBLIC HEARING to consider a request for a Conditional Use Permit to replace and modify nine of twelve existing wireless communications antennas located at 2970 Hilltop Mall Road (APN: 405-302-017). C-3, Regional Commercial District. Hilltop Medical Center, owner; Jim Louie, applicant; Planner: Jonelyn Whales; Tentative Recommendation: Conditional Approval.

6. **PLN12-292: Menlo Energy Biodiesel Facility** - PUBLIC HEARING to consider a request for a Conditional Use Permit to establish a new biodiesel production facility at 803 Wright Avenue (APN: 560-231-010). M-4, Marine Industrial District. 803 Wright Avenue Investors, owner; Kim Pfaff, applicant; Planner: Jonelyn Whales; Tentative Recommendation: Hold Over to 12/6/2012.

BROWN ACT – PUBLIC FORUM

Cordell Hindler, Richmond, suggested Richmond consider opening a skating rink for children for the holidays and open up the Auditorium for a Winter Wonderland event.

Ms. Whales reported that the applicant for Item 1 has been delayed by traffic and asked to move the item further down on the agenda. Chair Lane moved up Item 3 on the agenda.

Upon request by Vice Chair Soto, Chair Lane moved up Item 4 on the agenda.

Items Removed from the Consent Calendar:

4. **PLN12-256: Taqueria Limon** - PUBLIC HEARING to consider a request for a Conditional Use Permit to allow beer and wine sales (Type 41) at an existing food establishment at 927 23rd Street (APN: 529-060-013). C-2, General Commercial District; Antonio and Maria Moura, owners; Alejandra Avalos, applicant; Planner: Hector Lopez; Tentative Recommendation: Conditional Approval.

Chair Lane opened the public hearing.

Public Comments:

Cordell Hindler, Richmond, said he was in favor of the matter and thinks the owners should be able to sell beer and alcohol.

Vice Chair Soto said the only issue was potential sound from a sound system interfering with the nursing home across the street; however, he was not sure what the objective standard is for noise level. Ms. Velasco said the zoning ordinance under the City's performance standards provide acceptable decibel levels.

Hector Lopez noted Condition No. 9 addresses the issue of noise, and staff recommends approval.

Commissioner Butt said because noise was brought up as a potential issue, he asked if there were current problems and asked for their current hours of operation. Mr. Lopez said they are open from 10AM to 10PM and noise has not been an issue.

The public hearing was closed.

ACTION: It was M/S (Soto/Choi) to approve PLN12-256 with staff recommended conditions and findings; unanimously carried.

Commissioner Choi asked the owners to consider visiting and reaching out to their neighbors.

NEW ITEMS

- 3. PLN09-137: Housing Element Update - PUBLIC HEARING** to consider recommending adoption of the Addendum to the General Plan 2030 Environmental Impact Report and the Housing Element Update for the current 2007-2014 planning period to the City Council. The Housing Element is a State mandated element of the General Plan which assesses a jurisdiction's housing needs and provides goals, policies, and programs to address those needs. The Draft Housing Element is available on the City's website: www.ci.richmond.ca.us/housingelement. City of Richmond, applicant; Planner: Hector Rojas; Tentative Recommendation: Recommend Adoption to City Council.

Hector Rojas introduced Marie Munson from Seifel Associates, Kim Obsfield from Lisa Wise Consulting and Patrick Heinmarsh from PMC who will be conducting a PowerPoint presentation and Mr. Heinmarsh will address environmental questions. The first item for the Commission to consider is adopting the addendum to the General Plan 2030 EIR and the Housing Element Update which was released for public review in October 2012. Staff is recommending that the Commission recommend adoption of the Housing Element in its current form and whatever recommendation the Commission has, staff will develop a resolution and forward it to the City Council for consideration.

Marie Munson, Seifel Associates, provided an overview of the Housing Element components, RHNA, goals, discussed the public comments received and next steps. She said the City's Housing Element was last updated in 2005 and this Element covers the period 2007 to 2014 and establishes policies and programs designed to meet the community's housing needs. Components include an assessment of housing needs, a profile of the community, Regional

Housing Needs Allocation (RHNA), an adequate sites inventory, review of the last Housing Element, and the revised element sets forth requirements of state law to implementing the City's vision of the General Plan 2030 and how it will address its housing needs.

She provided data on projected growth in the City, stating that significant growth is expected through 2030 in jobs with an estimated 64,100 jobs in 2030. Households are expected to grow at over 47,000 households as well as growth in population of 133,000 residents.

She presented the City's RHNA numbers, stating this period identifies the need for 2,826 units. Of that 1270 units would be for very low, low and moderate income households. She stated 1216 units have been produced from 2007 through to this summer. The City's ability to meet the target will depend upon the economic recovery. She described the Housing Strategy and said its emphasis is on mixed-use, high density development along transit-oriented corridors and in Priority Development Areas (PDAs). The element has 4 over-arching goals and in each goal there are policies and programs, and each individual program has a quantified objective:

1. Balanced supply of housing, promoting a balance of housing types, densities and prices. There are 6 policies and 26 programs: Inclusionary housing ordinance amendments through a study, suggestions for second dwelling units to promote them in the form-based code area, annual progress reports and a housing coordinating group that would meet quarterly comprised of the City Manager, Planning Department, Housing and Community Development and the Housing Authority.
2. Improving the quality of life for all residents and preserving and enhancing Richmond's residential neighborhoods. Programs include putting in design guidelines and development standards in the form-based code to ensure housing, modernization of public housing, monitoring at-risk units and having technical education and assistance available for owners of developments that are at risk, the Neighborhood Stabilization Program, use of funds to rehabilitate foreclosed residences, and financial assistance programs.
3. Promoting the expansion of housing opportunities for all special needs groups such as senior housing incentives for large housing developments which includes reduced parking requirements, a way to reduce development fees, providing financial assistance, density bonuses, encourage development of these types of housing. The Reasonable Accommodation Ordinance program would develop just that under State and federal law and the recommendation is to use the HCD model ordinance. Also, the Emergency Shelter Constrain removal was approved in response to SB 2. This program includes amending the zoning ordinance to comply with the law to allow a large emergency shelter without a CUP and the goal is to adopt it by 2013.
4. Equal Housing Access for all which includes programs to continue the Section 8 Housing Voucher program, consider expanding the just-cause for eviction ordinance that the City has to go beyond units where renters are renting foreclosed property to apply to all properties, and in conjunction with this, consider and study rent control programs by a Rent Control Board.

Ms. Munson stated staff has been working closely with HCD to provide revisions to the draft Housing Element and HCD contacted the City today to let them know that with a couple of minor changes, they can write a letter to support the element as certifiable. Actual certification must come after the Council adopts it.

Mr. Rojas said comments received from HCD for the last iteration which was the September 2012 version. Upon review, the State wanted the City to include a housing needs analysis for developmentally disabled persons in accordance with SB 812 and they also wanted to have

more information on the Livable Corridors form-based code project, and also wanted to ensure the City included program modifications to ensure they incentivize affordable housing in the form-based project area. The changes are reflected in the October 2012 version for the Commission's consideration tonight. An additional document before the Commission was the result of a follow-up call from Melinda McCoy of HCD to clarify that since some of the mixed-use designations allow for residential only development and commercial only development. Therefore, these are things they wanted to see that when the City approves projects in the future, they do not restrict the City's ability to meet its RHNA.

Ms. Munson continued stating that the next set of comments at the last Planning Commission meeting included not having up-to-date data for homeless families and individuals. This has been revised and the new data is striking. For 2010/2011 it is estimated there are almost 6400 individuals in the County that use homeless services and 35% of those individuals were from Richmond. There was a suggestion to include the language to encourage the use of manufactured or modular housing products and this has been added to the variety of housing types in Program H1.4.1.

She said REDI has been active in providing comments on the process, particularly in establishing a rent control board. As the Housing Element is written now, it calls for a study of a rent control ordinance and board to evaluate the cost benefits, best practices, and REDI suggests an ordinance be adopted by the end of 2013. Staff also recommend evaluation of a community land trust by the end of 2013 and REDI is also suggested that it be established by the end of 2013. The third recommendation is to amend the Inclusionary Housing Ordinance to raise the in-lieu fee and require higher percentages of affordable housing. There is a program in the Housing Element which is to consider making amendments by completing to study and provide a recommendation by the end of 2013.

Feedback was received from the Richmond Annex Neighborhood Council, and staff has worked on modifications to language. They expressed opposition to reducing some of the requirements related to second dwelling units, reducing parking requirements for garage conversions and expanding the types of residential projects eligible for ministerial and administrative approval, and opposition to exploring potential permit streamlining measures for residential development. They had provided suggestions on the Housing Element's language and staff has been working with them and changes made in response to their feedback are included in the revision presented in tonight's handout.

Mr. Rojas clarified there was an understanding that programs in the Housing Element would be City Council direction to staff to actually implement permit streamlining measures automatically without further discussion or additional study. Staff would consider reductions and determine where they are appropriate and bring such reductions to the Planning Commission and City Council for adoption before they are implemented, and the neighborhood council found that acceptable.

Mr. Rojas noted that the City's CEQA and EIR consultant is present. Since they recently certified the General Plan 2030 EIR they wanted to determine if it covered environmental impacts that the Housing Element would propose. They determined that the Housing Element contemplates less development than the GP and it does not go above and beyond the contemplated development in the General Plan Land Use Element map. With the addendum, the City is affirming that the EIR covered the potential environmental impacts for the Housing Element. As long as they do not go over the amount of development adopted in the Land Use Element, the EIR covers impacts for the Housing Element. He highlighted that the Housing

Element is the programmatic component of housing in the General Plan. The Land Use Element designates where housing is to go, its density, intensity, amount of housing, and it merely adds programs to facilitate the type of development envisioned.

Ms. Munson said there is \$44 million in funding through the OneBayArea grant for the County and in order to be eligible to receive funding, jurisdictions must have an adopted and certified Housing Element by January 31, 2013. There are very important eligible projects for the City. As a precautionary step, the City has applied for an extension through January 2014 which serves as a fallback. MTC and ABAG will meet on that next month. The Housing Element would need to be certified prior to January 2014 and if not certified, City and County could be at risk of losing any grant monies awarded to the City.

Ms. Munson reviewed next steps, stating that after the Planning Commission's recommendation, it moves to the City Council for adoption and submittal to HCD for official certification. April 1st is the deadline for the annual progress report deadline to HCD and then in May, the process begins all over again for the 2014 Housing Element.

Mr. Rojas summarized and said it is critical that the Commission makes a recommendation to the City Council. They submitted a letter requesting an extension on the OneBayArea grant deadline; however, the City may not necessarily receive the extension. In order to remain eligible for grant funds and remain competitive with other jurisdictions, it is critical the Housing Element move forward as recommended in the October 2012 version; however, if the Commission makes recommendations, staff can prepare a resolution to that effect and forward it to the City Council for their consideration.

Chair Lane asked for questions of the Commission.

Commissioner Reyes said he ran the County Homeless program for 4 years and manages the GRIP Shelter now. He referred to page 32 which describes resources for the homeless in the City and said it contains errors in the document. He felt the City will be shortchanged resources due to errors.

Vice Chair Soto referred to the staff report and questioned whether a total of \$44 million is allocated to Contra Costa County or to the City alone. Mr. Rojas said there is a total of \$44 million allocated for the entire County. The City can apply for funds and would not receive all of it due to other jurisdictions with competitive projects.

Chair Lane asked Mr. Rojas to highlight changes from the neighborhood council, the State, and REDI. Mr. Rojas said the changes are minor and involve clarification that the City would consider reductions before taking any official action and include the word "consider" in most cases to reflect the community process. He noted they involve Program H1.2.1, H1.4.1, H1.4.3, H1.4.4, and Table 5.42.

Public Comments:

Stephanie Harvey, representing 4AM, a community organization supporting sustainable living through integrated community involvement, Richmond, said she supports the changes in the Addendum. She thanked the Commission and staff for the work product and recognized the importance of the addendum and the element's adoption.

Owen Luis Martin, Jr., Richmond, said the City would benefit from people working and living in the City, felt parking is needed and opposed options to reduce covered parking, and asked to consider businesses' needs as well as residential areas.

Vice Chair Soto said the General Plan looks to the future which means from getting away from automobiles, and encourages use of mass and public transit, walking, biking, and it is part of the concept that if it is built, it will invite more automobiles and parking as opposed to leading people in a new direction.

Richard Poe, Richmond, said he has been developing in Richmond since 1985, complimented City staff on their work and how the meeting is being run. What he worries about are rent control boards and inclusionary housing in-lieu fees. A San Jose developer was able to have fees reduced to develop housing. They are studying two projects, one an apartment project, and if rent control is in place, they would not consider the development. He asked to take the time to study the impacts of the City's decisions. He asked to study things slowly and wisely and thinks the City is on a new path.

Christy Leffal, REDI Coalition, Richmond, thanked the Commission, staff and consultants for their revised draft of the Housing Element. REDI thinks that some of the considerations reflect good thinking about community issues. They would like stronger language included in the document. Some recommendations to look at inclusionary housing, the community land trust and rent stabilization and rent board as studies is a good idea; however, the study should not be whether or not Richmond needs these but how to make these work for residents. There is a need or quality affordable housing and a rent control board and having incentives for developers to build housing and changing in-lieu fees is needed. They have evictions based on code enforcement issues and action is needed now to protect residents.

Chair Lane referred to REDI's recommendation for the community land trust and asked Ms. Leffal to expand on it. Ms. Leffal said the City passed a resolution many years ago in support of a community land trust. Some of REDI's work has been to identify what it could be, who administers it, what properties go into it, and a good way to be active is to identify zero value properties or properties the City can deed into a land trust and become community ownership. Ideally, the City's role would be to come up with and identify properties, look at ways to prepare deed transfers, and support through land acquisition.

Vice Chair Soto said under the inclusionary housing ordinance, the suggested language asks to "strike the inclusionary housing ordinance to limit circumstances under which developers can pay in lieu fees instead of building affordable housing." He asked if Ms. Leffal could identify under which such circumstances could occur to limit restricting paying in lieu fees. Ms. Leffal said in lieu fees are structured around how much development is being built on any one site. Ideally, they would like to see a fee structure that encompasses what it costs to build a comparable unit on site and another part of the neighborhood. They would be interested in strengthening this. Vice Chair Soto asked if REDI would support looking at it in the future if adopted by the City Council, and Ms. Leffal said yes; and supported more study on the overall structure of in lieu fees.

Commissioner Butt said the Kato Institute refutes the benefit of rent control and there are numerous cities that had implemented it and reversed it because it did not work. He asked for Ms. Leffal's comment on this evidence. Ms. Leffal said she has not seen the study from the Kato Institute but could speak for the need for rent control or rent stabilization. The fundamental idea is to look at how rents will rise and have risen since the foreclosure crisis. Many people have

trouble finding affordable rental housing and the ordinance is not only to establish a rent board to look at arbitration between landlord and tenant disputes, but to look at how rents may and will rise. There will be development in the City and they need to plan for affordable housing and stabilized rents for people wanting to live in Richmond.

Silvia Ledezma, Richmond, REDI Coalition member, spoke on H4.2.2; rent stabilization, stating she lost her house in 2010 and became a renter. She had various problems with manager intimidation and it is important that rent control measures include just cause and fair rent ordinances for all tenants and to regulate rents.

Lilia Silva, Richmond, said over the past year she noticed Richmond is getting worse. No one is investing in the City and she suggested an affordable shelter for all residents. Money goes outside of Richmond, there is no place to have fun, and everybody needs affordable housing, food and jobs.

Garland Ellis, Richmond, said he has seen many changes over the last 50 years. Policy H1.5.1 and H1.5.2 refer to a one-stop permit center and expanded ministerial review of housing elements. He asked to give more consideration to this before it occurs, needs a more professional level of service by the Planning Department before they can feel comfortable with an individual walking up to the counter, having everything okay'd at the counter and knowing no errors are made. They still see many errors in staff reports and they want to feel comfortable that things are handled correctly at that one-stop center. Also, correctional and rehabilitation facilities are shown only in C3 with a CUP. Currently, there are hotels and motels that are renting out large blocks of rooms for this purpose and a hotel/motel is outright permitted. If a hotel/motel is used for this purpose, there needs to be more consideration regarding this and it should not be allowed to occur without review. Land trusts require outside money and it is not something the City can pay for. There are downsides to rent stabilization boards and they limit rehabilitation of older housing.

Jerry Yoshida, Richmond Annex Neighborhood Council and resident, thanked staff for their work on the Housing Element, voiced concern about architectural review as it is necessary. There is evidence that things are not being properly reviewed. When projects get to the Board, he used to ensure they were ready for approval but this is not the case now. He is supportive of the one-stop review, supported staff's recommendation about studying rent control, said the code enforcement department is excellent at what they do in taking care of problems and cited the need to upgrade housing.

David Sharples, Richmond, ACCE (Alliance of Californians for Community Empowerment) and member of the REDI Coalition, thanked City staff for their work on the Housing Element. REDI asks to include policy changes in the element and urged the Commission to adopt those changes. He is a tenant in Richmond and thinks it is important to have rent stabilization as well as just cause and fair rent ordinances for all tenants to protect against unjust or arbitrary evictions, as well as a rent board to resolve landlord/tenant disputes.

Jerry Feagley, Richmond resident and realtor, said he built and developed over 300 units over 46 years, strongly supports rent control language being recommended by staff and that there be input from local realtors and businesses. People have forgotten that it was rent control that bankrupt New York City and it does not always work. He supports the inclusionary housing element being referred to staff for further study and input, as well. Having built and developed homes, development should be encouraged in the City and not discouraged.

Commissioner Willis asked why rent control may not work. Mr. Feagley said he has watched rent control work and not work in Berkeley and San Francisco. Richmond has enough issues and adding rent control adds problems to the value and desirability of bringing investors into the community. There is not the amount of injustice that some people think there is, and all landlords are not bad people. Having had property management companies, they would not manage properties where owners would not take care of their property, and there needs to be a reasonable balance.

Vice Chair Soto said it seems to him the real housing issues in San Francisco and Berkeley is not the lack of attractiveness but holding off on gentrification because they become so attractive, and he asked to explain his comment. Mr. Feagley said his point is that this is Richmond and it is not as attractive as living in San Francisco and Berkeley. He added that rents have not jumped out of control as they have in San Francisco. This is the first time in 46 years that he not only experienced a depressed housing market but rents also went down in the same timeframe and not up. Rents have not continued to climb over the last 7-10 years and are now just beginning to stabilize.

Commissioner Reyes said in looking at the REDI Coalition recommendations, they call for establishing a stabilization policy and rent control board that will even the playing field for renters. He said Mr. Feagley's comments remind him of what he read from the CAA; to make money. The City is looking at the playing field right now and people want to even it out. Mr. Feagley said his recommendation was to study rent control with input from the community and to revisit it.

The public hearing was closed.

Vice Chair Soto referred to recommended staff changes and asked if the REDI Coalition had an opportunity to see the document, and Mr. Rojas said it was not transmitted to them. He clarified that he received a call from HCD at 4:50 p.m. and these were very last minute changes. Vice Chair Soto said he did not believe there were any issues and some strengthens language. Procedurally, he suggested the Commission consider adopting the document as an amendment along with the Housing Element.

Vice Chair Soto thanked all speakers for participating in the process. What he has learned that the more people talk about things and clearly identify issues or concerns, it helps the Commission achieve a closer sense of consensus. It looks as though there are only a few items of concern. The notion of rent control that was developed through the planning process has significant history. He would have to say that the argument that it would dissuade future development in Richmond is not persuasive. It is not designed to inhibit development but to protect existing residents from the bad landlords. They have a reality in a City where half of Richmond residents are renters and they have less protection than most major cities in the area, and it can be seen in their living conditions. Rental units can be found throughout the north and east, but the problem are the slum lords in the Iron Triangle, south side, north Richmond and other neighborhoods, and people who are not responsible landlords.

He said he has supported this notion from the beginning and when he saw correspondence from Ms. Carr regarding the study from the Kato Institute, he chuckled because it is like reading a study from the NRA about gun control. The Kato Institute is anti-government and anti-regulation of just about anything, and when it comes down to the language in dispute, studying it instead of implement it and study how to implement it best will cause it to die by delay. There is an increasing division between the rich and the poor. He heard no complaints or problems with

vacant, foreclosed property ordinance language which has been brought forward by REDI, any problems with the land trust issue, code enforcement for neighborhoods or expansion of the just cause eviction. Comments seemed to focus more on criticism of rent control and the inclusionary housing ordinance.

He referred to H1.3.2, inclusionary housing ordinance and would recommend that the Commission strengthen the inclusionary housing ordinance to “limit circumstances under which developers can pay in-lieu fees”. Instead of building affordable housing, “increase the amount of in-lieu fees to fully cover the cost of constructing new affordable units.” Strike “consider recommending amendments to the Richmond’s Inclusionary Housing Ordinance based on studies and findings”. This would study it to death and 5 years later there would not be anything in place. He thinks it is only fair that developers should pay in-lieu fees fully to cover the cost of constructing affordable units, and if they do not want poor people living nearby, they should pay for it, and he made a motion to approve those amendments to the Housing Element. Commissioner Reyes seconded the motion.

Commissioner Butt said he would vote no. He agrees with much of what Commissioner Soto said and he agrees with most of the REDI changes, but he is concerned that between the two of these, potentially it could stifle development at a time when Richmond needs it more than ever before. He thinks there is reason to believe that developers’ best interest is making money and there is reason in that to oppose this. There are many reasons that developers would look the other way rather than to come to Richmond and he would hate to give them a couple of more. While he generally agrees with the amendments, he thinks if it were studied to death it would be bad but he wondered if there was a way to limit the time it could be studied.

Chair Lane supported approval, stating the City already has an inclusionary housing ordinance. What this is calling for is to improve and enhance it. She thinks if developers are building the number of units where this would come into effect, they are supposed to include affordable housing. What this is saying is that they are providing enough funding so if they do not build it in their development that the City could afford to build it.

Commissioner Reyes supported approval, stating that Benicia got sued because they did not want to live up to their agreement to build affordable housing. They lost the lawsuit and it is a fight in many cities. It will not be until Richmond stands up and supports it.

ACTION: It was M/S (Soto/Willis) to recommend amendments to the Housing Element Update, as follows: H1.3.2; inclusionary housing ordinance; strengthen the inclusionary housing ordinance to “limit circumstances under which developers can pay in-lieu fees”. Instead of building affordable housing, “increase the amount of in-lieu fees to fully cover the cost of constructing new affordable units.” Strike “consider recommending amendments to the Richmond’s Inclusionary Housing Ordinance based on studies and findings”. The motion/second carried with a vote of (5-1-1): Ayes: Choi, Willis, Soto, Reyes, and Lane; Noes: Butt. Absent: Teltschick-Fall.

Ms. Velasco and Mr. Privat suggested that the Commission consider making a recommendation for approval of the addendum.

ACTION: It was M/S (Soto/Reyes) to adopt a resolution (Attachment 1) recommending the City Council adopt the Addendum to the Richmond General Plan 2030 EIR; unanimously approved.

Vice Chair Soto referred to policy H1.3.4; community land trust study, he asked to strike the sentence beginning with "Study existing community land trust" down to "affordable housing" and insert "Create a community land trust CLT program in Richmond as a way to provide permanently affordable housing. The study exists in CLT programs in California and nationally to solicit input from the community to determine the most feasible and effective ways to structure Richmond's community land trust program" and strike "consider recommending formation" down to the word "community".

Commissioner Butt asked for a friendly amendment to require it be studied for no more than 4 months. Chair Lane suggested that when getting to those items, to make a motion to that effect.

Mr. Rojas said the way the language is heading right now, if the City Council directed staff to develop an ordinance, there will still be a study associated with it. They will have to inform both the Planning Commission and City Council about the ramifications and this information will be considered, and ultimately it will be the City Council's purview to adopt the ordinance, and there would be public input just like any other ordinance. Staff would follow the same timeframes, but staff had anticipated completion by 2013 but instead, they would put an ordinance in front of Council by that timeframe.

Vice Chair Soto responded, stating he is aware of this, but the difference in the language is the sentiment of considering it to be studied sometime in the future versus this is a good idea and they want to study how to implement it, and he made a motion to approve the amendments.

ACTION: It was M/S (Soto/Reyes) to amend policy H1.3.4; community land trust study, striking the sentence beginning with, "Study existing community land trust" down to "affordable housing" and insert "Create a community land trust CLT program in Richmond as a way to provide permanently affordable housing. The study exists in CLT programs in California and nationally to solicit input from the community to determine the most feasible and effective ways to structure Richmond's community land trust program"; and strike "consider recommending formation" down to the word "community"; unanimously approved.

Vice Chair Soto referred to policy H2.5.3; dealing with the vacant foreclosed residential property ordinance, and he asked to strike the word "consider" and "adopting" and insert "adopt an ordinance that would require the registration of vacant foreclosed properties which would collect fees, track maintenance and bank ownership in conjunction with code enforcement." He asked to maintain the current language regarding "studying the City of Los Angeles and the City of Oakland (as opposed to Las Vegas) ordinance as potential models."

ACTION: It was M/S (Soto/Reyes) to amend policy H2.5.3 dealing with the vacant foreclosed residential property ordinance, striking the word "consider" and "adopting" and inserting "adopt an ordinance that would require the registration of vacant foreclosed properties which would collect fees, track maintenance and bank ownership in conjunction with code enforcement." It is recommended to maintain the current language regarding "studying the City of Los Angeles and the City of Oakland (as opposed to Las Vegas) ordinance as potential models"; unanimously approved.

ACTION: It was M/S (Soto/Reyes) to amend policy H2.5.4; code enforcement for residential neighborhoods; to state, “Ensure that foreclosed properties are being properly maintained and aggressively enforce SB 11 to find lenders up to \$1,000 per day if they do not address code enforcement issues promptly.” Fines collected should be allocated towards foreclosure prevention or foreclosure buy-back efforts and continue with the previous language. After the word “foreclosures on a bank by bank basis, substandard housing conditions and neighborhood blight” so the City can track whether banks are in compliance with State of California homeowners’ bill of rights, and include the total amount of fines collected for these types of cases in the APR; unanimously approved.

Vice Chair Soto referred to H4.2.2; expansion of just cause eviction ordinance. As background, he was around in 2004 when this idea was first floated and it got subverted by the Council at that time in deference to their friends with the Apartment Owners Association. This is a chance for the City to revisit this and try to protect those 50% of residents who are renters. When this issue came up in 2004, half of the cases of the East Bay Community Law Clinic in Berkeley came from Richmond. He asked to amend the policy to add after “expand the City’s just cause for eviction ordinance” to “Analyze the effectiveness of the City’s just cause for eviction ordinance applying to tenancy and foreclosed properties, study other just cause for eviction ordinances in California, expand the City’s just cause for eviction ordinance so it applies to all rental properties, solicit input from community organizations, legal aid and renters to ensure the most pressing needs such as code enforcement violations are addressed. Study ordinances from other jurisdictions in California to evaluate the most effective strategies for drafting and implementing the ordinance in Richmond.” Strike: “and evaluate whether to expand” all the way down to the word “rental property owners.”

ACTION: It was M/S (Soto/Reyes) to amend policy H4.2.2; expansion of just cause eviction ordinance, as follows: Add after “expand the City’s just cause for eviction ordinance” to “Analyze the effectiveness of the City’s just cause for eviction ordinance applying to tenancy and foreclosed properties, study other just cause for eviction ordinances in California, expand the City’s just cause for eviction ordinance so it applies to all rental properties, solicit input from community organizations, legal aid and renters to ensure the most pressing needs such as code enforcement violations are addressed. Study ordinances from other jurisdictions in California to evaluate the most effective strategies for drafting and implementing the ordinance in Richmond.” Strike: “and evaluate whether to expand” all the way down to the word “rental property owners;” unanimously approved.

Chair Lane said it was brought to her attention on this issue that under a just cause for eviction ordinance, landlords would not be able to evict a tenant for reasons they feel are valid. She said if this were to be approved by the City Council, she wanted to be sure that landlords are still able to evict for certain things like not paying rent, rental agreement violations, tenants creating a nuisance or damage to the property, using the rental unit for illegal purposes, the landlord occupying the unit for themselves or renting to an immediate family member, as well as others.

Vice Chair Soto said lastly, the title of policy H4.2.3; Rent Control Ordinance Study, and he asked that this be changed to “Rent Stabilization Ordinance Study”. Strike the first sentence “study rent control” down to “rent control board” and instead insert: “Adopt an ordinance in Richmond to establish rent stabilization policies and rent board. The rent board will, among

other things, establish a renter arbitration process that will register landlords and hear and resolve landlord/tenant disputes, solicit input from community organizations and renters to ensure that the most pressing needs are addressed, study ordinances from other jurisdictions in California to evaluate the most effective strategies for drafting and implementing the ordinance in Richmond....review program components of other cities, benefits of cost of rent control ordinances and boards, administration and legal requirements and annual costs.” Strike “Also analyze potential constraints and opportunities to implement rent control in Richmond, consider whether to recommend an ordinance based on the study’s findings and extent of input from the community and rental property owners.” He made a motion to amend the policy with those changes.

ACTION: It was M/S (Soto/Reyes) to amend policy H4.2.3; Rent Control Ordinance Study to change the total of the policy to: “Rent Stabilization Ordinance Study”. Strike the first sentence “study rent control” down to “rent control board” and instead insert: “Adopt an ordinance in Richmond to establish rent stabilization policies and rent board. The rent board will, among other things, establish a renter arbitration process that will register landlords and hear and resolve landlord/tenant disputes, solicit input from community organizations and renters to ensure that the most pressing needs are addressed, study ordinances from other jurisdictions in California to evaluate the most effective strategies for drafting and implementing the ordinance in Richmond....review program components of other cities, benefits of cost of rent control ordinances and boards, administration and legal requirements and annual costs.” Strike “Also analyze potential constraints and opportunities to implement rent control in Richmond, consider whether to recommend an ordinance based on the study’s findings and extent of input from the community and rental property owners;” The motion/second carried with a vote of (5-1-1): Ayes: Choi, Willis, Soto, Reyes, and Lane; Noes: Butt. Absent: Teltschick-Fall.

Commissioner Butt thanked fellow Commissioners for splitting up the various policy amendments. He thinks there are many questions in his mind about this and he thinks it warrants further study.

ACTION: It was M/S (Soto/Willis) to recommend adoption of the Addendum to the General Plan 2030 Environmental Impact Report and the Housing Element Update for the current 2007-2014 planning period to the City Council, as amended through the various changes to policy sections; unanimously approved.

HOLD OVER ITEMS

- 1. EID1100513: Knobcone Development of 4 Residential Lots - PUBLIC HEARING** to consider adoption of a Mitigated Negative Declaration and approval of a Tentative Map to subdivide the site at 5801 Knobcone Court (APN: 435-300-010) into four single-family residential parcels and a remainder parcel. One house exists on the site and its parcel would be 22,920 square feet (SF). The subdivision would create three additional residential lots varying from 12,861 SF to 15,310 SF in size. The remainder of the site, a 61,540 sq. ft. (1.41 acres) parcel (referred as the “remainder parcel”), would have a detention basin to control rainwater runoff but would remain undeveloped because of potential geologic hazards. PA, Planned Area District. Rong Fong, owner; William Randolph, applicant; Planner: Jonelyn Whales; Tentative Recommendation: Conditional Approval.

Jonelyn Whales gave the staff report and an overview of the request to consider adoption of a Mitigated Negative Declaration and approval of a Tentative Map. She stated the environmental consultant, Michael Kent is present as well as the applicant and owner. She noted that in 2004, the applicant contacted staff for a 6 lot development with a remainder tentative tract map. It already had an existing house on the upper parcel (Lot 1-4) of 2,200 square feet. Parcel 3 is 12,861 square feet. The adjacent parcel is 15,310 square feet, and the remainder parcel which is not part of the tentative tract map is 62,000 square feet and this is where the proposed detention basin would reside. The project is within the SFR-1 Rural Residential zoning district which has development standards which require that parcels are approximately 11,000 square feet or more. There are proposed conceptual drawings in the packet for 3 custom homes which are not under review this evening, and staff would have to return with a design review permit and a conditional use permit for the hillside constraints area. Studies involving soils and geological were performed several years ago showing mitigations have been identified for any and all impacts.

Commissioner Reyes said he hopes there has been some work done to mitigate the project. Ms. Whales said staff held off from bringing it to the Commission because there was a request from an adjacent neighbor to meet with the environmental consultant and applicant to address some of their issues. However, unfortunately there was no meeting scheduled.

Commissioner Willis asked if the adjacent house occupied or vacant. Ms. Whales said she believes it is currently vacant.

William Randolph, applicant, said the house on the property is vacant. The owner is present and built the home for his family and also a home in another city where they live.

Vice Chair Soto referred the statement "whenever feasible" in the air quality mitigation measure III-1 and asked what this means.

Michael Kent, environmental consultant, said these are standard provisions required by the BAAQMD for all projects. When "whenever feasible" is concerned, it is at the discretion of the enforcing agency or the City. He does not know the specific criteria for the cited item, but BAAQMD does.

Vice Chair Soto referred to Item B; "apply non-toxic soil stabilizers on all access roads" and he asked what are non-toxic versus toxic. Mr. Kent said this is something the Air District has approved and is non-toxic. Vice Chair Soto referred to Item G, it tries to minimize exhaust emissions, particulates, and other pollutants.....idling motors.....be in frequent use for much of the construction period." He asked if there is equipment being constructed that has reduced emissions. Mr. Kent said there has been a big change in both on-road and off-road biodiesel equipment to require them to have reduced emissions and more are anticipated in the future.

Vice Chair Soto referred to page 81 dealing with nesting impacts, and mitigation measure IV-6. It talks about bringing on a qualified biologist who would conduct pre-construction nesting birds and surveillance of trees and shrubs. He asked for the qualifications of such a biologist, and Mr. Kent said there is a known community consulting biologist who has experience with this. Vice Chair Soto referred to fire protection service under mitigation measure XIII-1, the first point is to require the installation of sprinkler systems and he thinks the Commission should look at this for all residential and commercial structures. Regarding mitigation measure XIII-2 which talks about the park open space impact fee for each residential unit developed, he was involved in a study that showed Richmond is woefully behind on the amount it charges for park and open space

impact fees. There was to be a study about raising that fee and he questioned its status. Ms. Velasco said the fee is published in the City's fee schedule and is a flat fee on a per unit basis. Vice Chair Soto asked that this fee be revisited at some time in the future.

Commissioner Butt referred to mitigation measure VIII-2 which is the retention basin. He asked if staff could address the issue for mosquito vector control. Mr. Kent said in general, it takes longer for mosquitoes to breed in the time the water would be retained in the basin. The basin intends to bring the site back to the hydrologic conditions that existed before with all of the impervious surfaces and it would be a matter of hours or a few days.

Commissioner Butt stated there was language that talks about mitigation measure XIII-1 which impacts to fire protection services. It mentions the addition of two EBMUD hydrants. He did not see the language, but it talked about the inadequacy of pressure there. This is a real concern in a high fire danger area and asked where the pressure language went and why it was removed. Ms. Velasco said it is still contained in the staff report and was not in the mitigation measure itself. Ms. Whales stated RFD has been consulted and they are in agreement with staff's findings as well as the mitigated negative declaration for the mitigation measure. They reviewed all of EBMUD's water maps to determine what the flow would be and the utility company would have to weigh in as to the flow itself into the area and this is something that would be further discussed when and if the project is developed. Staff also has a letter from EBMUD that talks about their water service. They have a service elevation between 200-375 feet and staff is not sure where at the top of the ridge the homes will be and there are mitigation measures for water pumps to mitigate these issues if needed for pressure.

Commissioner Butt said it was a measure as shown as being mitigated in the past and now it says nothing about the water pressure issue. Mr. Kent noted that on page 56 of the circulation draft mitigated negative declaration it states a test of the water pressure was done. They found it was slightly below and therefore, the RFD requires structures for the fire flow of 1,000 gallons per minute and installation sprinklers would be necessary to provide adequate fire protection. Installation of those sprinklers is in measure XIII-1 on page 73. This would address adequate fire protection, and EBMUD has indicated they can also install pumps that would provide adequate domestic pressure of the water, if necessary.

Vice Chair Soto referred to the Alameda Whip Snake and other species and it looks as though the mitigation is to not disturb the wildlife. On page 6 of Attachment 4 from Wood Biological Consulting, which he read and said in the end, the National Wildlife Service states this will impact the whip snakes' habitat, tree removal, vegetation removal and disruption of the habitat of migratory birds. He asked what the mitigation is for destruction of habitat. Ms. Whales said below the wording is mitigation measure IV-3 and a biologist would be on-site and would monitor species if they are on-site and nesting. It would be addressed by the California Fish and Game throughout the process prior to any disruption of land. They must disclose what could possibly happen and they are not sure this will occur.

Chair Lane called for the applicant's presentation and public comments thereafter.

William Randolph, applicant, said the project application was submitted in 2004. The owner has been amenable to suggestions in trying to develop the land. They initially looked at dividing it into 8 lots and reduced it down to 4, not realizing what was occurring with the hills or water retention. After time, they restructured the project as the existing lot and three additional lots for housing and one remaining lot. The issue seemed to be one of NIMBY-ism given concerns there was a document that stated the land could not be subdivided further which does not exist.

They then dealt with the environmental issues which they believe has been done. He hopes the Commission will review the overall subdivision of land and mitigated negative declaration and provide a favorable response.

Public Comments:

Tom Waite, engineer, Richmond, stated the 1989 Commission resolution states the project will be limited to 6-8 maps and houses. These documents were lost in a fire, but his wife was a former City planner and he provided those documents to the Planning Department. He said Mr. Fong has had 8 years to talk with the neighborhood, and it was the previous developers, Bill Nukura and Bill Oliver, who met with them. His concern is water. In the original development they had an active creek. The development caused an eruption to the creek and in 1995 after the development went in and traffic started, neighbors started to have springs in their backyards. They must trench their yards, have sump pumps and there is structural damage. When a survey was done in 2004 of the remainder parcel, 25 feet of water was present. It is a landslide deposit which is confirmed by a geotechnical report, there are serious erosion problems with the road and the soils report predicted landslide issues. The wastewater treatment plant documents indicate they refuse to put a lateral up there so the owners have a private sewer line. There were 4 serious water line breaks on Knobcone Drive 4 years ago which were from stress-induced cracks. They were snapping down Knobcone one at a time during a 3 to 4 month period which was due to sheering force. He also voiced concern over buried gas lines and pointed out the sidewalks buckling at the base. PG&E should also worry about this. Lastly, they are seriously concerned about environmental impacts and property value effects and need for disclosures.

Vice Chair Soto said if there are active slide areas, he asked if there were also seismic impacts if an earthquake would occur. Mr. Waite said because of all of the water that normally went to the creek and now is going under all of their houses would most likely impact the area and should be looked at. They would like to see the water out and said the creek is now dry because access is no longer there because of the previous structure and road blocking it since 1997, and this was a serious environmental oversight that occurred which he continued to describe to explain to the Commission.

Commissioner Butt asked and confirmed that the cap at 8 homes was for the development that occurred in the mid-1990's after houses were built. He clarified that 7 of the 8 homes have been built which is a part of the property, and with the addition of 3 homes, it would total 11 homes.

Ms. Whales suggested the Commission refer to the tentative tract map in the Initial Study to see a better visual of the actual layout.

Commissioner Butt said it strikes him that there would be a nexus between the creek water, the potential damage and this proposed development. Mr. Privat said it would depend upon what mitigation has occurred. Ms. Whales stated there is a good explanation in the Initial Study on page 32. Allan Crop and Associates reviewed the geology. The creek is some distance, he talks about the monitoring of the cracks and a supplemental investigation was done for the mitigation which is VI-3. There is also an updated study conducted on May 16, 2012. It references all earlier studies conducted on the site and the project was mitigated and this is the reason it has been reduced down to the number of houses originally applied for. They originally came in for an 8-lot subdivision and it was not until they investigated the soils and geology and do boring that they learned it was best to have a detention basin on two of the lots they had previously planned to develop.

Mr. Randolph interjected that there were three geologic studies done on the entire property to determine what was feasible to build on and what was not, which should be in the report, which Ms. Whales affirmed.

Commissioner Willis asked the applicant if he indicated they were going to turn the extra parcel into a detention basin and into a creek. Mr. Randolph said not the entire parcel but a portion of it, and according to the City's consultant on the project, this would mitigate any run-off that would occur from impervious surfaces. The water goes to the drainage system that currently serves the neighborhood through a large pipe under the street and under the other side of the road.

Mr. Waite interjected that the water coming through yards is from springs from up underneath. While the basin is a good idea, they are still dealing with water underneath that was not present in 1987. Once cars began putting pressure on this, water began to move around.

Commissioner Choi questioned why Mr. Waite believes it is coming from springs underneath, and Mr. Waite said it is no one's fault that the creek got broken, but there is more pushing of water underneath and they do not want it to get worse and risk further damage.

Commissioner Butt asked about the limit of 8 parcels, and Ms. Whales noted staff has a letter from the Senior City Attorney that states they cannot be absolute from that requirement and there was never a requirement for 8 lots, and this is on file. This was dated 15 years ago. Commissioner Butt said he would be interested in seeing that document as well as what Mr. Waite has. Separately, he asked as a concerned neighbor and engineer, he asked if Mr. Waite looked at the mitigation measures and the Crop report. Mr. Waite said yes, and he noted that he would like the Commission involved with the neighbors and Planning Department staff regarding there is a limit of 8 lots.

Commissioner Butt confirmed that neighbors' concerns are primarily about the blockage of the creek, what has happened as a result of that, water pipes breaking in front of their homes, impacts on their housing values, and the need for disclosures of soggy backyards.

Ms. Whales said staff went through a very extensive public review of this project and they had never received any correspondence or emails during public review which consisted of 60 days for the Initial Study from neighbors who are present this evening, specifically Mr. Waite. There was ample time to review this, and the majority of studies are from qualified geologists stating the opposite which are part of the project and available for review at City offices.

Mark Alford, Richmond, said for the last 15 years he and his family have lived on Knobcone Drive. When he purchased his home, the Knobcone project was approved for 8 homes, but not developed. As the homes were developed the water flow on the hillside changed and problems started. It did not matter with rain patterns, but he now has small creeks of water popping out in the middle of his hillside and threatening his home. At times the concrete ditch that runs parallel to Knobcone Drive located behind and above his home is overflowing and cannot handle the immense watershed that starts at the top of Wildcat Canyon Ridge. The road leading up to Knobcone is showing signs of movement, cracking and buckling. The fact that the road is built over a fill and a known slide is a key point to consider. There is already a home built on the case property and when the structure is finally occupied and the last remaining approved lot is built upon, this alone will add to the impacted drainage, roads and sewer systems. He asked if the City of Richmond will be responsible for the roads, sewers and damage to existing resident's

homes on Knobcone Drive and he asked the Commission to think about the quality of life issues and future costs to the City before allowing this plan to go forward, as it is not worth it.

Commissioner Reyes asked if there is structural damage in homes, and Mr. Alford said it is moist under the house all year long even in dry months. When houses began getting built, there was a different water flow, the cement ditch was filling and overflowing in normal years, and the issue is that the hill is unstable land around them.

Robin Bedell-Waite, Richmond, said this development was limited to 8 lots and there was concern about water and erosion and this is why it was limited to 8 lots. The problem is that there is an absentee land owner, a monstrosity of a greenhouse that is vacant and uninhabitable with an illegal cyclone fence around it. If this is the integrity that will be applied to any of the mitigation measures, as a resident below the development has no faith it will be done correctly. If the retention basin is supposedly going to be maintained by a homeowners association, she also did not feel good about this. They have a development above them and they worked with them but this is a frustrated group who thought that the ruling by the Planning Commission was what was going to happen, but it is not. The issue is one of integrity and trust and she does not feel this exists with the particular land owner.

Vice Chair Soto clarified that the structure is inhabitable because when the owner purchased the property, it was half built and they ran out of money. It sat in the rain for a couple of years and it needs to be torn down.

Vice Chair Soto referred to water getting under houses or near homes, and he asked if any neighbors have experienced mold issues. Ms. Bedell-Waite said she could not speak for everybody, but did not believe so.

Evez Maoz, Richmond, said he it seems like some issues are completely ignored for the existing 45 residents below. The owner bought the property in a foreclosure and there were no disclosures made by the bank. He presented a document to the Commission and said when they created the original 8 lots one requirement was to create a homeowner association because there is a private road and shared sewer lines. A set of CC&R's were created and recorded which has a long history and he clarified with Commissioner Reyes he is part of it, but there are no fees in place.

Commissioner Choi said it seems these are long-standing issues and questioned why the Commission was hearing them for the first time tonight. Mr. Maoz said it seems to him that there have been 4 staff planners; Joseph, Tanya Boyce, and Lamont Thompson working on the same project and nothing changed. For some reason, when the owner bought the property he was told he cannot subdivide it, but he chose not to listen. He said he missed one meeting because he was out of the country but at the last meeting he received 3-days' notice and he gave packets to the planners.

Chair Lane said this item has been on the agenda at least twice and this is the third meeting over the past three months. She asked if Mr. Maoz brought the same issue in the past, and Mr. Maoz said he called the planner and begged that there are so many issues and the staff is not listening to neighbor's issues. After one or two minutes, she always indicated she needed to attend a meeting.

Chair Lane called on the applicant to rebut and then the lead speaker can also have two minutes to rebut.

Mr. Randolph, applicant, said the process has been long and arduous. There are language barriers with the owner; however, he initially bought the land and building on it and his family was going to live there. He ended up building his wife a house somewhere else and this is the reason it was initially vacant. He put a fence around it with the hopes of keeping intruders out and from stealing copper pipes; however, the way the project is designed will have the least amount of impact on existing neighbors. During the 8 year process, they met with El Sobrante Neighborhood Council and homeowners in the subdivision and there initially were 40 people. They told them they would do their best to make this a good process.

Tom Waite, Richmond, said they received a letter two weeks ago about the meeting and prior to that, they had not received any notice. The last letter was about one and one half years ago. They brought documents forward at that time and have been continually submitted since 2004 indicating their concerns. What was new tonight was the wastewater letter. Their frustration is getting the information to the City and they are in the process of contacting the Mayor of their concerns. They worked with the Knobcone Estates group which went fine and they approached the owner of this project to no avail. The CC&R's is the critical document and they have a lawyer involved at this time and will take it to the next level.

Commissioner Choi questioned what the document states. Mr. Waite said in the 1989 proceedings, they highlighted in the document where they capped it at 8 lots. There is proof that the road is sliding, breaking water pipes, water in their backyards that is there now and these are concrete examples. The basin may make it better or worse, but it is unknown and someone needs to be held responsible. He questioned who maintains the basin. City policy also prevents cyclone fences and he doubts the owner has ever been cited for this. What happens after projects are built is sliding of streets, water in back yards, or a gas line can break, and no one will be responsible.

Ms. Whales said staff is recommending the Commission approve Tentative Tract Map 88-12 for the four lot subdivision with the remainder parcel and adopt the mitigated negative declaration and mitigation monitoring and reporting program for EID1100515.

Chair Lane referred to the maintenance of the retention basin. One recommendation in the staff report is a homeowners association to ensure the system is maintained. She said there was a homeowner association that was supposed to be implemented or created which never happened. Ms. Whales said this will be a new homeowner association that would maintain the system for homes constructed on that end of the cul-de-sac going up to Knobcone Court and not the one cited earlier, which is a different subdivision. She explained that speakers have been mixing different subdivisions tonight and unfortunately, the homeowner association was not created, but she does have documentation from the City Attorney's office who reviewed it extensively.

Chair Lane recalled there was the previous homeowner association set up but it was never implemented or begun. Ms. Whales said this is correct and why Lot 10 was not developed at that time.

Commissioner Reyes asked for a definition or example of another retention basin in Richmond. Mr. Randolph said it is something that can be researched. They are designed primarily to capture overflow water and release the water gradually so as not to cause runoff. West County Wastewater District discusses this in the report.

Vice Chair Soto thanked residents for bringing back old documents from the time of Floyd Johnson. He referred to the Memorandum to Floyd Johnson from the City Attorney's Office, Public Works and Planning Departments, what it looks like is the notion of a homeowners association was a clever device to place the liability on somebody because clearly, the sanitary sewer district refused to accept the water due to geotechnical concerns. They have heard about what has happened since 1995 and the City did not want to take responsibility but wanted to give the property owners the opportunity to try and make money on their land, so he is not sure he is ready to vote on this tonight as it seems there are unresolved issues.

Commissioner Reyes referred to moisture underneath homes, and he asked for Mr. Randolph's response to this. Mr. Randolph said from what he knows from water in houses, it will cause mold. The neighbors live on the street below the project, and he was not sure anything would happen.

Commissioner Butt said he agrees with Vice Chair Soto. There are many unanswered questions and serious issues. The report is extensive, but it leaves a lot open for question. He thinks he would vote no and suggested postponing it. He asked to find a point where the Commission could look at a more innovative approach to water in a site instead of putting it in a detention basin. There may be opportunity to daylight the creek, make it a site amenity, get neighbors behind a project, but said they are not there tonight.

Chair Lane said there is a flurry of information and when the Commission receives documents the day of the hearing, it is impossible to read them all. Understanding that the City staff has felt that water and hydrology issues have been sufficiently mitigated, she hears neighbor's concerns and she is hearing that Commissioners are uneasy with approving the request tonight.

Vice Chair Soto said neighbors are impacted and have concerns and habitat has not even been discussed. He said he would be prepared to make a motion to close the public hearing and revisit the project in the next couple of months with more accurate information.

Planning Development Director Richard Mitchell said he had asked Ms. Whales to address this project after 3 or 4 planners had been previously assigned to it, but staff has exhausted all possibilities as far as studies, engineering reviews, and what staff would recommend is making a decision. If the Commission does not feel the project is satisfactory, he suggested the Commission make a motion to approve it or deny it as the City Council can make a decision once and for all. Staff is hesitant to spend any more time and resources on 4 lots. What is new for this Commission is that they have gone through a recession and the frequency of projects like this has gone down. In the past, they used to have about one project a month like this and issues were the same. These sites are wrought with uncertainty—they are hillside sites. Sometimes there is water, there are schemes for mitigation that sometimes work and sometimes do not work. The ability of staff and the Commission to sort this out is unlikely. What staff would like is closure and if the Commission does not feel findings can be made, it should deny the request. If there is any one or two things the Commission would like staff to review and return with, they could, but at this time, it has become something that needs to reach a final conclusion.

Chair Lane said she did not favor continuing it for two months and thinks the Commission would need to be specific on what information should be researched.

The public hearing was closed.

Mr. Privat said the resolution does a fair job of identifying all findings the Commission must make. He referred to pages 2, 3 and 4 of 7 dealing with General Plan consistency, physical attributes and suitability for development and environmental impacts. If the Commission were to deny, he asked to identify one of the findings it could not make and base the motion on that.

ACTION: It was M/S (Soto/Butt) to deny Resolution 12-14; Section 1.D; the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and that the Commission denies EID1100515 finding that the Commission cannot support subdivisions 3, 4, 5, and 6 of Section B of approval of the Tentative Map. Vote: (4-1-1-1) Ayes: Butt, Reyes, Soto and Willis; Noes: Lane; Abstain: Choi; Absent: Teltschick-Fall.

COMMISSION BUSINESS

7. Reports of Officers, Commissioners and Staff

Mr. Rojas announced that in cooperation with the City of San Pablo and Contra Costa Health Services through a grant funded by Caltrans for an environmental justice transportation planning grant, the cities of San Pablo and Richmond are working on a complete streets study for San Pablo Avenue between Hilltop Drive and River Street. The first public workshop was held in San Pablo, heard from residents living in those areas about what they would like to see in the area to improve pedestrian and bicyclist conditions. A couple of design options will be presented to the community on Thursday, November 15th from 6-8PM in Wanless Park in San Pablo.

Commissioner Reyes announced that on November 3rd, there will be a tree-planting event on 35th Street in Richmond.

Vice Chair Soto reminded everybody that Tuesday, November 6th is Election Day and he asked everybody to vote. He resents the obscene amount of money being spent by Chevron and the American Beverage Association in its attempt to corrupt and influence City government. On November 15 from 6:30-8:30 p.m. there will be a post-Election Town Hall meeting to discuss results of the election, sponsored by Communities for a Better Environment, Asian Pacific Environmental Network, ACCE, RPA, CCISCO and others, and he invited everybody to attend.

Commissioner Willis said ACE is looking for volunteers to walk precinct districts for Proposition 30 and 32. Also, during this Saturday at 9:00 a.m., BBK (Building Blocks for Kids) will have a parent empowerment event at the Nevin Community Center.

Chair Lane said she continues to appreciate the decorum as a Commission even if they do not agree on everything.

Adjournment - The meeting was adjourned at 10:35 p.m.