A regular meeting of the Pittsburg Planning Commission was called to order by Chairperson Ramirez at 7:00 P.M. on Tuesday, June 27, 2006 in the Council Chambers, City Hall, 65 Civic Avenue, Pittsburg, California.

ROLL CALL:

Present: Commissioners Garcia, Harris, Ohlson, Tumbaga, Thomas, Chairperson Ramirez

Absent: Commissioner Dolojan

Staff: Associate Planner Ken Strelo, Senior Civil Engineer Alfredo Hurtado, and Kathleen Faubion from the City Attorney’s Office.

POSTING OF AGENDA:

The agenda was posted at City Hall on Friday, June 23, 2006.

PLEDGE OF ALLEGIANCE:

Commissioner Thomas led the Pledge of Allegiance.

DELETIONS/WITHDRAWALS/CONTINUANCES:

There were no deletions, withdrawals or continuances.

COMMENTS FROM THE AUDIENCE:

There were no comments from the audience.

PRESENTATIONS:

a. C-3 NPDES by Ken Strelo
The Chair advised that the presentation would be made upon completion of the public hearings.

CONSENT:


MOTION:

Motion by Commissioner Garcia to approve the Consent Calendar, as shown. The motion was seconded by Commissioner Harris and carried by the following vote:

Ayes: Commissioners Garcia, Harris, Ohlson, Tumbaga, Thomas, Ramirez
Noes: None
Abstain: None
Absent: Commissioner Dolojan

PUBLIC HEARINGS:

Item 1: Montreux Annexation and Development Agreement. AP-06-348

A public hearing on an application filed by Altec Homes, Inc. and Seecon Financial and Construction Co, Inc. requesting approval of an annexation and development agreement to preserve the Pittsburg voter approved urban limit line and the Pittsburg General Plan Land Use Map and policies as they currently apply to an approximately 161-acre site commonly known as the Montreux property and located generally on the west side of Kirker Pass Road (6.4 acres located east of Kirker Pass Road) and south of the current City limits. APNs 089-020-009, 089-020-010, 089-020-011, 089-020-012.

Associate Planner Ken Strelo presented the staff report dated June 27, 2006. He recommended that the Planning Commission adopt Resolution No. 9646, recommending City Council approval of the proposed annexation and development agreement for the Montreux property.

Mr. Strelo advised that the City had received letters this date regarding the proposal from the Greenbelt Alliance and the City of Concord, both dated June 27, 2006. Copies of both letters were provided to the Planning Commission.

Mr. Strelo reported that staff and the City Attorney’s Office had reviewed the concerns raised by the Greenbelt Alliance in its letter. The City Attorney had determined that the Planning Commission could still make the required findings to recommend City Council approval of the project.

PUBLIC HEARING OPENED
PROPONENT:

ALBERT SEE NO, Ill, developer, stated that he had been pleased with the passage of Measure P which had brought the developer to the Planning Commission for the annexation of the Montreux property. He noted that the developer had entered into Memorandums of Understanding (MOUs) with the City for greenbelts and open space along the borders of the property. The developer had also been working with the associated jurisdictional agencies involved with the project.

Mr. Seeno clarified that at this time the developer did not have a proposed project. He sought the Planning Commission’s recommendation to be able to move on to the City Council.

Commissioner Thomas clarified with Mr. Seeno that the subject property would be open for now. She inquired whether or not the developer had met with the Greenbelt Alliance.

Mr. Seeno advised that the developer had met with the Greenbelt Alliance in the past, although there had been no recent discussions with the Alliance. He explained that the developer had worked with the Greenbelt Alliance at the time when Measure P was presented to the voters and the developer had worked with members of Save Mt. Diablo as well. He emphasized that the developer would be working with all regulatory groups as mandated by State and federal regulations and in that process would be working with the environmental groups.

Chairperson Ramirez inquired of the total acreage designated in the Montreux property for open space. Mr. Seeno advised that out of the total acreage, there would be 50 plus acres of open space.

WILSON WENDT, Miller, Starr & Regalia, 1331 N. California Boulevard, Walnut Creek, the Attorney representing the applicant, concurred with the comments made by the City Attorney. He pointed out that the Development Agreement (DA) included a provision that the density of development, height of structures, dedications and the like would be determined by the General Plan and land use provisions in effect when a development was presented to the Planning Commission sometime in the future.

Mr. Wendt advised that the intent of the DA was only to vest in place the General Plan provisions and the Urban Limit Line (ULL) to allow the developer/property owner the certainty to move forward in planning a project to provide the benefits to the City that the developer had already described. He urged the Commission to approve the project which would have full and complete environmental review at the time a project was submitted to the City, and at which time the developer/property owner would work with all stakeholders including the interested environmental groups.
OPPONENTS:
DAVID REID, East Bay Field Representative of the Greenbelt Alliance, 1601 North Main Street, Suite 105, Walnut Creek, spoke to the June 27 letter he had submitted to the Planning Commission. He suggested that the DA was fundamentally flawed and was illegal and unenforceable since it would pertain to property outside of the City’s Sphere of Influence (SOI). He noted that the statute was very clear that DAs could only be made on properties inside the City’s SOI. In this instance, there was no environmental review on the DA which was required to identify the potential impacts to the environment.

Mr. Reid also commented that the DA included no information on the scope and intensity of the development of the site. For those reasons and since the process before the Planning Commission was highly unusual, he requested that the Commission recommend a denial of the annexation and the DA to the City Council. He also recommended that the Commission urge the applicant to return with a full plan that the Commission and the City Council could fully evaluate to determine whether or not the DA was consistent with the General Plan and to what extent it would benefit the community and the public. Pending the resolution of those issues without a plan and a process, he suggested that neither the Planning Commission nor the City Council could evaluate the project.

Mr. Reid suggested that the DA would amount to a giveaway to the developer taking power away from the people to change the General Plan designation through an initiative or by electing City Council members who could change the General Plan in the future and give that power to the developer. He again asked that the DA be denied and that the developer be directed to return through the regular process and work with the associated environmental groups to establish a plan that would make sense.

Commissioner Garcia disagreed with the Greenbelt Alliance that the property was not within the City’s SOI. He pointed out that in 1997, a study and a report had been prepared which had included the property. There had also been an application submitted on the property, with the exception of a small portion of the property that was outside of the ULL and which at one time had been approved by the Planning Commission. He noted that the City’s SOI ran over the hill into the City of Clayton. Since the City Council at that time had not followed through, that application had been withdrawn.

Commissioner Garcia understood that regardless, the Nortonville property was in or would be annexed into the City.

Mr. Reid understood that per the June 27 staff report, the property was outside of the City’s SOI. He added that the DA statute stated that the DA must contain in the text the intensity and size of the buildings, among other factors, being proposed.

Commissioner Thomas asked the City Attorney to clarify the issues.

Kathleen Faubion, representing the City Attorney’s Office, clarified for the record that the
letter from the Greenbelt Alliance had been provided to the Commission. She stated that the contention by the Greenbelt Alliance that the DA was illegal and unenforceable was not supported by the Pittsburg City Attorney’s Office. She explained that the DA had been carefully crafted and had been negotiated with the developer and the City Attorney’s Office. Numerous citations throughout the DA dealt with provisions in the Government Code, with a tag line to show what Government Code would be considered and how it would be met. She stated the contention that the project had not been annexed and might or might not be outside the SOI was a non-issue since the DA would not come into play until the property was annexed. She advised that there was case law to that effect.

Ms. Faubion added that any SOI decision that would need to be made, if any, would be done at the time of annexation with compliance either way. The DA would not become operable until those qualifications had been met.

As to concerns with respect to California Environmental Quality Act (CEQA) review, an issue also raised by the Greenbelt Alliance, Ms. Faubion explained that the subject issue related to a discretionary decision which would have no physical effect on the environment.

The request before the Planning Commission, if supported, would freeze existing land use designations approved through the voter approved Measure P. She stated it was clear in the DA and the staff report that at the time development was proposed, CEQA review in a comprehensive nature would be required. At this time, as had been noted in the DA, anything else was too speculative.

Ms. Faubion disagreed that any action to approve would constitute a giveaway to the developer in that the item before the Planning Commission was a legitimate function of the City, to plan and to execute agreements as part of its governmental function which was what the DA was doing.

Mr. Reid reiterated that the DA had no information on the scope and intensity of development where the statute clearly stated must be part of a DA, which he stated had also been supported by case law. He noted that his June 27 correspondence had referenced the Smart case, where the courts had found in favor of the plaintiff who was trying to pursue development.

Mr. Reid reiterated his prior comments. While he recognized that the City would like to work with the developer to freeze the General Plan, he suggested that the DA was not the tool to accomplish that intent. The DA was a contract between the developer and the City which allowed the developer a vested right, where no future City Council and or citizen initiative for 20 years could change the General Plan designation or take away the developer’s right to develop. He reiterated that DAs typically were phrased in such a way that a City would receive a benefit in exchange for that right. In this instance, the City would receive no more than it had already negotiated in the MOU referenced in the staff report. He reiterated his opinion, that the DA was illegal on its face.
Ms. Faubion affirmed her prior comments that the DA was a negotiated agreement and it was up to the City Council to decide whether or not it was an appropriate agreement to be made. The City Council would make that determination once it had received a recommendation from the Planning Commission. She reiterated as to the scope and intensity of development, that the DA was not vesting development and would not reach that far into the development process. The intent of the DA was only to freeze what already existed. As previously stated, the Pittsburg City Attorney’s Office disagreed that the DA was illegal on its face.

SETH ADAMS, Director of Land Programs, Save Mt. Diablo, stated that in October 2005 he had requested that the City give notice of applications and land use proceedings for properties along the southern boundary, including the Faria and Montreux properties. He had only learned of the applications before the Commission yesterday morning from a City resident. As such, he had received inadequate notice of the application and had not been able to review the information in detail.

Mr. Adams suggested for both the Faria and Montreux properties that they were not within the City’s SOI. As such, before annexation could be processed, he suggested that the City must pursue an SOI change. He also noted that the Montreux property had been previously considered in a Draft Environmental Impact Report (DEIR) which had not been certified so the City had determined that the project, which had not materially changed, would be subject to CEQA and that an EIR would be required for both the Faria and Montreux properties prior to the consideration of annexation and a DA. He suggested that until there was a good development description it would be difficult to conduct the environmental analysis. He emphasized that CEQA analysis was required at the earliest stage, if possible.

Mr. Adams added that an environmental checklist and Initial Study were required to determine whether or not an EIR would be necessary. The City had suggested in this case that no environmental analysis was necessary since this was not a project, which determination he did not support. He suggested that the project would have significant environmental impacts which must be considered before moving forward with any agreements. He suggested that the City could not make a determination without that analysis and that it would be a bad idea to accede to the applicant and give the developer carte blanche without significant analysis of the potential impacts to residents of the City.

Mr. Adams reiterated that proper notice had not been given nor had notice of the public hearings been placed in the newspaper, which would have resulted in a more significant discussion. He suggested that the process only benefited the applicant at the expense of the City. He offered written comments to the Commission at this time.
In response to Commissioner Thomas, Mr. Adams reiterated his opinion that the projects had not followed the required CEQA processes for review.

Mr. Strelo clarified for the discussion that the City did not have a formal development application for review. There had been a prior application on the property which the developer had withdrawn. If in the future the developer planned development on the property, a full application would be required. As the City Attorney had previously stated, he explained that the City Attorney’s Office had determined that CEQA was not required at this time.

Mr. Adams disagreed and again outlined the CEQA requirements.

Ms. Faubion spoke to Pages 5 and 6 of the DA and stated that the CEQA checklist would not come into play without a project. She reiterated that the item before the Commission was not a project for CEQA purposes but was an annexation agreement, the application of which annexation had yet to be submitted, processed and approved.

Mr. Strelo further clarified that the City’s public noticing process had been followed for the public hearing, although he was uncertain that Save Mt. Diablo had specifically been notified given that CEQA action was not being pursued at this time.

Commissioner Garcia reiterated that both properties were within the City’s SOI and that the City of Concord had recognized in its correspondence the fact that the Faria property was within the City’s SOI.

Mr. Adams stated that the staff report for both projects had identified that both properties were not in the City’s SOI and that the Local Agency Formation Commission (LAFCO) must act on the SOI change before considering an annexation proposal. He added that Save Mt. Diablo was to be notified of any land use proceeding on the properties along the southern edge of the City, regardless of whether or not CEQA notification was required. He described the CEQA notification requirements at this time.

Mr. Strelo clarified that the Montreux property was not in the City’s current SOI but was within the planning area. At the time the project was considered by LAFCO, a request for reorganization of boundaries would be made which could include annexation to the municipal boundary and annexation to the Delta Diablo Sanitation District (DDSD), among potentially other agencies, which would be a request made along with an amendment to the City’s SOI.

PUBLIC HEARING CLOSED

Commissioner Thomas stated that she would like to make a motion to approve the project. She deferred to Commissioner Ohlson at this time to allow him to comment before a...
Commissioner Ohlson understood that other DAs had much more detail. He described the subject DA as sketchy.

Commissioner Ohlson noted that the staff report had indicated that the developer promised not to build for five years which would offer plenty of time to craft a DA subject to CEQA regulations. In his opinion, it appeared as if the Commission was considering a project, and as such, he would be voting against the item.

Commissioner Thomas stated that she would like to move to approve the proposed annexation and Development Agreement for the Montreux property with the proviso that the information received this date was correct and that there was no development and this was just an annexation.

Mr. Strelo clarified the intent under Commission consideration for the annexation and Development Agreement for the Montreux property to be preserved for 15 years.

Commissioner Garcia seconded the motion.

**MOTION: AP-06-348 (FAILED)**

Motion by Commissioner Thomas to adopt Resolution No. 9646, recommending City Council approval of an Annexation and Development Agreement related to future development of the Montreux property, AP-06-348, with the proviso that the information received this date was correct and that there was no development, just an annexation. The motion was seconded by Commissioner Garcia and **FAILED** by the following vote:

- Ayes: Commissioners Garcia, Harris, Ramirez
- Noes: Commissioners Ohlson, Thomas, Tumbaga
- Abstain: None
- Absent: Commissioner Dolojan

Ms. Faubion stated that the motion failed due to a 3-3 tie vote. She advised that the DA required a recommendation from the Planning Commission to the City Council. She reiterated that the Planning Commission was not being asked to approve a project.

Commissioner Harris expressed dismay that Commissioner Thomas had made a motion for approval and had then voted against that motion. He requested clarification from the City Attorney.

Mr. Strelo identified the staff recommendation as contained in the June 27 staff report, which was a recommendation that the Planning Commission recommend City Council approval of an annexation and Development Agreement related to future development of
the Montreux property. He explained that the Commission could either motion in support that recommendation or negate it.

Commissioner Thomas made a motion to send a recommendation to the City Council [which recommendation was not identified].

Mr. Strelo again identified the staff recommendation as contained in the June 27 staff report and questioned whether or not that was what Commissioner Thomas had intended to approve.

Commissioner Thomas read into the record the staff recommendation as outlined on Page 1 of 4 of the June 27, 2006 staff report, which stated, “Staff recommends the Planning Commission adopt the attached resolution recommending Council approval of the proposed annexation and development agreement”, which was the motion she had intended.

The Minutes Clerk read the original motion into the record at this time, when asked, which had been to approve the resolution with a proviso that a project was not being approved.

On the discussion, Commissioner Garcia pointed out that Commissioner Thomas had made the original motion to approve the staff recommendation with a proviso, although she had then voted against her motion.

Commissioner Thomas explained her reasoning for her motion and clarification. She wanted assurance that the Commission would be doing what was being asked of it and clarification from the City Attorney on the issues that had been raised, along with assurance that the City would be protected and that a project was not being considered. She had asked for the additional proviso to verify that the item was not a development plan that the action being taken would be fair to all parties. She understood that she could also have made a recommendation to the City Council.

Ms. Faubion clarified for the discussion that the first motion had failed due to a 3-3 tie vote. The Planning Commission now had a second motion on the floor, although no second to that motion had been identified at this time.

Commissioner Tumbaga clarified her understanding that the recommendation being made by Commissioner Thomas was that the City Council approve the DA and annexation. As to the discussion at hand, she noted the need to be very certain of the action being requested. She suggested that when a motion was made, it was to get the item open for discussion as opposed to an active approval, which she understood could be done. She also understood that just because a motion was made did not mean the motion maker had to vote in favor.
Commissioner Tumbaga expressed concern with the development, had concerns with development in the hillsides and had similar concerns to those raised by the previous speakers. She suggested that Commissioner Ohlson’s comments on the DA were well taken. She also urged more thought prior to making a decision given the numerous issues related to the project that would have to be evaluated. She added that she was clear that Commissioner Thomas was now making a motion to recommend that the City Council approve the DA and the annexation.

Commissioner Thomas stated that was not correct. In her opinion, the developer would do what was said it would do, although she wanted to make certain that everything was above board and amendable in terms of the project. She understood that the Commission was stalemated and that there were options available that should be considered. She requested clarification from the City Attorney on the options available to the Commission given the 3-3 tie vote which had resulted in the failure of the original motion.

Ms. Faubion explained that there was a second motion on the floor. She clarified that there was no second to that motion. She added that there had been an original motion with a second, with a resulting 3-3 tie vote where the original motion had failed. The Planning Commission was required to make a recommendation to the City Council. The language in the June 27 staff report and in the resolution was a recommendation to the City Council to approve the DA and the annexation.

Commissioner Harris stated that he had seconded the second motion. He withdrew his second at this time.

Ms. Faubion suggested that the Planning Commission could further discuss the issue and take another motion if it was of the opinion it could break the stalemate. If an agreement could not be made with the Commissioners present, the item could be continued to allow the full Commission to be present. Another option could be for the Commission to send no recommendation to the City Council indicating that it had received public testimony and had deadlocked. The meeting minutes could then be forwarded to the City Council for review.

Commissioner Ohlson understood that the first motion which had resulted in a 3-3 tie was, in effect, a recommendation of “no recommendation” on the item.

Commissioner Garcia explained that the only reason he had offered a second to the original motion had been his assumption that Commissioner Thomas would have voted in the affirmative on her motion. He reiterated that the item was not a final agreement, there was no project under review and at such time there was a project, there would be conditions imposed. He pointed out that both Save Mt. Diablo and the Greenbelt Alliance had opposed every major project in the City of Pittsburg. He suggested that those groups should rather address development occurring in the hills in the City of Clayton.
Commissioner Garcia stated that he was not ready to second the second motion made by Commissioner Thomas to approve the staff recommendation.

Commissioner Harris clarified that he had seconded the second motion.

The Chair clarified that the second motion was to approve the staff recommendation to recommend that the City Council approve the proposed annexation and Development Agreement for the Montreux property.

To clarify the situation, Ms. Faubion affirmed that Commissioner Thomas had offered a second motion to adopt proposed Resolution No. 9646, recommending that the City Council approve the proposed annexation and development agreement for the Montreux property, as shown on Page 4 of 4 of the June 27, 2006 staff report.

Commissioner Thomas affirmed that was her motion.

Commissioner Tumbaga pointed out that had been the original motion that had failed and the Commission was being asked to vote on the same motion. She understood that the Commission would be making a recommendation to the City Council for the Council to take the action.

Mr. Strelo explained that the very first motion that had been made was in reference to the approval of a project. The second motion was to adopt the resolution in the staff report, making a recommendation for the Council to approve the DA and the annexation. He added that the intent was for the Planning Commission to make a recommendation to the City Council. The Planning Commission was taking no action to approve a project. He too understood that the new motion was to recommend that the City Council approve the DA and annexation.

SECOND MOTION: AP-06-348 (PASSED)

Motion by Commissioner Thomas to adopt Resolution No. 9646, recommending City Council approval of an Annexation and Development Agreement related to future development of the Montreux property, AP-06-348. The motion was seconded by Commissioner Garcia and CARRIED by the following vote:

Ayes: Commissioners Garcia, Harris, Thomas, Ramirez
Noes: Commissioners Ohlson, Tumbaga
Abstain: None
Absent: Commissioner Dolojan

Item 2: Faria Annexation and Development Agreement. AP-06-349
A public hearing on an application filed by Faria Land Investors, LLC requesting approval
of an annexation and development agreement to preserve the Pittsburg voter approved urban limit line and the Pittsburg General Plan Land Use Map and policies as they currently apply to an approximately 607-acre site commonly known as the Faria South property located west of Bailey Road and east of the Concord Naval Weapons Station; APNs 097-180-006, 097-200-002, 097-200-003, 097-230-006, 097-240-002, 097-190-002.

Mr. Strelo presented the staff report dated June 27, 2006. He recommended that the Planning Commission adopt Resolution No. 9647.

Commissioner Thomas clarified with staff that the subject property was a separate parcel with the same conditions and issues as the prior item considered by the Commission.

Mr. Strelo also identified the property boundaries per the description for the Faria property as contained in the June 27 staff report.

Commissioner Tumbaga stated for the record that the comments she had made for the Montreux property were essentially the same for the Faria property.

Commissioner Garcia understood that the DA for the Faria property included a stipulation that $2,000 be provided by the developer to the East Bay Regional Park District (EBRPD) for every home that was built on the property. He also understood that $15,000 from the Montreux property would go towards the development of the Buchanan Road Bypass (BRB). Further, that the developer would have to pay the fees existing at the time the project was built at which time the development fees could be much higher. He pointed out that would benefit the City.

Mr. Strelo clarified that the EBRPD stipulation applied only to the Faria property. He also clarified that the developer would be subject to the development fees in place at the time of building permits, unless otherwise identified in the DA or in the staff report.

Commissioner Harris also clarified that the action before the Commission was the same as the prior item.

Commissioner Ohlson reiterated his prior comments that every DA he had read had included a project associated with it and a CEQA analysis. Since the proposed action related to a 15-year project, in his opinion there was time to complete the paperwork before a vote was taken. He again opposed the request before the Planning Commission.

Ms. Faubion clarified for the audience that the public hearing must still be opened to allow public comment since this was the same process as the prior item and since it appeared as if the Commission was now making deliberative comments.

Commissioner Thomas spoke to the letter from the City of Concord dated June 27, 2006, which had raised concerns with the potential negative visual impacts from any future
development along with concerns with development in the hillside areas and preservation of the ridgelines and hillside areas.

The Chair noted that the City of Concord had stated that it was not opposed to the annexation but had some concerns as outlined in its June 27 correspondence.

Commissioner Thomas suggested that there were more concerns related to the Faria parcel since the City of Concord had not referenced the Montreux property.

The Chair advised that was because the Faria parcel bordered the City of Concord whereas the Montreux property did not.

PUBLIC HEARING OPENED

PROPONENTS:

ALBERT SEENO, III, Faria Land Investors, LLC, clarified that whether or not the property was annexed into the City, there was no project. In the future, there would be a site plan that would be evaluated by all interested environmental groups and at which time any concerns could be raised. If annexed into the City, he explained that there would still be grazing cattle on the property and there would be no tractors or bulldozers on the hillside. Any project must review all environmental, wildlife and biological issues and require CEQA review.

Mr. Seeno noted his disappointment with the previous comments from Save Mt. Diablo and Greenbelt Alliance since he had met with those groups in the past and had raised money for Save Mt. Diablo. He emphasized that the Planning Commission was only making a recommendation to the City Council. Nothing would occur on the properties for years in that the CEQA review alone would take a couple of years. He pointed out that the General Plan had been changed to permit less density and that the developer would abide by the land use regulations in the General Plan.

Mr. Seeno emphasized that the properties had been in existence for some time and when submitted to the Commission for a project, the Commission’s review would be based on the merits of the project at that time. He stated that he would be building trails, parks and amenities for the City in which he also resided. He emphasized that the developer had worked with all State and federal environmental agencies and that he had listened to all concerns and had built good projects in the City.

JOEL WEINGARTEN, who identified himself as a Real Estate Developer/Homebuilder in Pleasanton, who had developed homes in the Oakland Hills, stated that he was present to check out the City for a potential project. He stated that he had never met the developer. He commented that every project had two years of pre-construction for every year of
construction which was the reason homes had become so expensive, eliminating affordability. He questioned anti-development groups and suggested that the Commission move the project along so that the homes would not end up being more expensive and take more time to build.

WILSON WENDT, Attorney, Miller, Starr & Regalia, 1331 N. California Boulevard, Walnut Creek, representing the applicant, emphasized again that there would be a full and complete environmental analysis for whatever project was proposed on either project site. Mr. Wendt advised that the developer would deal with the environmental agencies involved.

Mr. Wendt emphasized that there was no project on which an EIR would be based. The requested action before the Commission would freeze in place the voter approved ULL and the developer would then be able to start off the long pre-development process and know where the line would be, which would benefit the City and allow the project to move forward. He noted that they would be subject to the future approved Hillside Development Guidelines. He characterized the requested action as a preliminary step.

Mr. Wendt emphasized that the request had been analyzed in accordance with California case law. He noted a reference to a Santa Margarita case which had explicitly approved a DA that was similar to what was being proposed. He urged the Commission to recommend that the City Council approve the DA and the annexation.

OPPONENTS:

DAVID REID, East Bay Field Representative for the Greenbelt Alliance, 1601 North Main Street, Suite 105, Walnut Creek, stated that the same comments he had made with respect to the Montreux property applied to the Faria property in terms of its legality under the DA statutes as well as under CEQA regulations.

Mr. Reid clarified that the Greenbelt Alliance had recently endorsed the Black Diamond Project and had not opposed every development in Pittsburg. He clarified that he had not met with Mr. Seeno personally to discuss the DA but had discussions on what Mr. Seeno would like to see in the hillsides of the City. He noted that Measure P had narrowly passed with a lot of voter confusion on what the initiative would accomplish. He suggested that many voters were not aware that it would bring new land into the City that could be developed.

Mr. Reid suggested that the developer was fearful that a subsequent citizen initiative would come along and revoke or tighten the ULL. He suggested that was the reason there was a DA attached to the annexation request. If the developer wanted to commence with the annexation process to extend the SOI, he recommended that an annexation agreement be considered as opposed to a DA.
Mr. Reid noted that the DA locked in and froze in place vesting the developer’s right to plan and develop, taking away the City Council, Planning Commission and citizens’ power to change the General Plan designation in the future.

Commissioner Garcia questioned whether or not Mr. Reid had voted in the last election in Pittsburg. He questioned how Mr. Reid knew whether or not Pittsburg voters did not know what they were voting on. He pointed out that the measure had passed by a majority of voters. He suggested that the only reason the Greenbelt Alliance wanted to stop the annexation at this time was because there was a new referendum for a new ULL.

Mr. Reid stated that he was not a registered voter in the City of Pittsburg. The Greenbelt Alliance had commissioned a survey that had indicated that many citizens were unclear on what the initiative would actually do. He suggested that if the majority of the citizens in the future would like a future plan, those citizens should have the right to do so and not allow the developer to thwart the future will of the people with a blanket DA.

Commissioner Thomas questioned whether or not Mr. Reid had spoken with Mr. Seeno about the proposal, to which Mr. Reid stated that the Greenbelt Alliance had discussed the Faria property with Albert Seeno II, but had not reached a gentleman’s agreement of what was appropriate development in Pittsburg.

Commissioner Harris reiterated that no project was being approved at this time and that the item under Commission consideration was a recommendation only to the City Council. He suggested that if the environmental groups had any concerns with development, those concerns should be raised with the City Council.

Mr. Reid requested that the Planning Commission make no recommendation to the City Council on the matter.

SETH ADAMS, Director of Land Programs, Save Mt. Diablo, explained that the planning process allowed people to discuss the issues and consider them in greater detail than was oftentimes allowed at the City Council. He stated that a long deliberative process would allow a review of the details to be able to craft good sound recommendations. He commented that he took the Planning Commission’s recommendations seriously as it related to the issues. He suggested that the agreement had legal weight in that it would vest the developer with additional rights. He questioned what the City was receiving in return.

Mr. Adams suggested that the City would be giving up something if it and the City Council were to adopt the DA. He clarified that Save Mt. Diablo had no point of view on either of the two projects at this time and had not opposed every project in the City. He added that representatives of Save Mt. Diablo had sat down on numerous occasions with the Seeno family on numerous projects and had never discussed the subject DA and annexation
request. He clarified that he had not met with Mr. Seeno III other than to discuss Measure P last year.

Mr. Adams noted that the Faria property was the ridgeline between Pittsburg and Central Contra Costa County and could be the first brick of a development project that could be on the ridgeline with views all the way to State Route 4 across to Solano County. He added that the Mt. Diablo coal fields that were a proud possession of Pittsburg were the foothills of Mt. Diablo and that many residents of Pittsburg were members of Save Mt. Diablo and were therefore interested in proposals that could impact the welfare of the City.

Mr. Adams suggested that the process was backwards. He reiterated that the City should be reviewing the environmental issues as early as possible. If moving forward with a recommendation or approval on projects with no design, he suggested that would be giving the developer a blank check in the development process. He reiterated that the audience would have been larger if people were aware of the agreement that had been proposed.

Mr. Adams reiterated the lack of proper notice or a deliberative environmental impact process which would have reviewed and analyzed all of the issues over a period of time. He suggested that what the Commission had under consideration was a simple legal agreement, difficult to understand with no environmental background included. He urged the City to not give up its rights before being apprised of the potential environmental impacts. He again reiterated that this was an illegal action in that DA’s required more detail and that environmental analysis was required before these sorts of decisions were made.

DENNIS LINSLEY, 1063 Westmont Court, Pittsburg, commented that he had been contacted by the Sierra Club of which he was a member about the matter before the Planning Commission and that he had not been noticed of the project. He noted that the Commission had the responsibility to review the project, not simply forward the item to the City Council and that the Commission was to represent not only the developer but the citizens as well. While Measure P had passed, he questioned the fairness of the election. He noted that he would not like development in the ridgelines or on the hills. He suggested that the proposal was more of an annexation and a development proposal. He asked that the property not be locked into development.

Commissioner Garcia explained that the ridgelines would be protected by the City’s Hillside Ordinance where any development must stay 150 feet below the ridgelines.

Mr. Linsley opposed locking the property into development. He would like to see parkland in the area such as had been done for the Black Diamond Mines Regional Park. He suggested that if the item was approved, it would not allow the possibility of parkland to be considered by the voters.

Commissioner Garcia pointed out that the property was owned by a private owner and
unless someone had the money to purchase the land, it would not be parkland. The property had always been zoned for Single Family Residential.

PUBLIC HEARING CLOSED

Commissioner Tumbaga stated that she was not opposed to annexation although she characterized the DA as thin. She suggested that there should be more work on the DA prior to any action being taken.

Commissioner Ohlson reiterated his comments that he would be opposed to the DA and annexation request for the reasons previously stated.

Commissioner Garcia made a motion to adopt Resolution No. 9647, AP-06-349 and emphasized there would be a larger DA when a project was proposed for the property.

Ms. Faubion clarified with Commissioner Garcia that the additional statement to the motion was not intended to be a part of the motion but was a statement of his understanding of the matter before the Planning Commission.

**MOTION: AP-06-349 (FAILED)**

Motion by Commissioner Garcia to adopt Resolution No. 9647, AP-06-349, recommending City Council approval of an Annexation and Development Agreement related to future development of the Faria South Property, AP-06-349. The motion was seconded by Commissioner Harris and **FAILED** by the following vote:

- **Ayes:** Commissioners Garcia, Harris, Ramirez
- **Noes:** Commissioners Ohlson, Thomas, Tumbaga
- **Abstain:** None
- **Absent:** Commissioner Dolojan

**SECOND MOTION: AP-06-349 (FAILED)**

Motion by Commissioner Garcia to approve the June 27, 2006 staff report for Faria South Annexation and Development Agreement, AP-06-349, to be submitted to the City Council. The motion was seconded by Commissioner Harris and **FAILED** by the following vote:

- **Ayes:** Commissioners Garcia, Harris, Ramirez
- **Noes:** Commissioners Ohlson, Thomas, Tumbaga
- **Abstain:** None
- **Absent:** Commissioner Dolojan

Commissioner Garcia made a recommendation that a minority report be reported to the City Council, with a copy of the minutes from the Commission meeting.
Commissioner Tumbaga questioned how a minority report could be prepared for an item that failed with a 3-3 tie.

Commissioner Garcia made a recommendation that the minutes of the Planning Commission meeting be prepared in verbatim format, to be submitted to the City Council.

Mr. Strelo questioned whether or not the motion would be combined with the Planning Commission not making a recommendation on the project.

On the discussion, Commissioner Harris understood that the developer had the option to appeal the Planning Commission’s decision to the City Council.

Speaking from the audience, Mr. Wendt noted that the developer did not have to appeal anything in that the Commission was only making a recommendation to the City Council. He accepted Commissioner Garcia’s motion that the minutes of the Planning Commission meeting be prepared in verbatim format, to be submitted to the City Council.

Commissioner Harris seconded Commissioner Garcia’s motion to prepare a transcript of the meeting.

On the motion, Commissioner Ohlson asked that the motion be amended to include a statement that no recommendation was being sent from the Planning Commission to the City Council on the Faria property.

Commissioner Garcia pointed out that with the previous motion failing by a vote of 3-3, there was no need for a statement since the concerns would be included in the meeting minutes.

**THIRD MOTION: (FAILED)**

Motion by Commissioner Garcia to recommend that the minutes of the Planning Commission meeting be prepared in verbatim format, to be submitted to the City Council. The motion was seconded by Commissioner Harris and **FAILED** by the following vote:

- **Ayes:** Commissioners Garcia, Harris, Ramirez
- **Noes:** Commissioners Ohlson, Thomas, Tumbaga
- **Abstain:** None
- **Absent:** Commissioner Dolojan

Commissioner Ohlson stated that he had opposed the motion since it had not included the clause that the Planning Commission was making no recommendation on the matter.

Ms. Faubion explained that the original motion and second died. Any Commissioner was
free to make a new motion at this point. She clarified that the original motion that had failed had, in effect, indicated that there was no recommendation.

FOURTH MOTION: (PASSED)

Motion by Commissioner Tumbaga to forward to the City Council no recommendation on the Faria South Annexation and Development Agreement, AP-06-349, along with a copy of verbatim minutes of the Planning Commission meeting for Public Hearing No. 2, the Faria Annexation and Development Agreement AP-06-349, only. The motion was seconded by Commissioner Thomas and CARRIED by the following vote:

Ayes: Commissioners Garcia, Harris, Ohlson, Thomas, Tumbaga, Ramirez
Noes: None
Abstain: None
Absent: Commissioner Dolojan

Chairperson Ramirez declared a recess at 8:52 P.M. The meeting reconvened at 8:59 P.M. with all Commissioners initially shown as present or absent.

PRESENTATION:

a. C-3 NPDES by Ken Strelo

Controlling Storm Water Quality and Quantity Using Low Impact Development, Integrated Management Practices

Mr. Strelo explained that the presentation had been given to members of the Provision C-3, Implementation Work Group, and a Subcommittee of the Clean Water Program, of which he was a member representing the City of Pittsburg. Dan Cloak the Consultant hired by the Clean Water Program to help cities implement the program had prepared the presentation.

The intent of the presentation was to show the types of projects that could be evaluated in the future by the Planning Commission in terms of site design.

Mr. Strelo also held a short question and answer session with Commissioners.

COMMISSION CONSIDERATIONS:

There were no Commission Considerations.

STAFF COMMUNICATIONS:

The Planning Commission acknowledged receipt of the following Notice of Intent (to
Mr. Strelo reported that a joint City Council/Planning Commission workshop on the Trans Bay Cable Project had been scheduled for Monday, July 10 from 5:00 to 6:00 P.M. at City Hall with another workshop on the Local Traffic Mitigation Fees to be held immediately thereafter from 6:00 to 7:00 P.M.

**COMMITTEE REPORTS:**

There were no committee reports.

**COMMENTS FROM COMMISSIONERS:**

Chairperson Ramirez recognized Commissioner Dolojan who was absent. He took this opportunity to express his appreciation for Mr. Dolojan’s tenure with the Planning Commission.

Commissioner Garcia spoke to the south Wal-Mart exit onto Leland Road, across the street where the signal light was located and reported that the sidewalk was raised and in need of repair at that location. He also reported that the property located at 3795 Harbor Street had been running a flea market every weekend for the past several weeks.

Commissioner Tumbaga commended the Chair for his leadership over the past year.

Commissioner Thomas concurred.

**ADJOURNMENT:**

There being no further business, the meeting adjourned at 9:38 P.M. to a regular meeting of the Planning Commission on July 11, 2006 at 7:00 P.M. in the City Council Chambers at 65 Civic Avenue, Pittsburg, CA.