A regular meeting of the Pittsburg Planning Commission was called to order by Chairperson Jack Garcia at 7:00 P.M. on Tuesday, October 26, 2004 in the City Council Chambers of City Hall at 65 Civic Avenue, Pittsburg, CA.

ROLL CALL:

Present: Commissioners Dolojan, Gordon, Ohlson, Ramirez, Tumbaga, Chairperson Garcia

Excused: Commissioner Williams

Staff: Director of Development Projects Randy Jerome, Planning Director Melissa Ayres, Associate Planner Noel Ibalio, Assistant Planner Christopher Barton, Assistant Planner Dana Hoggatt, Senior Civil Engineer Alfredo Hurtado, City Engineer Joe Sbranti, Kathleen Faubion City Attorney’s Office, and Administrative Secretary Fara Bowman.

POSTING OF AGENDA:

The agenda was posted at City Hall on Friday, October 22, 2004.

PLEDGE OF ALLEGIANCE:

Commissioner Ohlson led the Pledge of Allegiance.

DELETIONS/WITHDRAWALS/CONTINUANCES:

Planning Director Melissa Ayres reported that as indicated on the agenda, the application for First Memories Family Day Care, AP-04-159, would be continued to a date uncertain. When rescheduled, the public would be notified and there would be a new mailing to all property owners within 300 feet of the project site.
COMMENTS FROM THE AUDIENCE:
There were no comments from the audience.

PRESENTATIONS:
There were no presentations.

CONSENT:
There were no Consent Items.

PUBLIC HEARINGS:

**Item 1: First Memories Family Day Care. AP-04-159 (UP).**
Public hearing on an application filed by Karen Zavala requesting a use permit to establish a large facility day care located at 3750 Roundhill Drive. The property is in an RS (Single Family Residential) District; APN 088-322-007.

As reported, the item was continued to a date uncertain.

**Item 2: Bancroft Gardens II. AP-03-78 (Subdivision 8805, DR).**
Public hearing on an application filed by Salvatore Evola of Discovery Builders requesting approval of a vesting tentative map to subdivide a 5.79 acre parcel into 28 lots, and design review approval of architectural plans for 28 single-family detached homes on an undeveloped parcel located at the terminus of Birchwood Drive in the RS (Single Family Residential) District; APN 095-150-030.

Ms Ayres reported that staff had received correspondence from Salvatore Evola of Discovery Builders dated October 26, 2004, requesting that the Planning Commission keep open an option to extend a trail from the project into the East Bay Municipal Utility District (EBMUD) DeAnza Trail where a solid fence was currently shown.

Ms. Ayres also provided the Commission with an amendment to the words of Condition No. 11 of the Subdivision Ordinance related to indemnification in response to the new City Attorney’s review of the City’s standard indemnification clauses that had been used in the past. The Commission was provided with an errata sheet showing the staff recommended changes to the language in that condition.

Assistant Planner Christopher Barton presented the staff report dated October 26, 2004. He recommended that the Planning Commission adopt Resolution No. 9531, approving Tentative Map No. 8805 with the staff recommended conditions, and approve Resolution No. 9532, approving Design Review Application No. AP-03-78 with the conditions as shown.
In response to Commissioner Ohlson, specifically with reference to Mitigation Measure No. 2, Mr. Barton noted that. As to Mitigation Measure No. 2, the proof of consultation would come prior to the issuance of a grading permit and would run with the conditions of approval for the subdivision. It would also require the City Engineer to ensure that the conditions of approval for the subdivision were met. Since the California Environmental Quality Act (CEQA) work had been done for the project and with the Mitigated Negative Declaration, that mitigation measure was an additional item that would be required to be checked to ensure that the regulation was met prior to the issuance of the grading permit.

Commissioner Ohlson also spoke to Page 6 of 13 of the staff report and the references to Policies 4-P-84 and 4-P-86. The letter from the applicant referenced by staff identified the fact that the applicant was now interested in making a connection to the Delta DeAnza Trail which was located on the EBMUD property. He inquired whether or not could be made a condition of approval.

Mr. Barton advised it could be made a condition of approval on either the design review or the subdivision resolutions.

Ms. Ayres clarified that such a condition would require that the developer enter into an agreement with another agency that might or might not be willing to enter into that agreement. Such a condition of approval would obligate the City to ensure that condition was met and may require condemnation process to bring about that condition, which she noted was not something the City liked to do. She recommended instead a condition that the applicant be required to attempt to get approval to make a pedestrian connection to the Delta DeAnza Trail.

Commissioner Ohlson questioned who would be responsible for the maintenance of the fence for the project. He also expressed a preference for a steel wrought iron fence with stone posts similar to the fence on East Leland Road in front of the residential development in that area. He was not supportive of a wooden fence since it would require repair in the future and since the maintenance responsibilities were unknown. He stated that the steel material would last longer and be more attractive.

Ms. Ayres advised that the right-of-way was public since the street was public and the City Engineer may have issues with a wooden fence if the City would have to maintain it. A new fence might not be needed if EBMUD wanted to prevent access and preferred to install its own chain link fence.

Senior Civil Engineer Alfredo Hurtado explained that the wood fence was needed to prevent trash from entering the aqueduct. He recognized that there were other fence materials that could be considered although the wooden fence had been determined to be the most appropriate at the time staff had reviewed the proposal.
PUBLIC HEARING OPENED

PROONENT:

SALVATORE EVOLA, Discovery Builders, Inc., 4061 Port Chicago Highway, Suite H, Concord, described the Bancroft Gardens II Residential Subdivision at the southern portion of the property previously approved by the Commission for residential development. He explained that the site was unique in its shape due to the easements surrounding it. He suggested that the development made the best use of the site.

Mr. Evola commented that the original Bancroft Gardens subdivision had proposed smaller 5,000 square foot lots. After a study session the Planning Commission had requested a minimum 6,000 square foot lots. The development was a continuation of that subdivision with the same architecture, lot sizes, 6-foot sidewalks and right-of-way widths.

Commissioner Gordon stated that he had received a telephone call earlier this date regarding the project and the issue of the Housing Element and the affordable housing component. With the City in the process of approving an Inclusionary Zoning Ordinance, he inquired when the developer was made aware that the development would fall under the guidelines of the Housing Element and the Inclusionary Zoning Ordinance.

Mr. Evola advised that he had been made aware of that requirement on Friday, October 22 at the time he had received the staff report. That issue had not been discussed during previous meetings with staff or when the application had been deemed complete in March 2004.

In response to the Chair, Mr. Evola stated his agreement with the staff recommended conditions of approval with the exception of Condition No. 3 of Resolution No. 9531, regarding the inclusionary housing component. He stated that he had attended many of the Planning Commission meetings and had spoken to many staff members about the project although the inclusionary housing component had not been raised.

Mr. Evola suggested that in this instance the inclusionary housing element would not be appropriate for the subdivision nor was it appropriate to bring it up for the first time in the staff report. He again agreed with the remaining conditions of approval recommended by staff, including those recommended by Commissioner Ohlson.

Commissioner Ohlson spoke to Page 5 of the applicant’s plans and the identification of bathrooms and requested clarification on the legends used on the plans for the bathrooms. He also referenced Page 10 of the same plans and the reference to the building elevations and use of some of the structural terms, such as UNO and powder. He asked for a clarification from the applicant.
Mr. Evola explained that the reference to the term “powder” identified a half bath and at times for numbering by the architect it had been numbered as a bathroom.

JOHN SCHEMERHORN, Discovery Builders, Inc., 4061 Port Chicago Highway, Suite H, Concord, explained that the reference to UNO meant “Unless Noted Otherwise.” He also clarified that the reference to powder on the plans was to a half bath or a powder room, not a full bath. He also clarified the location and number of the full bathrooms on the plans.

Commissioner Tumbaga spoke to the condition for the affordable housing component which as noted in the staff report was based on Redevelopment Law and not an inclusionary zoning ordinance. With Redevelopment Law in place for some time the Commission was in a position to enforce that condition.

Ms. Ayres explained that Redevelopment Law stated that 15 percent of the new homes must be made affordable within the RDA project area, but not on every individual project site. However, for every project that isn’t required to provide 15%, the units must be made up on other projects in the future.

Ms. Ayres added that the Housing Element which had been adopted in November 2003 stated in part “The Planning Commission shall consider whether to require an inclusionary housing component for each project on a case by case basis. The Housing Element was adopted by the City Council before the application had been filed. She noted that this was the first opportunity the Commission had to “consider” whether or not to require an affordable housing component.

Ms. Ayres explained that the East Leland Road development built by Kaufman and Broad was approved without an affordable component, and staff had been chastised by the City Council for doing that. There was another development on Solari Street which had also approved without through, although that developer had been required at the last minute to provide the 15 percent affordable component to a project on Parkside Drive and where the City had negotiated out a park to bring the project up to that 15 percent requirement.

Ms. Ayres added that staff had spoken with other representatives of the developer about that issue before the staff report went out. She understood that there had been some e-mails sent back and forth although she would have to defer to the Project Planner as to when the actual conversation had taken place.

Mr. Barton stated that the conversations were not with Mr. Evola. He had only spoken to Mr. Evola earlier this week after the staff report had been prepared and distributed. He had spoken however to another representative of Discovery Builders on the issue earlier. He acknowledged that the issue had been raised toward the end of the process.

Commissioner Ramirez suggested it was unfair for the developer to work on a project for months or a year and then at the last minute come through a change that would be very
costly to the development. In an effort to keep the cost of the homes down, each time a change was made it meant that the price of the homes would increase and someone would have to pay for it.

Commissioner Ramirez spoke to the development for the St. Vincent de Paul property which had been reviewed by the Commission. That developer had indicated that his next project would include the 15 percent affordability component which the Commission had supported. He suggested the same could be done in this instance.

Commissioner Gordon agreed in that it was inappropriate to wait to the last minute to notify the developer of the inclusionary housing component. He understood that there were certain incentives available to the developer based on the affordable housing component. He questioned whether or not any of those incentives had been discussed with the applicant.

Ms. Ayres advised that the condition in the staff report related to the affordable housing component were for Moderate Income designated units only. Staff was sensitive to the fact that the development was being acted upon before the inclusionary ordinance is in place. Staff was also aware that there was a product in the subdivision that was smaller than other units and expected all affordable units would be the smaller one story units, rather than the larger 2-story units. She stated that the Housing Element had assumed that the development would be Above Moderate Income designated units based on the assessment tables. She also noted that the Commission could require a lower percentage of affordable housing units than recommended by staff.

Commissioner Gordon suggested that the negotiations should not be done in this venue. He suggested that it was wrong to wait until the last minute to tell the developer about a recommended affordable housing component.

Commissioner Gordon inquired of the incentives the City proposed to encourage the applicant to provide the affordable housing component.

Ms. Ayres explained that the way the provision had been written, the applicant would enter into an Affordable Housing Agreement with the City where the applicant could negotiate different incentives at that point. She acknowledged that such incentives would have been best addressed prior to the submittal of the project to the Commission.

Commissioner Tumbaga pointed out that the condition had clearly been established under the Redevelopment Agency, although Ms. Ayres commented that it was not on a project by project basis. The Redevelopment Agency was obligated to provide 15 percent of the units in the area as affordable.

Commissioner Tumbaga inquired whether or not the representative from Discovery Builders that staff had referenced had the authority to speak on Mr. Evola’s behalf, to which...
Mr. Evola stated not to the extent of agreeing on the affordable housing issue. He reiterated that last week that individual had spoken with City staff about the project when the issue had first been raised and when he [Mr. Evola] had been advised to contact the Project Planner. He had immediately contacted Mr. Barton when the matter had been brought to his attention.

Commissioner Tumbaga supported the retention of the condition for the affordable housing component since it had to start somewhere. She emphasized that all developers needed to be held accountable to provide affordable housing in the community. She also suggested that the condition would not be so detrimental that it would cause a financial hardship on the subject development particularly since Moderate Income families would be able to afford most homes in the community. She urged the Commission to retain the condition.

Chairperson Garcia understood that the smallest units would start at half a million dollars.

Mr. Evola explained that the smallest plan on the project was a 1,785 square foot plan that was selling in other communities between $550,000 and $575,000. It would be difficult to make the smallest units affordable since in this instance the smallest unit was a single story unit. Based on construction and foundation costs, the single story homes were the most expensive plans to build per square footage. He noted that Discovery Builders had struggled with that in other communities where the affordable units ended up being the two story units. For the subject development the two story units would be larger in square footage.

Mr. Evola reiterated that when the Bancroft Gardens I development had been presented, it initially had 5,000 square foot lots. During a study session before the Planning Commission the Commission had expressed a desire that the lots be 6,000 square foot minimum. If both projects were to have the 5,000 square foot lots and if the affordable component had been discussed in the beginning, it could ultimately have worked out, although there was a current plan which complied with the existing zoning and which did not involve any variances or deviation of lot sizes.

Commissioner Tumbaga questioned whether or not the units, when on line, would have initial prices around $323,000, to which Mr. Evola affirmed that would be the case between the land costs and everything else.

Commissioner Dolojan inquired whether or not the developer planned future projects where an affordable component could be achieved. He agreed that the requirement should not be imposed on the developer at the last minute.

Mr. Evola reiterated that they were working on a future project on Golf Club Road which would be compliant with the affordable housing component. He recognized that all future projects would have to comply with the anticipated Inclusionary Zoning Ordinance.
ROBIN SEBAUGH, Pittsburg, commented that she had attended the Commission meeting when the Bancroft Gardens I project had last been discussed. She again expressed concern with the adequacy of the water supply to the site, particularly since the existing homes had an issue with water pressure.

Ms. Sebaugh also understood that there was a seasonal creek which ran through the property and that the developer planned to install a 24-inch pipe. She questioned whether or not that pipe would be adequate to handle the required water capacity. She also questioned whether or not an Environmental Impact Report (EIR) had been prepared for the project and whether or not the wetlands would be impacted by the development.

Ms. Sebaugh further spoke to the trail access and expressed concern that once it was blocked off with fencing people would likely use the lower access to the trail two miles from the property line. In addition, with the PG&E easement and passageway from Birchwood Drive she questioned how access to the new development would be achieved.

Chairperson Garcia explained that the developer would be required to negotiate with EBMUD to determine whether or not that agency would allow the developer to connect the development through the EBMUD easement. As to the 24-inch water line, he requested that staff clarify that issue.

Mr. Hurtado advised that the developer would be required to submit a hydrology study to the Engineering Department to determine whether or not there were any improvements needed to address the water needs in the area. As to the concerns with the water pressure in the existing homes, he commented that he had a report where the developer would not be connected to the water system serving the existing residents of the area who were in Zone 1. The developer would connect with the water lines for Zone 2.

RANDY HERNANDEZ, Paula Court, Pittsburg explained that his street intersected with Ackerman Drive. He spoke to the speed of traffic in the area and the potential problems with additional traffic as a result of more development.

Mr. Hernandez commented that his home was located on a corner and he had experienced two vehicles crashing through his side fence damaging his property. During the 21 years he had lived in his home, he had not seen a Police Officer conduct speed checks. Also, when traffic traveled down Range Road there were visibility issues. He asked that the area be monitored by the Police Department.

Chairperson Garcia requested that the City Engineer direct the City’s Traffic Engineer to review that situation and to contact Mr. Hernandez to address his concerns.

Commissioner Gordon advised that such concerns could also be addressed with the Pittsburg Police Department.
Mr. Evola spoke to the fencing and expressed the willingness to work with Planning staff on whatever material was chosen to ensure that garbage did not enter the aqueduct. He expressed his hope that a solution could be reached with EBMUD for access to the trail. He commented that Discovery Builders had attempted to purchase property from PG&E for a trail from Bancroft Gardens II since it would be accessing the site through the PG&E easement, although it had not been successful in acquiring all of that easement.

In response to Commissioner Dolojan, Mr. Evola again reiterated that a future project planned for Golf Club Road would include one affordable unit since that development would only involve a total of seven units.

OPPONENTS:  None

PUBLIC HEARING CLOSED

On the motion by Commissioner Ramirez to adopt Resolution No. 9531 to approve the request, Commissioner Ohlson seconded the motion although he requested an amendment to require that the developer negotiate with EBMUD and the East Bay Regional Park District (EBRPD) to include a standard trail connection between Birchwood Drive and the Delta DeAnza Trail, if feasible.

Commissioner Ramirez accepted the amendment to the motion.

MOTION:    AP-03-78 (Vesting Tentative Map)

Motion by Commissioner Ramirez to adopt Resolution No. 9531, approving Vesting Tentative Map No. AP-03-78, for a 28-lot single-family residential subdivision on 5.79-acres located at the terminus of Birchwood Drive for “Bancroft Gardens II Residential Subdivision, Tract 8805,” with the conditions as recommended by staff with the elimination of Condition No. 3, and with an additional condition as follows:

- The developer shall negotiate with the East Bay Municipal Utility District (EBMUD) and the East Bay Regional Park District (EBRPD) to include a standard trail connection between Birchwood Drive and the Delta DeAnza Trail, if feasible.

The motion was seconded by Commissioner Ohlson and carried by the following vote:

Ayes:  Commissioners Dolojan, Gordon, Ramirez, Garcia
Noes:  Commissioners Ohlson, Tumbaga
Abstain:  None
Absent:  Commissioner Williams

Planning Commission Minutes
October 26, 2004
MOTION: AP-03-78 (Design Review)

Motion by Commissioner Ramirez to adopt Resolution No. 9532, approving Design Review Application No. AP-03-78, for proposed home designs for a 28-unit residential subdivision for “Bancroft Gardens II Residential Subdivision, Tract 8805,” with the conditions as shown. The motion was seconded by Commissioner Gordon and carried by the following vote:

Ayes: Commissioners Dolojan, Gordon, Ramirez, Garcia
Noes: Commissioners Ohlson, Tumbaga
Abstain: None
Absent: Commissioner Williams

Chairperson Garcia rearranged the agenda at this time.

CONTINUED PUBLIC HEARING:

Item 6: Brenden Theaters Wall Sign and Sign Exception. AP-04-149 (DR).

Application by Alan Ford for Flouresco Lighting and Signs requesting design review approval of sign plans for an internally-illuminated, 255 square foot channel letter wall sign, and a request for sign exceptions for individual sign face area and maximum total sign area, in order to identify an existing cinema theater complex located at 4085 Century Boulevard, CC (Community Commercial) District, APN 074-460-001.

Ms. Ayres reported that the Commission had been presented with a copy of an e-mail from J.D. Snead from Brenden Theaters accepting all conditions as presented to the Commission.

Assistant Planner Dana Hoggatt presented the staff report dated October 26, 2004. She recommended that the Planning Commission adopt Resolution No. 9524, approving Design Review Application No. AP-04-149 (DR), with the conditions as shown.

Commissioner Gordon inquired of the status of the wall sconces, to which Ms. Hoggatt advised that the wall sconces would be submitted to the Planning Commission as a separate application or as an administrative design review application, where the Commission would be provided with a Notice of Intent. In the event the Commission wished to review the application as a formal design review application that could also be done. When the developer resubmitted the plans, the wall sconces had not been part of the resubmitted plans.

PROPOSENENT: The applicant was not present.

OPPONENTS: None

MOTION: AP-04-149 (DR)
Motion by Commissioner Ramirez to adopt Resolution No. 9524, approving Design Review Application No. AP-04-149 (DR), for sign plans and a sign exception for a 255 square foot wall sign identifying a movie theater complex located at 4085 Century Boulevard, for Brenden Theaters, with the conditions as shown. The motion was seconded by Commissioner Tumbaga and carried by the following vote:

Ayes: Commissioners Dolojan, Gordon, Ohlson, Ramirez, Tumbaga, Garcia
Noes: None
Abstain: None
Absent: Commissioner Williams

PUBLIC HEARINGS:

Item 3: Vista Del Mar Development. AP-03-33 (GP, PDRZ, PD Plan, Subdivision 8448).

Continued public hearing on an application by William Lyon Homes and Alves Ranch LLC (applicant) pertaining to a 293 acre site commonly known as Alves Ranch, requesting 1) that the General Plan Land Use Element be amended to shift the designated Public/Institutional classification area southwest of its current location (and designate current location to Medium Density Residential); 2) that the text in General Plan Policy 2-P-88 be amended to reapportion the 1,100 permitted units across the property; 3) that the property south of the West Leland Road extension be rezoned to P-D (Planned Development) District; 4) that a P-D plan be approved for the property south of the West Leland Road extension which provides for 540 single family homes, an 11.3 acre school site and approximately 117 acres of open space; 5) that approximately 15 acres located northwest of the West Leland Road extension be rezoned CO-P (Commercial Office with Master Plan Overlay) District with a maximum of 0.4 FAR; 6) that the remaining 40+/- acres north of the West Leland Road extension permit 560 units; and 7) that a vesting tentative map be approved to subdivide the 293 acre site into 540 single family residential lots, four high density residential lots, one business commercial lot, one school site, and several additional lots for open space, a detention basin, and/public purposes in order to facilitate the proposed development. APN 097-122-004, 097-160-013, 097-160-014, 097-160-015, 097-160-047, and 097-180-004.


Public hearing on an application by William Lyon Homes and Alves Ranch, LLC (applicant) requesting approval of a development agreement (extending the term of the entitlements for a period not less than 18 years) in conjunction with the Vista Del Mar Development project to be developed on a 293 acre site commonly known as Alves Ranch. APN 097-122-004, 097-160-013, 097-160-014, 097-160-015, 097-160-047, and 097-180-004.
Chairperson Garcia advised that he had spoken with the Planning Director prior to the meeting and had requested that Items Nos. 3 and 4 be continued for a two week period due to the fact that Commissioners had received late packets and had not had an opportunity to review the information. He recognized that a consensus of the Commission would be required to continue the items. He recommended that public testimony be received and that the item be continued.

Ms. Ayres suggested that the Commission could wait until the completion of the public hearing and deliberations of the Commission were completed before that decision was made.

Ms. Ayres added that the Commission had been provided with a copy of a revised Resolution No. 9533 for the Vesting Tentative Map with changes only to the formatting. Also, the page numbers had been corrected for any final signed document. The Commission had also been provided with a revised Exhibit A to the Vesting Tentative Map, including revisions made this date on the proposed changes related to comments from the City Attorney, the applicant and Seecon Financial and Construction Co. The changes were noted in strikeout and underline formats.

Further, corrections had been made to the indemnification on the Vesting Tentative Map with final wording from the City Attorney in terms of the new indemnification clause the City Attorney would like used for all new projects which had been incorporated into the revised Resolution No. 9533.

Associate Planner Noel Ibalio presented the staff report dated October 26, 2004. He recommended that the Planning Commission provide a positive recommendation to the Council regarding the General Plan and rezoning requests and approve the proposed PD Plan and Vesting Tentative Map, subject to conditions, including that they would not become effective until the related General Plan Amendment and P-D rezoning requests had been approved.

Commissioner Tumbaga spoke to the conditions of approval as contained in the resolutions and inquired whether or not there was a condition included for the affordable housing component.

Mr. Ibalio explained that the project would include the 15 percent affordable housing component which had already been built into the project, as reflected in Condition No. 9 of Resolution No. 9525.

In response to Commissioner Ohlson, Ms. Ayres explained that State Planning Law regarding density bonuses allowed a developer to request density bonus units over and above what the current zoning and General Plan allowed. Since the Development Agreement would be for 18 years, there was the possibility that during that time the
developer would ask for additional units on the northern portion of the property. A Master Plan Overlay had also been proposed on the property with no site plan or detailed plans as to how the property would be developed.

Ms. Ayres stated that staff had envisioned that there would be the possibility that the developer would ask for additional units over that 18 year period under the State Density Bonus law. The section referenced had been included to clearly acknowledge that 560 units would be permitted now, although the developer could ask for more later. Any additional units would be subject to additional environmental review at that time.

Chairperson Garcia commented that the staff report had indicated that discussions had been held on the school site. He inquired how much input the Mt. Diablo Unified School District (MDUSD) had with the development.

Mr. Ibalio advised that the MDUSD had been involved in the process from the beginning. The school site had been altered and moved south as a result of input from the MDUSD.

Chairperson Garcia understood that the MDUSD had to purchase 11 acres. He inquired why the MDUSD had to purchase the property since the developer had to have a 5 acre park.

Ms. Ayres advised that the developer did not have to have a 5 acre park and it was not called for in the General Plan. The developer would be offering to sell to the MDUSD 11.3 acres, for a K through 8 grade elementary and middle school and play fields. The developer had offered to improve the play fields. The Development Agreement discussed an option for a joint use agreement between the MDUSD and the City in which case the developer would receive no in-lieu credit for the land since it would belong to the MDUSD. The developer would receive half credit for improvements to the playing field, which the City through the joint use agreement would have access for half of the time. City Staff also had conversations with the MDUSD, which was supportive of such a joint use.

Ms. Ayres commented that the school fees would be negotiated with the developer and the MDUSD. None of the documents presented to the Commission would tell the developer how to make that exchange. She understood that the MDUSD would be discussing the matter at its next Board meeting and would likely forward any comments to the City Council if any changes to the agreement were sought.

Ms. Ayres added that the Development Agreement had included language where the City had proposed that the developer make an offer to sell the site to the MDUSD for a five year period, although the original term requested by the developers for three years. The MDUSD was very interested in acquiring the property as soon as possible and the developer was very interested in building the park playfields as soon as possible. The Development Agreement included a condition that the park was to be built as soon as the 200th building permit was issued and that the park be completed before the 400th.
Certificate of Occupancy. There was also a standard condition of approval in the Tentative Map related to the same issue, as reflected in Condition No. 62 of Exhibit A.

Ms. Ayres clarified that the Development Agreement would extend the approvals for 18 years. The project should be able to stand alone and the Development Agreement did not have to be approved to approve the project.

Chairperson Garcia spoke to Page 7 of 18 of the staff report and the discussion of the West Leland Road Extension and the reference to two lanes. He suggested that discussion should be revised to read four lanes.

Ms. Ayres advised that the public hearing could be opened for both the Vista Del Mar Development project and the Vista Del Mar Development Agreement to allow staff to clarify many of the issues being raised.

PUBLIC HEARING OPENED [For both the Vista Del Mar Development and Vista Del Mar Development – Development Agreement]

Commissioner Ohlson recognized that the MDUSD would be working with the developer to purchase the school site. He inquired whether or not the developer would pay for the park in conjunction with the sale of the school site.

Ms. Ayres explained that the idea was that the MDUSD would negotiate with the developer to acquire the property and the developer would improve that portion of the 11.3 acres for a park and playing field. The City and the MDUSD would enter into a joint use agreement for the use of the playing field/park and school buildings. The MDUSD had done that in other jurisdictions which had proven to be successful in the payment and management of such facilities. The MDUSD was not a party to the Development Agreement. The Development Agreement only obligated the developer to cooperate with the MDUSD to make that happen.

Commissioner Ohlson spoke to Page 11 of the Development Agreement, and the issue relating to the West Leland Road Extension. He requested a clarification of that issue.

City Engineer Joe Sbranti advised that the intent of the Development Agreement was to give the developer two years to complete the construction of West Leland Road, although the developer intended to build all by September 1, 2005 pending any delays. The developer would build four lanes through the project and two lanes through the former Seeno right-of-way that was now owned by the City.

Commissioner Ohlson spoke to paragraph d on Page 23 of the Development Agreement which had shown that the City would deliver plans to the developer on or before September 1, 2005. He questioned the correctness of that date, to which Mr. Sbranti
clarified that

there appeared to be a typographical error in that the plans had nearly been completed at this point and would be available for the developer in the spring.

Commissioner Ohlson referenced Section 3.11(a) of Page 17 of the Development Agreement and the reference to the Updated City Traffic Improvement Fees (TIF) which had shown that the City planned to raise the fees and the developer agreed to pay the increased fees, although the TIF would be frozen for the next 18 years. If the TIF was raised during that time and the developer was on a fixed rate, he questioned whether or not that was a good arrangement for the City.

Mr. Sbranti advised that the intent of the Development Agreement was to have the developer pay the fee in place at the time the permits were issued. The TIF that would be paid were those that would be in place at the time of the permit issuance, with no limits. Through the process and as long as the developer had the opportunity to discuss the TIF with the Council as each fee was considered, the developer would pay whatever fee had been determined to be a nexus and could be approved by the City Council, whether local, regional or some other fee. There were currently two fees in place, a local and a regional mitigation fee. The regional fee was currently set at $7,607.

Commissioner Ohlson suggested that the language in the Development Agreement be revised to reflect that the developer would be required to pay all of the TIF rather than just the first raise in fees.

Mr. Ayres clarified that staff had a more updated condition as reflected on Page 8 of 23 of the Vesting Tentative Map conditions which stated “the developer shall pay such existing and or new local or regional Transportation Mitigation Fee as may be adopted by the City Council whether by ordinance or by resolution at the time the developer obtains a building permit in an amount then in effect.”

Mr. Sbranti also clarified that he had an updated Development Agreement which had stricken the language referenced by Commissioner Ohlson.

Commissioner Ohlson spoke to Page 13 of the Development Agreement and his understanding that the developer desired to dedicate the land under which PG&E had its easement to the City. He expressed concern that the City could be required to maintain the property under the high wire tension lines. He suggested that the developer should voluntarily place a trail on the PG&E easement since the City would have to maintain the property and the trail should go from one edge of the Alves property to the other.

Mr. Sbranti suggested that the applicant be allowed to present the project since many of the questions could be clarified. He added that most of the unused portion of the PG&E right-of-way would be included within the area that would not fall on the City for
maintenance. In addition, the developer would be providing trails that the City had agreed
to take on for maintenance and which would not be an excessive burden to the City.
GREG MIX, Area Manager, William Lyon Homes, 2603 Camino Ramon, Suite 150, San
Ramon, introduced the development team consisting of the Project Manager, Project
Development Consultant, the Alves Ranch LLC representative, Legal Counsel and their
Civil Engineer. He suggested that the development would be an asset to the City and he
noted the staff recommended approval of all of the entitlements.

Mr. Mix referenced the project Environmental Impact Report (EIR) and the frustration that
many had expressed with the change in the process. He understood the City Attorney
had changed the process that had previously been used because it was legally vulnerable.
He suggested that the process had been followed with an adequate and legally certified
Final EIR presented to the Commission to be used in the review of the project.

Mr. Mix recognized the prior concerns that had been raised with respect to water capacity,
much of which related to the Water Capacity Reservation Agreements (CRA) between
Seecon Financial and Construction and the City. He recognized that Seecon wanted to
ensure and was of the understanding that it had the right to water capacity to always be
available to serve its projects. If the CRA was legally enforceable the project was
consistent with those agreements. The developer would also build water infrastructure that
was far in excess of the demands created by the development. For that reason the City
would be assured that the water capacity would always be available for the Seecon
projects. In addition, the development would pay its way for all necessary past, present
and future water infrastructure improvements.

Mr. Mix explained that the Development Agreement required the developer to pay a "buy
in" fee which would reimburse the City for the developer’s fair share of all of the existing
water infrastructure improvements that had been constructed to date.

In response to the concerns with respect to water capacity and a suggestion to work out
some sort of an agreement with Seecon, Mr. Mix suggested there was no basis to reach
that conclusion. The City owned the water system. Since it was a public utility, Alves
Ranch LLC had the right to use that system and pay its fair share to obtain that right, which
would be done. The Development Agreement provided that would be accomplished
through the developer building all of the Water System Master Plan amendments Phase
One improvements, all of the Phase Two improvements and bond for the critical
components of Phase Three, an expenditure of approximately $11 million plus the bonds
and against the developer’s obligations, which were approximately $3.7 million.
Mr. Mix advised that the developer would be receiving credit against its water fees for that
portion that would exceed its obligations.

Mr. Mix spoke to the traffic improvements and emphasized that the development would pay
its fair share to mitigate all of the traffic impacts on the roadways and intersections in and
out of the City. The FEIR had addressed all of the traffic impacts for the project and had
identified mitigation measures that had been incorporated into the project conditions. The project would impact traffic on State Route 4 and would pay the associated regional traffic fees to mitigate that impact as well.

Mr. Mix also commented that some of the impacted intersections would be located in the City of Concord and that neither the developer nor the City could require the City of Concord to make traffic improvements within its city limits. The provisions in the Development Agreement again required the development to pay its fair share of those improvements.

Mr. Mix further spoke to the issues surrounding the San Marco extension and commented that the road could not be constructed through the Alves property; it was an unusable alignment due to the existence of the endangered species habitat in that location and due to the steepness and instability of the slope. All of those points had been affirmed by the City and recent City actions, including approval of the Bailey Estates development which and revised to accommodate a more southerly alignment. Neither the policies in the General Plan (preserving habitat) nor City staff support an alignment through the Alves property.

Mr. Mix advised that the developer had reviewed the staff report and the conditions of approval for the project and were in agreement with all of the conditions, including some recent changes identified by staff.

Mr. Mix reiterated that the development would represent a unique opportunity to approve a project in the City providing 1,100 residential units the entire economic spectrum of renters and buyers of housing in the City. At its closest point, the project would be within a quarter of a mile from the Pittsburg/Bay Point BART Station. The development also included 117 acres of open space most to be provided and identified as habitat for endangered species, 11.3 acres for a K-8 grade school site, 14.78 acres of land zoned for future commercial development, a 15 percent inclusionary affordable housing component and early construction of West Leland Road.

Chairperson Garcia noted that the FEIR had identified that it was not possible to follow what had been recommended for an extra left turn lane east, additional straight lane east and dedicated right lane west for Bailey Road/Leland Road intersection. If that was not done, he suggested it would reduce the traffic flow to a Level of Service (LOS) F which would not comply with the General Plan.

Chairperson Garcia suggested that it was possible with additional land on the south/west corner which might require the elimination of some landscaping and relocation and one of the standards for pedestrian crossing.

Chairperson Garcia also spoke to the area of West Leland Road and San Marco Boulevard.
and the intersection improvements that had been proposed in the future, although in his opinion those improvements should be required now to avoid the City’s future cost of those improvements. In addition, the same problem occurred at the intersection of San Marco Boulevard and Willow Pass Road where there should be a signal light.

Chairperson Garcia further spoke to the water capacity issue. He noted that residents of the City had just received a 10 percent increase in water rates and another 10 percent increase was expected in 2005. If the new water line was not installed to the project site now, he suggested that City ratepayers could end up paying for it. He emphasized that the City had never allowed a subdivision where the water was not in place prior to the subdivision being built. He questioned the statement that the water would not be needed until 2015 or 2020.

Chairperson Garcia referred to the Builders Circle industrial park which had not been built due to the lack of water availability even though the City had appropriated the funds 15 years prior to providing water to the site.

Chairperson Garcia commented that while the applicant suggested that he could tap into the existing water system, Seecon had disagreed that could be done. He also questioned the process to bond for the water system. He again suggested that the application and Development Agreement should be continued to allow the Commission adequate time to review all information and documentation.

Mr. Mix suggested that the FEIR was clear and that the development would be paying its fair share.

Ms. Ayres added that those agencies had been adamant that they would not accept a road through the area and would not accept it for a preserve if the road was preserved as a potential on the property. Due to the sensitivity of the property and since both Bailey Estates and San Marco Meadows had shown an alignment totally south and away from the subject property, staff did not see that an alignment through the property could occur.

Chairperson Garcia disagreed in that it had been decided that San Marco Meadows should be pulled and there was no development for San Marco Meadows as far as he was aware.

Ms. Ayres advised that the file existed and the history was in the community. There had been an application for San Marco Meadows in 2001 and 2002, although it was not an active project. She did not expect the road to ever go through until the San Marco Hills area had been developed and the road was needed to serve those properties. She emphasized that the city traffic engineer had indicated the road was not needed for general circulation.

Chairperson Garcia questioned why the City could not reserve that piece of the property.
Ms. Ayres explained that the State Department of Fish and Game and the US Fish and Wildlife Service had been adamant that such an alignment would significantly impact that area as a preserve.

Chairperson Garcia suggested that it was the applicant’s problem.

Ms. Ayres added that in speaking with the City's Traffic Engineer as to the impacts to Bailey and Leland Roads, the impacts would not occur until 2025 until full build out with cumulative impacts from the entire area. The subject development would not push the impact to LOS F. As a result, the development would pay its pro rata share and those fees would also be collected from whatever became of San Marco Meadows, the West Coast Transit Village and any other traffic mitigation measure fees that could be collected in that area to make those improvements.

Chairperson Garcia suggested that as had occurred in the past, the funds would not be available when needed and City taxpayers would be responsible for the cost. He again suggested that the work should be done now.

Ms. Ayres cautioned that there was no nexus to require the subject developer to make improvements now for a cumulative impact that would not occur until 2025.

Commissioner Gordon spoke to the water issue and the discussion for an agreement with the subject developer and Seecon along with concerns for potential lawsuits, he could find no location of the water zones in which the property would be located. He requested clarification from staff.

In response, unidentified staff speaking from the audience advised that the property would fall within Zones, 2, 3 and 4.

Commissioner Gordon read from a copy of the SEECON Water Reservation Agreement “the southwest water facilities would serve only developer’s property and be reserved to develop all of developer’s properties at full build out…City agrees that Zone 3/Zone 2 facilities described will serve developer’s properties in those zones. Should the City and the developer jointly agree in writing that there is any excess capacity in the Southwest Pittsburg Water Facilities to allocate to some or all of the other benefiting properties, such remaining capacity may be allocated to the other benefiting properties.”

Mr. Sbranti clarified that was not the issue under discussion in that the developer had not identified excess capacity and the developer eventually would more than use all of its capacity. The discussion related to the use of capacity on an interim basis, while infrastructure was being constructed. The capacity that was currently being used was
approximately a little more than a third of what the current transmission line could handle. In this case, the applicant was proposing to utilize a portion of the extra capacity for a period of time that would enable the City, along with potentially other developers, to complete the construction of that transmission line left out of this piece.

Mr. Sbranti added that the developer proposed to build $11 million worth of water improvements, $3.7 million would have a direct nexus to the subject project. The more than $7 million remaining would benefit other projects, not the developer’s. The City would be fronting those costs and at the same time bonding for additional improvements which would ultimately provide all of the capacity necessary for the southwest hills. At no time would the agreement designate any portion of that capacity on a permanent basis to the subject developer.

Mr. Mix responded to questions about the timing of the completion of West Leland Road and the discrepancy between the dates in the Development Agreement, noting that the developer’s obligation by September 1, 2005 was to ensure that two lanes were open across the site. The reason there was an additional two years to complete the remaining two lanes was that the critical component had been to get the traffic circulation through.

Mr. Mix emphasized that it was the developer’s intention to build everything at once, although the developer was guaranteeing to the City that at least two lanes would be open to ensure service by September 1, 2005.

Mr. Mix added that the two year period referenced in the Development Agreement should not matter to the City once service had been provided. The two years represented an outside date to ensure that the work was done in an orderly fashion.

As to the situation with the off-site component of West Leland Road with an outside date of September 1, 2006 for the developer to construct the road on the Seecon property, Mr. Mix explained that the Alves Ranch, LLC was protecting itself to ensure that the City would be able to give the developer the improvement plans and the right-of-way in order to make those improvements.

Mr. Sbranti clarified that while the City intended that all four lanes be constructed in a timely manner, regardless only two lanes of the four lanes would be utilized. He noted that two lanes would be basically pavement that would be blocked off since it would lead nowhere. Opening all four lanes and transitioning back to two lanes would not work so that the intent was to build all four lanes and utilize only two lanes. As to the September 1, 2006 deadline, he suggested that it was not necessary to push it that far out. The City already owned the right-of-way and the plans were 99 percent complete waiting for the Development Agreement to be stamped and dated.
Mr. Mix also spoke to the TIF and the concern that the fees would be frozen. He commented that once the development’s full mitigation had been accomplished the fee would then be frozen. He noted that the development would pay the TIF for the entire project at the outset of the project by taking credit for the costs where the City did not have to come up with the money to build West Leland Road. The applicant did not want a situation where he would be pulling building permits in the near future and have the fees increased where another TIF would be required.

Mr. Sbranti explained that the discussion related to pre-paid fees. If the fees were pre-paid by the developer the funds could conceivably earn interest in an account and there might not be a need to raise fees.

Mr. Mix also clarified that the Landscaping and Lighting District (LLD) for the project would cover the cost of maintenance for the interior open space components jointly between the Geologic Hazard Abatement District (GHAD) and the LLD which was an additional assessment on the homeowners within the Alves Ranch development. The City would not be out any additional funds for maintenance of the open space areas.

As to the trail across the PG&E easement, Mr. Mix stated that the applicant had no concern installing a trail, although he was opposed to installing a trail across that portion which would extend on steep terrain areas near west property line. A trail across the PG&E easement would necessitate a mid-block crosswalk which was not the preferred place for a crossing. The preferred approach had been for the trail connections to occur on City streets.

WILLIAM ROSS, Palo Alto, Attorney representing Seecon Financial and Construction Co., spoke to the revisions that had been made to Exhibit A of Resolution No. 9533 as identified by staff. He presented a copy of Exhibit A to the Commission which contained a number of revisions he asked the Commission to consider. He noted that Seecon had issues with the cost allocations for infrastructure and he expressed his hope that their revisions to the conditions could be considered.

Mr. Ross spoke to Condition No. 14 of Exhibit A, noting that he had clearly specified the provisions of the water system and had referenced Phase One and Two of the pipeline segments that would be involved and which were to be constructed prior to issuance of Certificates of Occupancy for the residential or commercial office space. He also recommended an additional Condition No. 14 (a), which would indicate that the development would pay its fair share of the current costs of the existing Zones 2, 3 and 4 or the applicable water facilities that would serve that development for the water reservoirs in Zones 3 and 4.

Mr. Ross recommended another Condition No. 27 (a) regarding the San Marco Boulevard Extension. He presented a diagram identifying the existing alignment in the General Plan, the project property site and the Concord Naval Weapons Station Blast easement.
restrictions. He noted that the alignment could not be moved farther south in that the Blast Easement prohibited any public highways or roads within the blast zone area, as identified by Figure 4-2 in the project EIR.

Mr. Ross pointed out that the Planning Director during the October 18 meeting of the City Council had referenced the possible solution where there would be an irrevocable easement prepared that would not be recorded but which would provide the appropriate dimensions to preserve that area and which would not be subject to any conservation easement restrictions but would allow the extension of the alignment of the roadway. He suggested that his revised Condition No. 27(a) would afford the flexibility to allow the project to go forward while ensuring that the alignment would be preserved in the future for the intensity of development that could be authorized.

Mr. Ross also recommended that prior to the issuance of the first building permit the development should contribute its fair share for the cost of the associated non-fee lanes.

Mr. Ross referenced the heading of the conditions of Exhibit A, and recommended that the heading be revised to read, Conditions of Approval Based on the EIR, since they emanated from the actual nexus requirement from CEQA provision 21004.

Mr. Ross referenced Condition No. 53, and again presented the Commission with a diagram relating to that condition. He suggested that it would be more appropriate to have that condition as a construction obligation rather than as a contribution obligation.

Mr. Ross recommended amending that condition to provide for a different off-ramp configuration. As such, he suggested that there should be no substantial difference between his recommended condition and the way it had been written by staff.

Speaking to Condition No. 54, Mr. Ross presented the Commission with Page 7.8 of the Transportation Element of the City’s General Plan that the LOS standards for routes of regional significance had been indicated, as E or better for the intersections along Bailey Road. He emphasized that there was a mandatory obligation to implement provisions of development standards from the General Plan. He noted that the EIR had indicated that both the AM and PM traffic would be at LOS F as a result of the development. He questioned the Commission’s ability to override a requirement of the General Plan and to substitute it with a Statement of Overriding Consideration under CEQA.

Mr. Ross advised that he was also recommending modifications to that condition to show that the condition should be a construction obligation.

As to Condition No. 56, Mr. Ross presented the Commission with information on what had been proposed as a mitigation measure. He again recommended that the condition should be a construction not a contribution obligation. He emphasized that the existing right-of-way was available to accomplish and maintain the two left turn lanes and to accommodate
two full traffic lanes through the intersection as well as the right turn lane. Regarding the Phase Two extension of West Leland Road to the Avila intersection, Mr. Ross presented the Commission with language which should address that concern and which would fairly address that issue and the issue of the cumulative effect the project would have on the utilization of the extension over time.

Mr. Ross suggested that the recommended changes he had outlined to the Conditions of Approval should be followed by changes to the proposed resolutions of approval. He presented to the Commission copies of a red and blue lined version of his recommended revisions which he suggested were consistent with the changes he had recommended to the conditions.

Mr. Ross also spoke to the background of the formation of Development Agreements to ensure that standards were met and which would control a development. He specifically spoke to the Interim Financing Bond Section of the Agreement, which stated in part “the parties anticipate City’s issuance of a bond offering that may among other things finance the construction of portions of Phase Three of the Southwest Hills water improvements including the water line.” Also, “parties agree that the water line bond shall be for a maximum term of two years.”

Mr. Ross suggested that was the type of language that needed to be precise and not casual in that there was an obligation from the public side to avoid a gift of public funds. The security could not vanish and he suggested that the language he had referenced was one example why there was a need for a continuance of the project to allow further clarifications in writing that were understandable on such a critical development document.

Mr. Ross advised that he had a meeting scheduled next week with staff with preliminary discussions with the City Attorney and the City Engineer. He suggested that the level of precision needed to be increased so that there was certainty from Seecon’s side and in an effort to seek to avoid issues of contention, to ensure that the development would bear its fair share and that Seecon was not financing a portion of the development, and that the infrastructure and phasing of the improvements were done in a manner that was consistent with the City’s General Plan policies. He asked that both the project and the Development Agreement be continued to allow time to clarify the issues.

PETER HELLMAN, representing Alves Ranch LLC, one of the applicants for the Vista Del Mar Development, suggested that if the Commission were to follow Mr. Ross’ advise and continue the matter for a two week period, he would be happy to provide the Commission with the documentation from the San Marco Development Agreement and its conditions of approval for that project by which that development was obligated to construct the traffic improvements that Mr. Ross had listed.

Mr. Hellman spoke to the San Marco Blvd. Extension matter and quoted from the Bailey Planning Commission Minutes October 26, 2004
Estates EIR which stated in part that the alignment through the Alves property was “not consistent with the recently adopted Pittsburg 2020 General Plan Update and is environmentally inferior to the other road alignment alternatives.” Further, “this alignment is located in steep unstable terrain or over its intersection with Bailey Road likely will traverse a significant wetlands and species habitat areas. The construction of an arterial in this location would require excessive cut and fill up to 260 feet deep, landslide repairs and remedial grading. The intersection shown on a curved portion of Bailey Road would be unsafe. A safer, less costly alignment that would cause much less environmental impact can be located south of the proposed alignment.”

Mr. Hellman commented that based on those comments he had concluded, as had City staff, that the Bailey Bypass would never traverse the southern end of the property. He advised that the source of the comments he had quoted had come directly from a letter that Seecon had submitted on the Bailey Estates project dated February 12, 2002, and which had been submitted to the Planning Commission at the time that Seecon had tried to eliminate the Bailey Estates development. As a result of that letter the Bailey Estates development had been substantially redesigned to accommodate the southerly alignment that Seecon had advocated.

Mr. Hellman suggested that Seecon was now trying to eliminate the Vista Del Mar development and its spokesman was advocating a northerly alignment that would traverse through sensitive biological mitigation area which would be completely inappropriate. He added that the policies in the General Plan did not support that alignment, City staff was not supportive of that alignment, and Seecon had not supported that alignment.

Mr. Hellman spoke to the CRA and noted that the agreement between Seecon and the City was illegal, unenforceable and represented an illegal delegation of the City’s police power over its own infrastructure and an unlawful preference for properties located outside of the City limits.

Mr. Hellman stated that the City Attorney’s former law firm had litigated the Trimont Case, which resulted in a California Supreme Court decision which had established precedent in this area.

Mr. Hellmann commented that as the City Attorney and the City Engineer would attest the project was consistent with the CRA and the development would be building far more infrastructure than the project would consume. Further, that the developer would provide financial guarantees that would ensure that there would always be capacity to serve all development in the southwest area of the City, including the Seecon projects.

Mr. Hellman suggested that there was no basis for the suggestion or a requirement that the developer arrive at a solution with any private party. The water infrastructure improvements were owned by the City and no one else.
Mr. Hellman also spoke to the issue of the argument on the Seecon side, that it had paid for the improvements and had constructed them and the capacity should therefore be reserved for Seecon projects. He stated that the Seecon had not paid for those improvements rather that they had been constructed by an assessment district. Seecon had been fully reimbursed for its costs by the assessment district. Those paying for the infrastructure were the homeowners in the Oak Hills and San Marco developments who had assessments levied against his/her properties and no one else.

Mr. Hellman reiterated that the CRA would not prevent the Planning Commission from approving the project which appropriately mitigated all of its traffic impacts, and that the Bailey Bypass would never traverse the southern end of the subject property.

Chairperson Garcia inquired whether or not Mr. Hellman was the developer of a project located on Leland Road adjacent to Auto Zone.

In response Mr. Hellman stated that he was not that developer.

Chairperson Garcia requested a motion to continue the project for a two week period to allow the Commission to digest all of the information presented for consideration.

In response to Commissioner Gordon, Ms. Ayres explained that under the Tentative Map conditions, the developer must comply with the park dedication in-lieu fee provisions of the Subdivision Ordinance. With the Development Agreement, the City could ask for more although there was no guarantee that the City Council would approve the Development Agreement. She added that the Tentative Map conditions must stand alone based on the rules currently in place.

Commissioner Gordon understood that the Commission would not approve the project without the Development Agreement.

Commissioner Gordon understood that there had been past discussions about the school site that should be in the Planning Commission minutes. He recommended that the Commission refer the Development Agreement to the City Council prior to the approval or recommendation of approval for any changes to the General Plan. He suggested that there was much in the Development Agreement that could be added to the Conditions of Approval for the other entitlements. He too commented that he had not read the entire Development Agreement prior to the meeting and agreed that the project and Development Agreement be continued to allow ample time to study all of the issues and information.

Ms. Ayres commented that whether or not the project hearing was continued was up to the Planning Commission. While the project had already been scheduled for City Council consideration, she noted that the Council date could be continued if the Commission continued the item. She added that staff preferred to take the entire package to the City
Council at one time.

Commissioner Gordon recalled that when the Commission had considered development agreements in the past, it had considered them prior to the subdivision portion of projects. He questioned whether or not the current process was a new process.

Commissioner Ramirez stated that he was not prepared to make a decision at this time. He agreed that the item should be continued for a two week period.

Commissioner Ohlson commented that he was prepared to vote on both items. He was opposed to continuing the application.

Commissioner Tumbaga acknowledged that she too had received her Commission packet on Friday evening, although she had read the information and suggested that it was unfair to put the project off if other Commissioners had been unable to complete his/her review of all of the information. She was also uncertain whether or not it was in the City’s best interest to continue the project, particularly since the project was not brand new and since the issues that had been raised had been raised again and again in the past. She stated that many of those issues had been addressed.

Commissioner Tumbaga suggested that if the intent of the continuance was to stall the project she was not in favor of continuing the items.

Chairperson Garcia stated that his intent was not to stall the project but to allow the opportunity for all Commissioners to read and review the associated material.

Commissioner Dolojan agreed that the item be continued to allow everyone the opportunity to review all information. He respected the Chair’s request to continue the item. He made a motion to that effect to continue the time to the Planning Commission meeting scheduled for November 9.

Commissioner Gordon stated that he was not opposed to a continuance or action on the project at this time, although since he would not be present for the Commission meetings during the month of November due to surgery whatever action was taken he would abstain on the motion.

Commissioner Ramirez seconded the motion.

Commissioner Tumbaga asked that any additional information that could be sent or presented to the Commission be provided in a separate packet to Commissioners.

**MOTION:**

Motion by Commissioner Dolojan to continue the public hearing for Vista Del Mar
Development AP-03-33, (GP, PDRZ, PD Plan, and Subdivision 8448) and the Vista Del Mar Development Agreement AP-03-33, to the Planning Commission meeting of November 9, 2004. The motion was seconded by Commissioner Ramirez and carried by the following vote:

| Ayes:      | Commissioners Dolojan, Ramirez, Garcia |
| Noes:      | Commissioners Ohlson, Tumbaga          |
| Abstain:   | Commissioner Gordon                   |
| Absent:    | Commissioner Williams                 |

**Item 5: Inclusionary Housing Ordinance.**

Continued public hearing on a City-initiated proposal to establish an inclusionary housing ordinance.

Assistant Planner Dana Hoggatt presented the staff report dated October 26, 2004. She recommended that the Planning Commission support the adoption of the draft ordinance.

Commissioner Gordon thanked staff for the revisions that had been made to the ordinance in response to comments from the Planning Commission and the public. He otherwise commented that he had a recent conversation with the City Manager who was in agreement with some of the proposed changes to language.

Commissioner Gordon disagreed with the elimination of the equity participation option since it would have allowed homeowners the option to either go into a home that had been built as an affordable unit, or purchase an existing market rate home with help from the City or however funds might be determined. In speaking with a number of people who resided in the area of West Boulevard, he had inquired if those individuals would like that option. The response had unanimously been in the affirmative. He suggested that the ordinance had otherwise been well written and would allow the City to take advantage of some funds a developer would pay to the City, where if the City owned property elsewhere it could potentially build the affordable units. Such an option would allow the development of those units as Low or Extremely Low Income homes.

Commissioner Gordon stated that there was a need for more units with a high bedroom count for Low and Extremely Low Income households. He reiterated that he would not support the document if the equity participation option was not included.

Commissioner Ohlson suggested that the equity participation option, as it had been defined in the document, would allow the option for Low Income families to secure a home cheaply and also have the benefit of equity.

Commissioner Tumbaga agreed with Commissioner Gordon’s comments.

Commissioner Dolojan agreed with the inclusion of the equity participation option since the
homeowner could realize a return on investment. Commissioner Ramirez also agreed with Commissioner Gordon’s recommendation.

Chairperson Garcia further expressed his agreement to include the equity participation option in the ordinance.

Ms. Ayres explained that staff had no objection to the equity participation option, although staff still had questions as to how to implement it.

Ms. Ayres explained that staff had proposed to let the ordinance move forward without that component, allowing those developers who wanted to participate in an equity participation apply for a Development Agreement where all of those details could be identified.

Commissioner Gordon reiterated his opinion that the equity participation option should remain in the ordinance.

Ms. Ayres explained that the language for the original equity participation option had come directly from Redevelopment Law and was one of the options that could be dropped back into the ordinance if that was the wish of the Commission.

Commissioner Dolojan reiterated his prior concern with Page 10, Section B, regarding land dedication and new construction and his concerns that it could result in an escape clause for developers in that if developers did not want to build in the areas identified for land dedication he/she could give the lot to the City and allow the City to build the affordable housing. He had also expressed concern with Page 11, Section C, which he suggested was another avenue for developers to not provide affordable housing and only build higher end housing.

Commissioner Dolojan commented that while he initially had concerns that those two sections would weaken the ordinance, he now acknowledged that the revisions to the ordinance, as identified by staff during the presentation of the staff report in response to those concerns from the public and the Commission, would be acceptable.

Commissioner Tumbaga stated that she too had originally favored the elimination of the fee in lieu of construction and land dedication component, although she too had since rethought that issue and acknowledged that there would be some good possibilities in retaining that component. She suggested that the document was well written as it was.

PUBLIC HEARING OPENED

PROPONENT: City of Pittsburg

INTERESTED SPEAKERS:
GREGORY OSORIO 325 Cumberland Street, Suite F, Pittsburg, commented that he had spoken to staff and was now more open to the equity participation option than he had originally been. His real concern was that there could be a windfall for individuals which was something he opposed. While he commended the efforts that had been put into the ordinance, he was concerned that there would be attempts to weaken the document. Ms. Ayres recalled that Mr. Osorio had expressed concern that the equity participation option agreements be done in a public forum so that everyone could see what windfall might or might not go to that person based on the market versus the sales price.

Mr. Osorio urged a more uniform basis for everyone. He noted that the original ordinance included the equity participation option as discretionary by project and would not be uniformly applied for each and every project. He also spoke to the total development costs and suggested that there was a strong disincentive for the in-lieu fees. Having spoken to the Inclusionary Zoning Ordinance consultant, he had been informed of the need for strong language in the ordinance to avoid litigation if there was no in-lieu component.

Mr. Osorio further expressed his preference that the ordinance preference existing local residents which he suggested was the purpose for the ordinance.

In response to a matter of concerns expressed by Mr. Osorio Ms. Hoggatt explained that any replacement would require a 1:1 ratio. Referencing the West Boulevard area as an example, she stated that if any lots were lost by fire and if the lots were not aggregated and rebuilt as a new development but kept with individual lots and the exact same square footage, replacing what was built before, there would be no loss of affordable units. Ms. Hoggatt added if the lot was demolished intentionally that would be different. The new units would be subject to the ordinance.

Commissioner Gordon understood that if the City’s Redevelopment Agency was to put together monies that could be available the restriction on those monies could be for local residents’ participation. As an example, with a $400,000 home and a family that could afford a $200,000 payment, the fund would supply 50 percent of the value of the home. In two to five years, if the home sold for market rate, the fund which had supplied the initial 50 percent would get back 50 percent so that the homeowner could share the market rate increase but not receive the full share.

Commissioner Gordon commented that the money could then be used to perpetuate a fund for others.

Mr. Osorio understood that the homes would involve 45 year covenants. If the equity participation option was done in a public forum the public could then participate in the structure that would be used. He understood that unless the City participated in some means of development costs of the unit, the City would not be entitled to share in the equity of that property.
Commissioner Gordon clarified that there were two separate issues; one being the affordable component to the ordinance which included the 45 year covenants. He was speaking to the affordability issue where a home would be built to supply the affordable housing market and where there would not be a 45 year covenant on that home.

Ms. Ayres explained that the option being referenced by Commissioner Gordon was a 3rd option and was like the first time homebuyer program where the City had funds which could be offered to residents to buy down a mortgage. The 45 year covenant program and the equity participating in the ordinance referenced by Commissioner Gordon involved two other options.

Ms. Ayres clarified that one option would be that 15 percent of the units would be deed restricted and could be purchased only by a Low or Moderate Income household. Under option 2 the units would not be deed restricted. The home could be sold in the future and the appreciation on the home could be recouped over and above what would be realized by selling to another Moderate Income household.

Mr. Osorio encouraged a hybrid between the two where a 45 year covenant could be phased in over time, with the property owner to have the equity participation and where the home could be sold in the future and still be affordable.

Ms. Ayres reiterated that the equity participation option would not require any public funds and it would be an option where the price would be bought down by the developer. She stated that if the Commission desired that the equity participation option be retained in the ordinance, staff could develop an affordable housing agreement that would deal with those issues that had been discussed.

In response to Commissioner Dolojan, Ms. Ayres clarified that the property owner would not participate in the equity participation option unless the developer had set up those rules in advance. Her inclination was that no one would opt for the 45 year deed restriction option if the equity participation option was included in the ordinance. She suggested that the downfall was that 66 percent of the community was in a Redevelopment Project Area where 15 percent of the new units built had to be made affordable. Every time someone sold one of those units at market rate, that unit would no longer count toward meeting the 15% required making it harder to stay in compliance as affordable with Redevelopment Law. The new units would be subject to the ordinance.

Mr. Osorio questioned why there could not be a 45 year covenant which could offer the equity participation option throughout that time period and keep the unit affordable.

Ms. Ayres explained that Redevelopment Law was very specific that the unit must be affordable to Moderate Income households that earned 110 percent of the area median income based on an appropriately sized family. That price would increase slightly every year, probably around 7 percent a year, which would allow some equity participation.
although it would not be as much as it could be on a negotiated arrangement.

Commissioner Tumbaga questioned the monitoring process on the purchase of the homes for Moderate or Low Income households to ensure qualified buyers. She noted her understanding that of the First Time Homebuyer programs that had been developed by other cities those cities could restrict the use of that program. Requirements included that the homeowner must reside and/or work in that city. She questioned why that would not be appropriate to include in the Inclusionary Zoning Ordinance for the City of Pittsburg.

Mr. Osorio reiterated his concerns and suggested that such a scenario would create a litigation problem.

Ms. Ayres advised that the Redevelopment Agency was committed to hiring someone who would be the Affordable Housing Specialist. The developer would be responsible for the qualification of a buyer under specific rules that would be provided by the City to the developer, although the developer would have to submit that information to the City to ensure compliance.

Ms. Ayres explained that for the equity participation program option the second person could have any income. In terms of the preference program, when the Planning Commission had recommended approval of the Housing Element to the City Council, the Commission had adopted a resolution that had requested that the Council add a program to stipulate that when a project which had been funded by the City with local housing funds and which created affordable housing, those projects shall include an affordable housing preference program for persons who live or work in the city. The Redevelopment Agency was to create that program by 2005. Ms. Ayres stated, however, that the City Attorney at that time had advised the City not to include the preference program for projects which did not involve public funds because it could be vulnerable to lawsuits.

PUBLIC HEARING CLOSED

Commissioner Gordon made a motion to adopt Resolution No. 9530, identified as Attachment 2 to the staff report, with the inclusion of the equity participation component option.

Ms. Hoggatt spoke to Attachment 1, Section 18.86.100 Continued Affordability, City Review of Occupancy C (1) on Pages 13 of 15, and 14 of 15, where the text that had been deleted and which had been shown in strike through on the bottom of Page 13 referred to affordable units that were subject to an equity participation agreement that was approved by the City Manager, and which was not subject to the 45 deed restriction. She commented that was the section that could be inserted back into the ordinance with the language referring to the City Manager revised to read City Council.

Commissioner Gordon affirmed that he would like that language retained in the ordinance,
with the language reading “City Manager” to be revised to read “City Council.”

Ms. Ayres requested that staff be allowed to further revise the language in that section to clarify the exact language. She acknowledged that staff was aware of the intent of the motion.

MOTION:

Motion by Commissioner Gordon to adopt Resolution No. 9530, recommending that the City Council Amend Pittsburg Municipal Code to Add Chapter 18.86 of Part V: General Plan Use regulations of Title 18: Zoning (Inclusionary Housing Ordinance), with the inclusion of the equity participation component, with staff to further refine the language in Section 18.86.100 Continued Affordability, City Review of Occupancy C (1) of the ordinance to reflect the intent of the Planning Commission. The motion was seconded by Commissioner Tumbaga and carried the following vote:

Ayes: Commissioners Dolojan, Gordon, Ohlson, Ramirez, Tumbaga, Garcia
Noes: None
Abstain: None
Absent: Commissioner Williams

STAFF COMMUNICATIONS:

The Planning Commission acknowledged the Notice of Intent for the following items:

1. Notice of Intent (to review/approve project at staff level)
   a. Peppertree Apartments Monument Sign. AP-04-160 (DR)
   b. Woodland Hills Apartment Monument Sign. AP-04-161 (DR)
   c. JLGL Flooring. AP-04-163 (AD)

COMMITTEE REPORTS:

There were no Committee Reports.

COMMENTS FROM COMMISSIONERS:

In response to Commissioner Gordon as to whether or not staff had received a response from Wal-Mart, Ms. Ayres explained that Wal-Mart had responded to staff with an e-mail with information on plans to move forward to repair the parking lot.

Commissioner Gordon also spoke to the property located on the east side of Harbor Street which faced Tenth Street where boats and vehicles were being parked. He requested that
Commissioner Ohlson requested a copy of the adopted General Plan for his records. Since he understood that the City Council was working to adjust fees in the City, he asked the Planning Commission to consider a recommendation that the Council also consider an adjustment to the fees a developer paid for parks. In his opinion developers were not paying the full costs associated with parks.

Ms. Ayres advised that a copy of the General Plan was available on the City’s website, although the City was holding off publishing hard copies, pending approval of the General Plan Amendment for the Alves project. Copies were also available to the public on a CD disk for $1.

As to the City’s fees, Ms. Ayres advised that park fees were regulated under the Quimby Act which included specifics on how to impose park fees. Also under the Subdivision Ordinance, developers were required to submit an appraisal of the land around the time of the approval of the Tentative Map which generally identified the value of the land. That was a specific formula in the Subdivision Ordinance that was used to calculate the park fees based on the value of buying parkland in the subject area at that time. The equation related to the number of people per household. The number in the Subdivision Ordinance was lower than the 2000 Census Bureau information for the community.

Ms. Ayres explained that she would be working with the City Engineer over the next budget year to amend the Subdivision Ordinance to at a minimum change the number that was used in that equation.

Kathleen Faubion, representing the City Attorney’s Office, added that the Quimby Act was limited to land dedication to a certain extent with specific formulas. She stated that if the Commission wanted to require something more than the acreage that the Quimby Act allowed, or would like to require something that would allow funding of improvements, the Commission could either recommend or suggest to the City Council that a park impact fee be adopted that would cover more than what the Quimby Act would allow.

Chairperson Garcia commented that the problem was that the developer did not pay those fees and such a recommendation would pass the additional costs on to the potential home buyer which would also raise the cost of the homes. At some point developers might not be able to sell homes due to the amount of fees and conditions that could be attached to the project. He emphasized that developers were not in the business of losing money.

Chairperson Garcia otherwise spoke to the EIR for the Alves property and his understanding that the Planning Commission would be making a recommendation to the City Council to approve the EIR, although that process had been changed by the City Attorney. He requested in the future that the Planning Commission be able to adopt
resolutions recommending that the City Council approve an EIR before the Council certifies an EIR.

**ADJOURNMENT**

There being no further business, the meeting adjourned at 10:58 P.M. to a regular meeting of the Planning Commission on November 9, 2004 at 7:00 P.M. in the City Council Chambers at 65 Civic Avenue, Pittsburg, CA.

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MELISSA AYRES, Secretary
Pittsburg Planning Commission