MINUTES
OF THE REGULAR MEETING
OF THE
PITTSBURG PLANNING COMMISSION
November 23, 2004

A regular meeting of the Pittsburg Planning Commission was called to order by Chairperson Jack Garcia at 7:03 P.M. on Tuesday, November 23, 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
Absent: Commissioner Williams
Staff: Director of Development Projects Randy Jerome, Planning Director Melissa Ayres, Associate Planner Ken Strelo, Associate Planner Noel Ibalio, Assistant Planner Dana Hoggatt, Assistant Planner Christopher Barton, City Engineer Joe Sbranti, Assistant City Engineer Keith Halverson, City Attorney Ruthann Zeigler, and Attorney from the City Attorney’s Office Kathleen Faubion.

POSTING OF AGENDA:
The agenda was posted at City Hall on Friday, November 19, 2004.

PLEDGE OF ALLEGIANCE:
Associate Planner Ken Strelo 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:

There were no presentations.

CONSENT:


Commissioner Ohlson requested an amendment to the last paragraph on Page 23 of the August 10, 2004 minutes as follows:

Commissioner Ohlson requested that the bike parking be no farther away from the entrance than the closest auto parking space.

And to the last sentence of the sixth paragraph on Page 5 of the September 14, 2004 minutes:

Since it was unlikely the Burlington/Northern Santa-Fe undercrossing at Railroad Avenue would be rebuilt, he [Commissioner Ohlson] recommended a bicycle route from the downtown to Bay Point which would incorporate a wide railroad underpass and which would require the designation of Willow Pass Road with eight foot shoulders consistent with the General Plan for a Class III bicycle route.

MOTION:

Motion by Commissioner Gordon to adopt the Consent Calendar, as shown with the amendments to the August 10 and September 14, 2004 minutes, as shown. The motion was seconded by Commissioner Ohlson and carried by the following vote:

Ayes: Commissioners Dolojan, Gordon, Ohlson, Ramirez, Tumbaga, Garcia

Noes: None

Abstain: None

Absent: Commissioner Williams

PUBLIC HEARINGS:

Item 1: Orlando Residence at 77 Lorraine Avenue. AP-04-167 (UP)

Application by Michael Orlando requesting a use permit to construct a 1,896 square foot single family residence on a undeveloped 5,000 square foot substandard lot at 77 Lorraine Avenue, RS (Single Family Residential) District; APN 087-123-003.
Assistant Planner Christopher Barton presented the staff report dated November 23, 2004. He recommended that the Planning Commission adopt Resolution No. 9536, approving Use Permit Application No. AP-04-167 (UP), subject to conditions as shown.

In response to Commissioner Ohlson as to the differences between a substandard and a standard lot, Mr. Barton advised that a standard lot was 6,000 square feet in size per the minimum lot size requirement. In this instance, on the same side of the street where the home was located the homes were primarily on substandard lots. There were some 6,000 square foot lots located on the other side of the street.

PUBLIC HEARING OPENED

PROPOSENT:

MICHAEL ORLANDO, 76 Manville Avenue, Pittsburg, stated in response to the Chair, that he had read and was in agreement with the staff recommended conditions of approval. He also clarified that his home was actually 1,512 square feet in size.

Mr. Barton clarified that the reference to the 1,896 square foot size as identified on the agenda included the square footage of the garage.

Mr. Orlando further clarified that Manville Street and Lorraine Avenue abutted one another. He owned a home on Manville Street abutting another home he owned on Lorraine Avenue with his back yard going from Manville to Lorraine.

OPPONENTS: None

MOTION: AP-04-167

Motion by Commissioner Ramirez to adopt Resolution No. 9536, approving AP-04-167 (UP), a use permit to construct a one-story 1,896 square foot single family residence on an undeveloped 5,000 square foot substandard lot located at 77 Lorraine Avenue for “Orlando Residence at 77 Lorraine Avenue,” with the conditions as shown. The motion was seconded by Commissioner Dolojan and carried by the following vote:

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

Commissioner Ramirez stepped down from the dais due to a potential conflict of interest with the next item since his residence was located adjacent to the home at 188 Lois Avenue.
Item 2: 188 Lois Avenue SF Home Addition. AP-04-170 (UP)

Application by Pedro Preciado requesting a use permit approval of a 1,140 square foot addition, including a 570 square foot second story addition, to an existing 1,269 square foot one-story single family home on a substandard (5,000 square foot) lot located at 188 Lois Avenue. The site is zoned RS (Single-Family Residential) District; APN 087-173-021.

Associate Planner Ken Strelo presented the staff report dated November 23, 2004. He recommended that the Planning Commission adopt Resolution No. 9537, approving Use Permit Application No. AP-04-170, subject to the conditions as shown.

PUBLIC HEARING OPENED

PROONENT:

PEDRO PRECIADO, 188 Lois Avenue, Pittsburg, stated in response to the Chair that he too had read and was in agreement with the conditions of approval for the project.

RALPH RAMIREZ, Pittsburg, expressed his support for the project. As a resident of the area with the subject home located next door, and after having discussed the project with the property owner, he suggested that the addition would fit well into the neighborhood. He explained that there was a two story home to the west of the applicant’s property and another two story home directly across the street from the property. The neighborhood understood that the property owner desired more room and had looked to purchase another home in the City, although he had ultimately decided to add the addition to the existing residence. The neighborhood supported the addition.

OPPONENTS: None

PUBLIC HEARING CLOSED

MOTION: AP-04-170

Motion by Commissioner Gordon to adopt Resolution No. 9537, approving AP-04-170 (UP) a use permit to construct a 1,140 square foot addition to an existing 1,215 square foot one-story single-family home on a substandard lot located at 188 Lois Avenue for “188 Lois Avenue Single Family Addition”, with the conditions as shown. The motion was seconded by Commissioner Tumbaga and carried by the following vote:

Ayes: Commissioners Dolojan, Gordon, Ohlson, Tumbaga, Garcia
Noes: None
Abstain: None
Absent: Commissioners Ramirez [recused], Williams
Commissioner Ramirez returned to the dais at this time.

**Item 3: Contra Costa ARC. AP-04-155 (UP/DR)**

Application by Barbara Maizie, Contra Costa ARC, requesting a use permit to establish a large day care facility within a 2,843 square foot space inside an existing office building, and requesting design review approval of site improvement plans to restripe parking stalls and add landscaping and a fenced play area to the rear parking lot of the office building located at 300 East Leland Road, CC-O (Community Commercial with a Limited Overlay, Ord. 1023) District; APN 088-184-008.

Assistant Planner Dana Hoggatt presented the staff report dated November 23, 2004. She recommended that the Planning Commission adopt Resolution No. 9538 approving the design review and use permit for the Contra Costa ARC Early Intervention Program, with the conditions as shown.

Ms. Hoggatt requested that additional conditions be added to Resolution No. 9538. She recommended Condition No. 9 for the addition of a bike rack in the parking facility consistent with the design review guidelines already adopted by the Planning Commission. She also recommended another condition for the applicant to correct the drainage problem on the site as part of the site improvements which could be done through the Engineering Division review process.

In response to Commissioner Ohlson, Ms. Hoggatt clarified that the reference to CMU walls on Plan A3 identified a concrete masonry unit. She also clarified that the tenants in the adjacent office had been publicly notified of the application.

Commissioner Ramirez spoke to Sheet A1 and the specifics for the play area which would be added to the building portion. He inquired of the location of the entrance to the play area.

Ms. Hoggatt explained that the entrance to the play area would be from inside the proposed day care facility. For security reasons, there would be no gate directly to the parking lot.

**PUBLIC HEARING OPENED**

**PROпонENT:**

BARBARA MAIZIE, Executive Director, CCARC, 1340 Arnold Drive, Suite 127, Martinez, stated her agreement with the draft resolutions and the staff recommended conditions of approval.

**OPponents:** None
PUBLIC HEARING CLOSED

MOTION: AP-04-155

Motion by Commissioner Ramirez to adopt Resolution No. 9538, approving AP-04-155, a use permit for a General Day Care Facility and design review of plans to redesign an existing parking lot on a development property located at 300 East Leland Road for “CCARC Early Intervention Program,” with the conditions as shown and with the addition of Condition No. 9 and the additional condition for the application to correct the drainage problem on the site as part of the site improvements, as stated by staff. The motion was seconded by Commissioner Gordon and carried by the following vote:

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

Item 4: Vista Del Mar Development AP-03-33 (GP, RZ, PD Plan, Subdivision 8448 and Development Agreement)

This is a (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 designating that area as Medium Density Residential; 2) that the text in General Plan Policy 2-P-87 be amended to reapportion the 1,100 perimeter 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; 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/or public purposes in order to facilitate the proposed development; and 8) that a development agreement be approved for this project for a period of 18 years. APN 097-122-004, 097-160-013, 097-160-014, 097-160-015, 097-160-047, 097-180-004.

Planning Director Melissa Ayres presented the staff report dated November 23, 2004. She reported that a workshop had been held with the City Council and the Planning Commission on November 22, 2004 where a number of issues had been raised and discussed.
A list of Vista Del Mar Development Agreement Potential Modifications dated November 23, 2004, had been presented to the Commission for consideration and which could be identified and discussed further. The Commission had also been presented with copies of a power point presentation from Seecon Financial & Construction’s Legal Counsel, William Ross including changes Seecon would like to see occur in the Development Agreement (DA).

Ms. Ayres 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 don’t take effect until the related General Plan Amendment and P-D rezoning requests had been approved.

Commissioner Ohlson spoke to the second to last sentence of the staff report where West Leland Road had been identified as a local arterial street, while the General Plan had identified the same as major and minor arterial streets. Since the Contra Costa Transportation Authority (CCTA) identified West Leland Road as a route of regional significance, he requested that sentence be amended to show West Leland Road as a major arterial street.

Commissioner Ohlson also spoke to Page 13 of 22 of the staff report, and the reference to Impact 7-2, Cumulative Plus Project Impacts of the Bailey Road/West Leland Road Intersection. He noted that the discussion in the staff report was for three additional lanes in the eastbound direction on West Leland Road as it approached Bailey Road. He explained that the General Plan called for bike lanes through that intersection and although it had not been mentioned in the staff report, he fully expected that if any work was done in the intersection bike lanes would be provided.

In response to Commissioner Gordon, as to the order of action on the resolutions of approval before the Planning Commission, Ms. Ayres recommended that action on the DA be done last since it involved the most issues.

Commissioner Gordon recommended that action on the DA be done first.

Kathleen Faubion, representing the City Attorney’s Office, suggested that it was possible for the Planning Commission to discuss the DA first and at the time it was ready to take action, she would recommend that the Planning Commission keep to the order established at the end of the staff report.

Chairperson Garcia preferred to discuss the DA first and then take action on that document first since that document could necessitate changes to the resolutions for the other entitlements.
Ms. Ayres explained that there was a condition in the Tentative Map which stipulated that in the event that the Tentative Map conditions were inconsistent with the DA, the DA would prevail.

City Attorney Ruthann Ziegler explained that the reason for the recommended order of action in the staff report was that the DA must be found to be consistent with the General Plan.

City Engineer Joe Sbranti referenced the Vista Del Mar Development Agreement Potential Modifications report dated November 23, 2004, copies of which had been provided to the Commission for review. He expressed the willingness to walk through each proposed revision with the Commission.

Chairperson Garcia expressed concern that the Commission had again been handed documentation just prior to a meeting without the opportunity to review all information. He expressed concern with the fact that the Commission could be rushing through with a project that could possibly not start until 2007. He questioned why the City Council was pushing so hard to complete the project in such a short period of time. He preferred that action on the project not be taken by the City Council until December 20, as originally scheduled. He also suggested that the City should be sitting down with all of the attorneys involved and that rather than have a potential lawsuit the project should be continued until an agreement had been reached with all involved parties.

Mr. Sbranti referenced No. 1 of the Vista Del Mar Development Agreement Potential Modifications report dated November 23, 2004, with a proposed revision to Recital D, to move the last two sentences into a separate recital as new Recital N. The request had been made by Counsel for Seecon and was acceptable to staff. The No. 2 item was a recommendation for Recital F, to change the reference from “San Marco Elementary School” to “Delta View Elementary School”. This change had been recommended by staff. No. 3, involved a revision that had come about during the November 22 workshop between the Planning Commission and the City Council to revise Section 3.02 (d), to change the existing language to state:

“(d) as part of the Off-Site West Leland Road Extension, Developer agrees to construct two (2) lanes of West Leland Road from the western boundary of the Project Site (i.e., the western terminus of the On-Site West Leland Road Extension) to San Marco Boulevard (the “Off-Site West Leland Extension”, subject to Section 4.02 of this Agreement. As long as City approves all Off-Site West Leland Extension improvement plans on or before February 8, 2005, Developer agrees to dedicate to City the Off-Site West Leland Extension on or before September 1, 2005.”

Mr. Sbranti understood that all sides were in agreement with that revision.
Ms. Ayres explained that the revision had come about after discussions related to the definition of Off-Site West Leland Boulevard and to add the extension of the road occurring by September 2005.

No. 4 was recommended to revise Section 3.07 (b) to modify the last sentence to state:

“Developer shall complete and obtain the City acceptance of the Developer’s offer of dedication of the improvements by the earlier of four years from the Agreement’s Effective Date or the 400th building permit. Developer shall design and construct the improvements consistent with applicable local, state and federal standards including, but not limited to, those of the City and of the Fire District.”

Staff had recommended approval of this revision provided that the developer provides a performance bond for the approximate $3.5 million of improvements they would be responsible to complete included in this section of work and in a form and from a surety acceptable to the City, with the bond to be provided to the City prior to approval of the first final map.

Chairperson Garcia expressed concern that the developer was being given twice the amount of time than the City wanted.

Mr. Sbranti explained that the concern was whether or not the developer would be able to provide water to the site. Condition No. 42 would require the developer, prior to the approval of each final map, to provide proper water, line size and to meet the domestic and fire protection demands for the subdivision as determined by the City. Although it allowed more time to complete the improvements, the condition of approval would require the developer to provide the necessary water needed for each final map.

Mr. Sbranti understood that the concern of the developer was that the construction of the Zone 2 water tank would potentially take longer than two years and if so, they could run into a time issue with the 200th permit requirement where they would not be able to continue constructing homes while water could be available. The water tank could conceivably be under construction and nearing construction but the developer could be on permit No. 201 and be stopped.

Commissioner Gordon expressed concern that if the Fire District stated as an example, at No. 80 permit if it did not have enough water the water tanks would have to be built prior to the permits anyway.

Mr. Sbranti acknowledged that might be the case, although he noted that the condition he had referenced would be included in the conditions of approval regardless of the proposed revision to Section 3.07 (b).
Mr. Sbranti referenced No. 5 to revise Section 3.07 (d) to change the existing section to include only the first sentence, delete the remainder of the Section and add the following:

“City agrees that it will have fully constructed and operational the WTP/Bailey Line prior to the development in the Southwest Hills area placing any demand on the line.”

For No. 6, Section 3.13 (a) (ii) to add the word “sale or” to that section, to now state:

“Reserve sixty-six (66) of the high density residential units to be constructed on the Alves Ranch Property for sale or lease to Very Low Income Households.” [with the remainder of that paragraph unchanged].

No. 7, Section 3.13 (e), to revise this section to state:

“Lyon shall enter into an affordable housing agreement, subject to City Council approval, prior to City approval of Lyon’s first final map. Alves Ranch shall enter into an affordable housing agreement, subject to City Council approval, prior to City approval of Alves’ first final map or issuance of Alves’ first building permit, whichever occurs first.”

Ms. Ayres explained that with the way the affordable housing agreement would be written, there would be an allocation for Lyons and for Alves Ranch. This revision would allow two agreements rather than one since there would be two developers.

No. 8, Section 4.02 (d) to change the reference at the end of that section from Section 4.02 (e) to Section 4.02 (d), as recommended by staff. For No. 9, Section 3.02 (a), as recommended by Counsel for Seecon to be revised to read:

“As a consideration for the benefits the Developer will receive from the 18 year development agreement, the Developer shall grant the West Leland Road right of way and any required slope easements and temporary construction easements for the two Fee Lanes to the City within 15 days after the effective date of this Development Agreement. Failure to do so shall be considered a default under Agreement Section 10.04.”

Mr. Sbranti advised that as the applicant had stated during the November 22 workshop, this recommended revision was not supported. For that reason alone, staff would also not be supportive of the revision in that the entire agreement would go away.

Chairperson Garcia questioned the staff attitude and questioned whether or not staff was protecting the City or the developer.
Mr. Sbranti suggested that the developer address that requested revision later in the meeting.

For No. 10, Subparagraph J.11 of Recital should be added which would require the construction of the improvements described in the EIR [Environmental Impact Report] Mitigation Measure No. 7-2 at the West Leland Road/Bailey Road Intersection prior to issuance of the first project (commercial or residential) building occupancy, as recommended by Counsel for Seecon.

Mr. Sbranti explained that the developer had recommended that the construction occur prior to first occupancy with staff requiring that the developer provide fair share contributions towards those improvements for the EIR.

Ms. Ayres explained that the fair share issue was a mitigation measure which had been identified in the Mitigation and Monitoring Plan (MMP), incorporated in the DA and could be in the Tentative Map.

Mr. Sbranti stated that No. 11, Section 3.17, Subparagraph 3.17 should be added which required the construction of the improvements described in EIR Mitigation Measure No. 7-2 at the West Leland Road/Bailey Road Intersection prior to the issuance of the first Project (commercial or residential) building occupancy, as recommended by Counsel for Seecon. Mr. Sbranti stated that staff was not supportive of this recommended revision. Instead, he recommended that the fair share amount be paid as per the EIR.

For No. 12, Section 3.02 (c), The developer should modify the existing signal at Bailey Road and West Leland Road in conjunction with addressing the needed turn lane required to relieve the current Level F condition at that intersection, as recommended by Counsel for Seecon, Again, that revision was not supported by staff.

No. 13, Subparagraph F of the Recitals, revision to the fourth sentence to read:

“To aid City in its effort to remedy this situation, Developer, in consideration of this Agreement, has offered to construct and dedicate to City an extension of West Leland Road across the Project Site, to the intersection with San Marco Boulevard, as discussed below.”

Mr. Sbranti reported that staff was supportive of this revision which was consistent with the revision proposed to Section 3.02 (d), as earlier identified.

No. 14, Section 3.02 (d), Off-Site West Leland Road Extension to San Marco Boulevard, a revision recommended by Counsel for Seecon.

302 (d) “The Developer shall be required to construct West Leland Road to
Mr. Sbranti explained that staff did not support this revision since it had been covered already in Section 302 (d), as stated for revision by staff.

No. 15, Section 4.02 (c), Off Site West Leland Road Extension to San Marco Boulevard Reimbursement:

402 (c): should be revised to be consistent with the City’s current traffic mitigation fee program. The developer should receive a fee credit or reimbursement for the West Leland Road fee lanes they construct in accordance with the cost estimates by Fehr and Peers contained in the “Pittsburg Traffic Mitigation Fee Study Update” dated October 23, 1997 (adjusted for inflation).

Mr. Sbranti stated that this was another recommendation made by Counsel for Seecon, not supported by staff in that the cost of the construction of the road would far exceed the estimate done in 1997 and it would be difficult to place a condition on the developer to build a non-nexus road. Staff was negotiating the item to be constructed at today’s costs, since what this developer could build it for was far below the City’s cost to build. Therefore the City would end up with a savings in the range of $1 to $3 million depending on the estimates.

To provide further clarification, Mr. Sbranti added that in this instance, the developer had proposed to build a project that had been included in the local traffic mitigation fee. Counsel for Seecon was stating that if they build a project that was in the local traffic mitigation fee, the developer should not be credited more than the amount of fee that had been collected. Since the fee only projected a specific cost, giving the developer credit for more than that cost, would be [as stated by Counsel for Seecon] a gift of public funds. If the developer did not build the road, it was the staff position that the City would lose at least $1 million or several million dollars since the City would build the road later as a City project at a much greater cost.

Mr. Sbranti stated that No. 16, Section 4.02 (d), Off Site West Leland Road Extension to San Marco Boulevard Provisions should be revised to be consistent with revised Section 3.02, as recommended by Counsel for Seecon. The revision was supported by staff.

No. 17, Recital J. 12 and subparagraph Section 3.18 should be added which would both require the developer to contribute its fair share of the West Leland Road Phase II extension to Willow Pass Road, as recommended by Counsel for Seecon.

Mr. Sbranti explained that the developer would be contributing its fair share amount by
paying into the local traffic mitigation fees. The way the revision read would suggest that the developer was making no contribution at all, however that contribution would be through the local transportation mitigation fees. He understood that Seecon was concerned that additional fees should be contributed to cover the reconstruction of the existing Avila Road. He described that as a complicated issue because they were speaking of the reconstruction of a road located in the City of Concord, determining their design speed, design of the road in the City of Concord for that community and estimating a cost for Concord and charging the developer a fee. Such a scenario had not been done for prior developments in the City and the revision was not being recommended by staff.

No. 18, Recital 1.2, Revise the Recital paragraph I.2 of the Development Agreement page 4 add to the last sentence, as follows:

“The project shall provide for and be conditioned for the relocation of the San Marco Boulevard extension by providing an Irrevocable Offer of Dedication including appropriate slope easements, exclusive of any Project Conservation Easement restrictions, in the location shown on the existing General Plan. The dedication must be made prior to the issuance of the first Project grading permit and the granting of any Project Conservation Easement. Developer shall contribute their fair share of the developer’s lanes for the design, grading and all physical improvements of the San Marco Boulevard bypass.”

Mr. Sbranti explained that this item had been discussed in depth during the joint workshop with the City Council on November 22. Staff did not support the revision. The City had the option of never building the road, waiting to build the road until the blast zone was eliminated which might or might not happen, or building the road through the southern portion of the Alves property. Staff was of the opinion that building the road through the bottom of the Alves property would not be a viable option and staff was not concerned with the loss of that option.

No. 19, Section 3.07 (b), not (d) as shown on the document, to revise the last sentence of that section to read:

“The improvements shall be completed and accepted for dedication by the City consistent with applicable local, State and federal standards, including those of the City and the Fire District prior to issuance of the first project building permit.”

Mr. Sbranti advised that staff had already recommended a revision to the language as reflected in No. 4, and was not supporting the change recommended by Counsel for Seecon.

Mr. Sbranti described No. 20, Section 3.07 (d) as a recommendation that had been proposed by Counsel for Seecon, Staff had already recommended revisions to the language as reflected in No. 5. As such, staff was not in support of the recommended
Commissioner Gordon referenced Section 302 of the DA and the discussion of the dedication of West Leland Road. He understood that the conflict related to the language in the current DA that had no time frame to dedicate that property. He noted that Counsel for Seecon had recommended a revision to that section to provide for dedication of the property within 15 days of the approval of the DA irregardless of a potential lawsuit.

Mr. Sbranti explained that since the developer was committed by the DA to construct West Leland Road by September 1, 2005, and dedicating the property at that time, there was a time attached to that requirement. Plans must be submitted by February 8, 2005 and the developer would have to go into construction by early spring to ensure that the road was completed and dedicated on time.

Commissioner Gordon commented that if the DA were approved and for whatever reason Lyons goes away or some other glitch occurred and the developer decided not to build, he questioned what would occur with the dedication requirement and the City’s ability to have the West Leland Road extension built.

Mr. Sbranti advised that the City always had the right to use eminent domain.

Commissioner Gordon pointed out that the cost of eminent domain proceedings was prohibitive. He questioned whether or not the land could be dedicated at the time of a grading permit and where the completed roadway could be dedicated at a later date.

Mr. Sbranti explained that was not the way the DA currently reads although it would be fine with him to make such a revision.

City Attorney Zeigler commented that there was a cure and correct provision in the DA that would make a demand on the developer if it did not cure and correct under a certain time frame where they could be declared in default and the City could terminate the DA. That would put the City in no worse a position than if the DA had not existed in the first place.

Commissioner Gordon suggested that they could have the dedication of the land at the time of the grading permit and the dedication of the completed road at the time of completion to ensure the dedication of the land prior to the completion of the road.

City Attorney Zeigler acknowledged that it could be structured in that fashion, although it was likely when the applicant addressed the Commission the developer would be opposed to that scenario.

GREG MIX, Area Manager, William Lyon Homes, 2603 Camino Ramon, Suite 150, San Ramon, commented on the lengthy workshop that had been held between the Commission and the City Council on November 22 when a number of issues had been discussed.
including recommendations proposed by Counsel for Seecon, which he suggested had not correctly characterized the intent of the DA or what the DA language stated.

Mr. Mix suggested that the Commission could act and make a decision on the project at this time. He expressed his hope that the Commission would act in favor of the item and would recommend approval to the City Council.

Mr. Mix explained that the developer was in agreement with the conditions of approval in the DA and in the resolutions of approval before the Commission, with a few exceptions.

As to the Vista Del Mar Development Agreement Potential Modifications, dated November 23, 2004, Mr. Mix advised that Nos. 1 and 2, as shown in the document would be acceptable to the developer. No. 3 was acceptable to the developer in concept, although there was a concern with the language in the last sentence of that section which now read: “Developer agrees to dedicate to City the Off-Site West Leland Extension on or before September 1, 2005.” He noted that the land did not belong to the developer and therefore the developer could not dedicate the land. The developer would agree to construct the improvements once they were past any potential litigation. He suggested that by referencing that phrase as being subject to Section 3.02, the developer’s concerns could be accomplished.

Ms. Ayres understood that the only change to that section had been a change in the language from the use of the term “dedicate” to “construct” the Off-Site West Leland Extension on or before September 1, 2005.

After further review by the City Attorney, it was recommended that the last sentence of Section 3.02 (d), be further revised to read:

“Developer agrees to complete to the City’s satisfaction the Off-Site West Leland Extension on or before September 1, 2005.”

City Attorney Zeigler also suggested that the timing provision could be cross referenced as referenced in Section 3.02.

Mr. Mix spoke to No. 4 and stated that the developer was in agreement in concept to the staff recommended change, although he noted that the developer could not compel the City to accept the offer of dedication. At the suggestion of his Counsel, it was requested that Section 3.07 (b) be revised to read:

“Developer shall complete and offer to dedicate the improvements by the earlier of four years from the Agreement’s Effective Date or the 400th building permit. Developer shall design and construct the improvements consistent with applicable local, state and federal standards including, but not limited to, those of the City and
DAVID GOLD, Morrison and Foerster, LLP, further commented that the developer again could not legally compel the City to accept the developer’s offer of dedication.

City Attorney Zeigler suggested that the section should remain as proposed for revision by staff and as shown in the November 23 potential modifications to the Vista Del Mar DA, in that if the improvements were offered for dedication and for some reason there was a concern with the nature of the improvements, the City would not accept the offer of dedication.

As to No. 5, Mr. Mix advised that it would be acceptable to change Section 3.07 (d) as proposed by staff. No. 6 would also be acceptable although it should be clarified that the revision would apply to the 27 units and not just the 66 units. Nos. 7 and 8 were acceptable to the Developer, as revised by staff. Nos. 9 through 12 requested revisions by Seecon were not acceptable to the developer. No. 13 involved the same dedication issues with respect to No. 4. For Nos. 14 and 15 the developer was in agreement with staff to not revise Section 3.02 (d) and Section 4.02 (c).

Further, Mr. Mix stated that the concept for No. 16 was that the developer had asked for certainty that the City had obtained the dedication of the land, which the City had not done. The developer wanted assurance that everything that was needed to commence construction had been obtained.

Mr. Sbranti clarified that the City would be building the center two lanes through that area and that Counsel for Seecon had stated that the property had already been rough graded. If there were any temporary slope easements required they would fall within the City’s right-of-way since the City was only grading the center two lanes. He noted that there was ample right-of-way to construct the roadway.

Mr. Mix commented if that were the case it would be acceptable to make the revision to Section 4.02 (d), as recommended by staff. As to Nos. 17 through 20, Mr. Mix agreed with the staff recommendation to not include those revisions as requested by Seecon.

SCOTT HANKS, Consultant, representing the land buyer and the property owner, spoke to Resolution No. 9525, and commented that he had submitted to staff a recommended revision to the Table for the Development Standards in the PD District. Speaking to the setbacks for Neighborhood B, Mr. Hanks noted that part of the developer’s agreement was that Plan Four would have a nine foot front yard setback rather than a 10 foot setback. For Neighborhoods C and D, and in accordance with City Code 18.80.010, Mr. Hanks understood that the porches of the project would be permitted to encroach into the setback by four feet. He identified a footnote at the bottom of the table, which stated that no additional encroachments including porches were permitted in the front yards except for roof overhangs. He stated however that City Code permitted front yard porches. As to the
building heights, Neighborhoods C and D would have an elevation of 30 feet as opposed to 28 feet. The estate lots would have an elevation of 35 feet as opposed to 28 feet.

Mr. Hanks requested that those revisions be made to Resolution No. 9525.

Ms. Ayres spoke to the request for nine foot front yard setbacks for Neighborhood B and stated that was something that would be at the discretion of the Planning Commission. While the standard zoning was normally 20 feet, she was aware that there had been a project which had been approved and which involved a 10 foot front yard setback. She was not aware of any approved project which had gone down to nine feet. As to the 12 foot setback issue for Neighborhoods C and D, she commented that had already been covered in the footnote at the bottom of the referenced table, where encroachments were not allowed except for front porches and overhangs. As such, that portion of the resolution did not have to be amended.

In response to the requested revision for building height, Ms. Ayres explained that in the RM District there was a height standard which allowed for a greater height than 28 feet, although it was intended for apartments. All of the City’s single family residential districts allowed building heights of 28 feet. That standard had been maintained in the resolution and staff saw no reason to recommend approval of a project with an exception to that standard. Again, it was up to the Planning Commission to either agree or disagree with the requested revisions.

Ms. Ayres in response for clarification suggested that the developer would be better off using the 12 feet for the front yard setbacks for porches and add the footnote for the 12 foot porches for that model.

Mr. Hanks explained that the developer had discussed that issue with staff and it was understood that the setback would be 12 feet although the current code required a greater distance.

Commissioner Gordon commented that the City had the plans for the project for the past year and the developer had known about the setbacks and height issues. He questioned why those issues had not been called out prior to this time.

Ms. Ayres described the project as extremely detailed with multiple persons involved for each entitlement. She acknowledged that some things slipped through the cracks.

Commissioner Gordon inquired whether or not staff was recommending that the table be modified to allow for the plans the Commission had initially been presented.

Ms. Ayres clarified that the Commission was not being asked to approve any design review for the project. The Commission was only approving the development standards for that
district. She was supportive of the developer’s request for the 12 foot exception for the front yard porches, with a footnote to be added to that table which would provide for the 12 foot exception for porches. Ms. Ayres reiterated that the City did not have a building height standard for single family homes over 28 feet. Again, if the Commission desired to support the developer’s request on the building height that was a decision to be made by the Planning Commission.

Mr. Mix stated that with those comments, the developer was in agreement with all of the conditions of approval in all of the documents for the project. He again asked the Commission to approve the project which would provide a number of benefits to the City including opening West Leland Road at the earliest possible opportunity.

Mr. Mix stated that the developer would also construct more than its fair share of road improvements for the West Leland Road intersection, fund other major traffic improvements both in and outside of the City, construct water infrastructure in excess of the developer’s fair share of the improvement requirements, provide 117 acres of Open Space, bike lanes and trail connections to adjacent properties, and set aside a school site including a five acre joint use park opportunity with the City.

The project would also include 15 percent inclusionary affordable housing across the project to be built inside the project allowing for a smart growth development with a full range of housing at its closest point within a quarter mile of the BART station.

WILLIAM ROSS, Attorney representing Seecon Financial & Construction, presented the Commission with copies of a PowerPoint presentation he had presented to the Commission during the joint workshop with the Planning Commission and City Council on November 22.

Mr. Ross spoke to the issues regarding the early dedication and construction of West Leland Road. He commented that if it was the principle consideration for the DA it should have been insured. Otherwise it would not occur until the spring of 2007. He acknowledged discussions during the joint workshop about water system reimbursement and the Water Capacity Reservation Agreement. He noted that Section 307 (b) of that Agreement referenced the reimbursement for Phases I and II construction in an amount which constituted $11.1 million. There was also a designation in the DA between non-nexus costs and nexus costs in the southwest area. The approximate amount of the Phase III construction for the Bailey Line had also been included at $3.8 million. That amount constituted a total of $15 million. He questioned the share that would be applicable to the developer in that case.

Mr. Ross advised that Mr. Mix had represented during the joint workshop and this meeting that William Lyon Homes would build beyond its requirement, although that had not been stated in the DA. The developer was to be reimbursed at least on 30 and 60 day increments for that amount with the security provided by the City. He asked that the developer accurately reflect what was in the DA and whether or not that would be in the
best interests for the City. He suggested that an AB 1600 proceeding should be held to determine the fair share allocation. He stated that had yet to take place.

Mr. Ross spoke to the performance bond as identified in Section 307 (d) which had been greatly discussed during the joint workshop. The Water Line Bond, an obligation normally the responsibility of the developer was not provided in this instance. The City was to provide that amount. As a result, the City would end up paying $84,000 on a multi-million dollar project at the end of the two year period for a performance bond that was normally paid by a developer.

Mr. Ross also spoke to the developer’s statement that the bonding capacity was not being used in an unfair way. He disagreed in that the security paid for by properties that would pay the property tax increment which constituted around 90 percent of the City would provide security for the developer to get paid now within 30 days. Also, Section 408 (c) 2, stipulated that if the City was delinquent on any 45 day period, interest would be two percent for every 45 days. He again questioned whether or not that was in the best interest of the City.

Speaking to Section 3.13 of the DA, Mr. Ross spoke to the three acres that would be purchased by the Redevelopment Agency for approximately 93 units with the developer given the option of a Promissory Note secured at 6 percent with tax exempt financing with the possibility of using the Redevelopment Agency (RDA) Housing Trust Fund at 20 percent of the tax increment for the construction of the units. He again questioned the benefit to the City in that any normal developer would have to meet its fair share with for profit units to be set aside in the development. He recommended that those monies be used by non-profits to build affordable housing, as opposed to providing the subsidy to the developer for that portion of the development.

Mr. Ross referenced the Phase II extension of West Leland Road to the Avila Road intersection and spoke to Condition No. 54 of the Vesting Tentative Tract Map which required the same developer to construct its proportional fair share for the improvement of that intersection. If the road must be reconstructed it would not be covered by the Traffic Fees.

Mr. Ross stated his opinion the developer should pay for the proportional fair share for the extension of the reconstruction of that road at four lanes, and not just the widening associated with the applicable fees. He noted that Seecon, an adjacent developer, had not enjoyed the same kind of City financing. He questioned why City funds were being used in this instance.

In regard to the San Marco Boulevard Extension, Mr. Ross acknowledged that there were questions about the constructability of the current alignment. The Buchanan Road Bypass had similar problems as to whether or not the slope easements and widths were
comparable. He was aware of no exception to any easement benefiting a Federal agency where the prohibition of the construction of public roads and highways would allow the feasibility of the relocation proposed by F-2 in the General Plan Amendment. If it could not be done legally, he questioned why it was being done at all. He asked that the alignment be maintained as the only possibility. He understood that was the same position with the Bailey Estates development.

Mr. Ross suggested that the Commission should support the City Manager’s original recommendation for the project to be heard by the City Council on December 20. He questioned the clarity of the DA and whether or not the best interests of the City had been reflected in the cost information he had outlined. He suggested that the issues would be addressed if the project were continued to that date. He asked that the issues not be ignored but clarified.

Mr. Ross again spoke to the use of the RDA funds and stated that while they had been used in the past, he noted that the public wanted the park improvements for the Highlands Ranch subdivision and in that instance Seecon had met its obligation and park commitment through the dedication of the land. He noted that Seecon had not received a subsidy and had met its obligation for its developments. In his opinion, the current situation would allow the use of City funds to assist the developer to meet the obligations up front. He questioned whether or not that would constitute a gift of public funds.

Mr. Ross suggested that the way the DA was now set up it would not benefit the City although it would benefit the developer as it related to some of the interests of his client. Until the Commission addressed the issue of the cost subsidy, he suggested it would be an unfair burden to place on the Commission to come forward on the project to have it approved before the end of the year and before the expiration of terms of the current City Councilmembers.

Mr. Ross urged that the application be extended to offer a rational approach with a resolution of the issues and a true allocation of the actual costs to ensure that there would be no litigation, which was something he suggested his client was being forced into. He pointed out that Mr. Mix had stated during the workshop that if there was a lawsuit, the developer would not move forward with the early dedication and construction.

Mr. Ross presented the Commission with the preliminary route alignment of Alternative D with respect to the Buchanan Road Bypass, as shown in the EIR to show that it would be feasible, as it would apply to the issues surrounding the extension of San Marco Boulevard.

BEN JOHNSON, Pittsburg, expressed concern that the joint workshop with the Planning Commission and the City Council on November 22 and which had been called by the City Council, had been attended by only two Council members. He expressed concern that without a quorum of the Council to discuss the issues, the meeting had not been a factual way to do business. He acknowledged that he was a recently elected member of the
Council and that he had spoken to the other elected City Councilmember who was of the opinion that the newly elected Councilmembers had been slighted in that they would be carrying the project for the next four years, with possible litigation and costs facing the City as a result of the development.

Mr. Johnson expressed concern with the potential cost of litigation which would increase over time. He would rather have had the project remain with its original schedule to go before the City Council on December 20. He also expressed concern that once the DA was approved it would have an 18 year lifespan. He urged the Commission to make its decisions based on the best interests of the City. He also expressed concern that all of the commitments were coming from William Lyon Homes which did not yet own the property but which had an agreement to build. He suggested that there was a potential for the developer to walk away from the project leaving the City responsible.

Mr. Johnson suggested that the project should be continued to allow more time for review. He questioned the need to rush the project through the City processes where mistakes could be made. He also inquired of the City Attorney whether or not the City Council could approve the project and overrule the Planning Commission in the event the Planning Commission denied the project at this time.

City Attorney Zeigler explained that the City Council had the discretion to approve the project whether or not it was approved by the Planning Commission. If the Commission continued or postponed the project and took no action at this time, the matter would only be considered by the Council after the Commission had made a recommendation as to whether to approve or deny the project.

Commissioner Gordon noted that he was ready to take action on the proposal. He identified the appeal process in the event that an individual opposed the decision of the Planning Commission, whereby an appeal of the decision could be made to the City Council. He spoke to the issues surrounding the development of the Keller Canyon Landfill and the San Marco Estates DA which had involved a project which had been rushed through and based on a promise that a landfill would not be placed on that site.

In that instance the City had approved the DA prior to the developer purchasing the property. Commissioner Gordon stated that mistakes had been made on that project as a result of it being rushed through. The developer in that instance owned a portion of the Keller Canyon site which was now the landfill within the City limits.

Commissioner Gordon suggested that the staff recommended changes to the DA should be included and that the Commission forward the project on to the City Council for consideration. He expressed his hope that the current Council would delay the project to allow the new Council the opportunity to review and consider the project.

Commissioner Gordon stated that he would support the project, with a stipulation related to
the dedication of the property for the On-Site West Leland Road property prior to the construction of the road bed. He suggested that there was enough from a land use issue for the Planning Commission to forward the project on to the City Council. He urged the Council to spend the necessary time to properly review and consider the application.

Commissioner Ramirez inquired whether or not the Planning Commission were to delay the project and hold it over to the next Commission meeting, how it would impact the development and to what extent.

Mr. Mix explained that there had been no rush to judgment on the project. The first public hearing had been held in July 2004 with numerous hearings since that time. He suggested that the Commission had the information to make a decision. The primary concern of the developer was that it was very important to have West Leland Road constructed by next September, particularly as it had added in that portion of West Leland Road across the frontage of San Marco on the same time schedule.

Mr. Mix commented that the urgency with moving forward was that it was very important to the City to have the West Leland Road Extension improvements completed. If the project was delayed again, the developer was fearful of further delays and might not be able to accommodate the wishes of the City. As to the details as to when West Leland Road could be dedicated, he noted that the developer was willing to dedicate West Leland Road as soon as any litigation was resolved.

Mr. Mix stated that as soon as any potential litigation was resolved and as soon as there was a grading permit for the property, the property could be dedicated.

Commissioner Gordon understood that the developer would be willing to dedicate the property prior to a grading permit, to which Mr. Mix restated that would be the case providing that all statutes of limitations had run on any possible litigation.

City Attorney Zeigler clarified that it was not any litigation, but only CEQA [California Environmental Quality Act] related litigation which had a 30 day statute of limitation once the Notice of Determination had been recorded.

Mr. Mix added that grading and improvement plans had already been submitted to the City to accomplish that goal, although the process was on hold since the project had yet to be approved. The goal was to start grading on April 15, 2005 since the work could not start on West Leland Road until the start of grading at that time.

Commissioner Ohlson requested clarification in that he understood that since July 2004, the developer would build West Leland extension (four lanes) from San Marco Boulevard to the existing West Leland Road.

Mr. Mix clarified that there was no previous requirement to build the portion of West Leland Road.
Road across the San Marco project on the time schedule by September 2005 as across
the portion on its own site. To further clarify, he noted that the dates in the DA had been
included to protect the developer against the City potentially delaying that portion of the
project in the event the City could not deliver plans, right-of-way and the like. It had always
been the developer’s intention to build those improvements simultaneously with the portion
of West Leland Road on its own site, although it had not been stated that way in the DA,
which had now been clarified.

Mr. Ross suggested that the language in the DA was at the City’s discretion to extend
West Leland Road. That section in the DA had not been modified. In addition, he noted
that the developer would receive a 5 percent management fee on the non-nexus
reimbursement at three quarter of a million dollars in addition to everything else. He again
reiterated his comments that there were deficiencies in the DA that should be clarified over
time and which could be done without a rush to judgment.

Mr. Sbranti explained that the developer had agreed to provide reimbursement for its use
of the Zone 4 and Zone 3 water tanks. He was uncertain whether or not Seecon’s
representatives were stating that Seecon had not been reimbursed through the
assessment district or would like to be reimbursed a second time. As to the deal points of
the project and as to whether or not they were a good deal or not for the City, Mr. Sbranti
commented that this project had an affordable housing component unlike the San Marco
development as an example. Also, the project unlike any other in the City would have a
supplemental landscaping and lighting district to ensure that the General Fund was not
impacted by the addition of a park provided for all citizens of the City, as well as other
features provided within the development. The developer would pay for all of its park
improvements within the development as well as pay the landscaping and lighting fee on
top of that. Additionally, the project would pay 100 percent of the signal to be provided as
opposed to other developers who paid a lower percentage.

Mr. Sbranti stated that the request for the project to contribute towards the reconstruction
of Avila Road would be unprecedented. As an example, the adjacent San Marco
development even closer to that location would not be contributing to that reconstruction.
He was unclear why one developer would be asked for a contribution while the neighboring
development would not make an equitable contribution.

Mr. Sbranti further spoke to the comments by Mr. Ross regarding Highlands Ranch park
and how his [Mr. Ross’] client had met his obligation for Highlands Ranch. He noted that to
date, there has been no dedication of parkland and he was uncertain how many permits
had been issued and homes built, nor had there been any parkland dedication in the San
Marco development. Further, in response to Mr. Ross and the reference to the 5 percent
management fee, he noted that as compared to the 7 percent management fee that was
given to Seecon for the Highlands Ranch tank, the management fee proposed for the
subject developer was a bargain.
PETER HELLMAN, representing Alves Ranch LLC, one of the applicants for the Vista Dela Mar Development, stated that the comments made by the City Engineer were right on point. He referenced the last Commission meeting in October when a development from Discovery Builders had been presented and where the Commission had agreed that it was not reasonable or fair to impose an inclusionary housing component on that project since the application had been deemed complete in March 2004 with insufficient notice or opportunity to allow the developer in that instance to weigh the pros and cons of that requirement.

Mr. Hellman advised that the subject application had been deemed complete on December 20, 2003, although late in the process City representatives had mentioned that affordable housing would be an asset to the community and was something City staff wanted the developer to consider. The developer had worked hard to accommodate that goal with a program to build 166 affordable homes in the project.

Mr. Hellman referenced Mr. Ross’ comments that he did not have the opportunity to have his say, although he was surprised that the City Attorney or staff did not take exception, since he was aware of a meeting which occurred approximately four weeks ago and which lasted for four hours at which time Mr. Ross and other representatives of Seecon, including its General Counsel, had met with the City Attorney, Planning Director, and the City Engineer to review the DA. A promise had been made during that meeting that the comments that had been received by fax late this afternoon were to be submitted to the City by the Friday of the week of that meeting. He suggested that the receipt of the comments at the last minute from Seecon was unfair, rude and disrespectful of the staff and of the Planning Commission’s time.

Mr. Hellman stated that he had made numerous comments during prior meetings to point out the obvious and egregious examples of where Seecon was trying to transfer its development obligations onto the subject developer.

Mr. Hellman stated that he had presented to the Commission and the City Council during the November 22 workshop, Seecon’s Memorandum of Understanding which had been executed in 1992, by which Seecon was obligated to make the improvements west of San Marco Boulevard. He had also shown the Commission during prior Commission and City Council meetings that Seecon had spoken in 2002 against the location of San Marco Boulevard in the subject development, comments which had been made during efforts to stop the Bailey Estates development. He suggested that Seecon was also trying to stop this developer, another competitive project in the southwest area of the City.

Mr. Hellman advised that Alves Ranch LLC had entered into a transaction with William Lyon Homes, one the nation’s largest home builders with quality projects all over the western United States. He suggested that this was not the way to treat people who would like to do business in Pittsburg. He suggested that this was another in a continuing line of
relentless withering and unfounded attacks on the development which had only one purpose - to stop the project.

Mr. Hellman also spoke to the amount of time involved in the project with efforts over the last two years to bring the project to this point. He suggested that City staff had done an outstanding job of evaluating every facet of the development. He asked the Commission to approve the project at this time.

Chairperson Garcia inquired whether Mr. Hellman, representing Alves Ranch LLC, would be willing to accept a revision to the first sentence of Article III, Obligations of Developer, Section 302 (a) of the DA, with the elimination of the last sentence of that paragraph with that section to now read as follows:

(a)  “Forty five (45) days after the Council approves this agreement, Alves Ranch LLC, will dedicate the West Leland Road ROW extending across the Project Site from the Project Site’s western boundary to its eastern boundary, free and clear of all liens, bonds, taxes, assessments, and other charges, sufficient to accommodate construction of the proposed four lane extension of West Leland Road from its existing western terminus across the Project Site, as generally depicted in the attached Exhibit C, (the “On-Site West Leland Extension”). Developer will pay for all escrow and recording costs associated with the aforementioned dedication, if any.

Mr. Hellman stated that he had made his position clear on that matter. He was not willing to accept that amendment to Section 302 (a) of the DA.

PUBLIC HEARING CLOSED

Commissioner Ohlson referenced Mr. Ross’ comments as to whether or not the project was in the best interest of the City. Commissioner Ohlson noted that Seecon had enjoyed many sweetheart deals in the past, with just about every development built in the City over the past 40 years. The DA for the Alves property was no worse than any of the arrangements enjoyed by Seecon. He also commented that Seecon had not expected the San Marco Boulevard extension to go through with the area to the south of where the traffic signal for Leland Road would be installed and which had been built to collector street standards.

As to the potential modifications to the DA, as outlined by staff and dated November 23, 2004, particularly Nos. 10, 11, 12, and 17, Commissioner Ohlson commented that each recommended revision had been proposed by Counsel for Seecon, who preferred that the developer make those improvements so that Seecon would not have to conduct those improvements.
Chairperson Garcia requested that the motion on the project include the revision that he had recommended to Section 302 (a) and as shown above. In the event the Council determined it should not be included, it could be removed by the Council during its deliberations. In his opinion, there was no reason for the developer not to dedicate the land once the project had been approved.

Commissioner Gordon reiterated his comments on the project and his hope that the City Council would take the necessary time, as the Planning Commission had, to ensure that the project was properly reviewed and considered.

**MOTION: AP-03-33 (GP)**

Motion by Commissioner Gordon to adopt Resolution No. 9524, recommending that the City Council adopt a resolution approving the General Plan Amendment to relocate the Public/Institutional classification further south, and to change the General Plan text of Policy 2-P-88 for the Vista Del Mar Development on the Alves Ranch Site (AP-03-33 (GP)), with the conditions as shown. The motion was seconded by Commissioner Tumbaga and carried by the following vote:

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

**MOTION: AP-03-33 (PDRZ)**

Motion by Commissioner Gordon to adopt Resolution No. 9525, recommending that the City Council adopt an ordinance to rezone the area south of the West Leland Road Extension to PD (Planned Development) District; to rezone 14.78 acres northwest of the West Leland Road Extension to CO-P (Commercial Office- Master Plan Overlay) District and the remainder to RH-P (High Density Residential) – Master Plan Overlay) District and approving a P-D Plan for the area recommended to be Zoned P-D (Planned Development) District for the “Vista Del Mar Development,” subject to the conditions as shown and with the following revision to:

- Table 1, for the Development Standard Residential Neighborhoods within PD District, for the minimum front yard setbacks for Neighborhood B to allow for a 9 foot setback and a 12 foot setback for Neighborhoods C and D; and
- The height limitations to be maintained at 28 feet.

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

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

MOTION: AP-03-33 (Subdivision)

Motion by Commissioner Gordon to adopt Resolution No. 9533, approving AP-03-33 (Subdivision) a Vesting Tentative Map, Tract 8448, to subdivide a 293 acre site into 540 single family residential lots, four high density residential lots, one business commercial office lot, one school site, and several additional lots for open space, a detention basin, and/or public purposes for the "Vista Del Mar Development," with the conditions as shown. The motion was seconded by Commissioner Tumbaga and carried by the following vote:

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

Commissioner Gordon recommended approval the Development Agreement subject to the following modifications:

- 1. Recital D, as shown on the Vista Del Mar Development Agreement Potential Modifications, dated November 23, 2004;
- 2. Recital F, as shown on the Vista Del Mar Development Agreement Potential Modifications, dated November 23, 2004;
- 3. Section 3.02 (d), as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004, as further modified by the City Attorney, with reference to Section 3.02 as to the timing issue;
- 4. Section 307 (b) as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004;
- 5. Section 3.07 (d), as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004;
- 6. Section 3.13 (a) (ii), as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004 with additional reference to the for sale applying to 27 units, as discussed;
- 7. Section 3.13 (e), as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004;
- 8. Section 4.02 (d), as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004;
- 13. Subparagraph F of Recitals, as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004 as recommended by Seeno Construction, 11/23/04, as recommended by staff;
• 16. Section 4.02 (d), as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004, as recommended by Seeno Construction, 11/23/04, as recommended by staff; and
• Modification to the first sentence of Section 3.02 of Article III, Obligations of developer, with the preservation of the last sentence of that paragraph.

The first sentence to read as follows:

(a) “Forth-five (45) days after the Council approves this agreement, Alves Ranch LLC, will dedicate the West Leland Road ROW extending across the Project Site from the Project Site’s western boundary to its eastern boundary, free and clear of all liens, bonds, taxes, assessments, and other charges, sufficient to accommodate construction of the proposed four lane extension of West Leland Road from its existing western terminus across the Project Site, as generally depicted in the attached Exhibit C, (the “On-Site West Leland Extension”). Developer will pay for all escrow and recording costs associated with the aforementioned dedication, if any.”

On the last modification, City Attorney Zeigler clarified that the intent of the modification to Section 3.02 (a), would require the dedication of the property by the developer within 45 days of the City’s approval of the DA. She clarified, however, that although the Chair had recommended the elimination of the last sentence of that section, if there was a CEQA challenge, she would recommend 45 days after City Council action which would allow the 30 days for any CEQA challenge. If there was no legal challenge the dedication would be 45 days, as proposed. A CEQA challenge would require that once the CEQA challenge was resolved, in the developer’s favor, the requirement would become immediate.

City Attorney Ziegler further clarified that as discussed during the workshop, the language in that section had been narrowed down to address potential CEQA litigation only. She recommended that the last sentence of that section be retained.

MOTION: AP-03-33

Motion by Commissioner Gordon to adopt Resolution No. 9535, recommending that the City Council adopt an ordinance approving a Development Agreement for the Vista Del Mar Development on the Alves Ranch Site, (AP-03-33) with the conditions as shown and as modified, as follows:

• No. 1, Recital D, as shown on the Vista Del Mar Development Agreement Potential Modifications, as requested by Seeno Construction, as acceptable to staff, dated November 23, 2004;
• No. 2, Recital F, as shown on the Vista Del Mar Development Agreement Potential Modifications, as recommended by staff, dated November 23, 2004;
• No. 3, Section 3.02 (d), as shown on the Vista Del Mar Development Potential Modifications, as recommended by staff, dated November 23, 2004, as further modified by the City Attorney, with reference to Section 3.02 as to the timing issue;

• No. 4, Section 307 (b) as requested by the developer, as accepted by staff, as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004;

• No. 5, Section 3.07 (d), as recommended by staff, as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004;

• No. 6, Section 3.13 (a) (ii), clarification by staff, as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004 with additional reference to the for sale applying to 27 units, as discussed;

• No. 7, Section 3.13 (e), as recommended by staff, as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004;

• No. 8, Section 4.02 (d), as recommended by staff, as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004;

• No.13, Subparagraph F of Recitals, as recommended by staff, as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004 and as recommended by Seeno Construction, 11/23/04;

• No. 16, Section 4.02 (d), as recommended by staff, as shown on the Vista Del Mar Development Potential Modifications, dated November 23, 2004, and as recommended by Seeno Construction, 11/23/04, and

• Modification to the first sentence of Section 3.02 of Article III, Obligations of developer, with the preservation of the last sentence of that paragraph.

The section would now read as follows:

(a) “Forth-five (45) days after the Council approves this agreement, Alves Ranch LLC, will dedicate the West Leland Road ROW extending across the Project Site from the Project Site’s western boundary to its eastern boundary, free and clear of all liens, bonds, taxes, assessments, and other charges, sufficient to accommodate construction of the proposed four lane extension of West Leland Road from its existing western terminus across the Project Site, as generally depicted in the attached Exhibit C, (the “On-Site West Leland Extension”). Developer will pay for all escrow and recording costs associated with the aforementioned dedication, if any. The parties agree that all of the Developer obligations set forth in this Section 3.02 (a) are expressly conditioned on City’s approval of the Project Approvals and the running of all related CEQA statutes of limitation and, in the event of a CEQA-related challenge to the Project Approvals, the final resolution of such challenge in Developer’s favor;

The motion was seconded by Commissioner Tumbaga and carried by the following vote:
Ayes: Commissioners Dolojan, Gordon, Ramirez, Ohlson, Tumbaga, Garcia
Noes: None
Abstain: None
Absent: Commissioner Williams

Chairperson Garcia declared a recess at 9:40 P.M. The meeting reconvened at 9:45 P.M. with all Commissioners initially shown as present and absent.

Commissioner Gordon took the opportunity to congratulate the Commission on completing its review and consideration of the Vista Del Mar project. He also recognized the time and effort spent on the preparation of that review by City staff.

Chairperson Garcia echoed the comments. He too expressed his appreciation to the hard work expended by City staff.

**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)
   b. Brenden Theaters Extension Lighting. AP-04-176 (DR)
   c. Sign Modification Union 76 at 2150 Railroad Avenue. AP-04-168 (DR)

Commissioner Gordon spoke to the Wal-Mart Exterior Color Change, and suggested that Wal-Mart should not be allowed to proceed with any other modifications until the parking lot had been repaired.

Ms. Ayres expressed the willingness to see if that could be done although she noted that the City did not have a Certificate of Occupancy to hold back the plans for the color change.

Director of Special Projects Randy Jerome presented the Commission an informational item for a future project proposed at the corner of Tenth and Railroad Avenue. The project would be submitted to the Commission at its next meeting on December 14, 2004 for discretionary approval.

Mr. Jerome explained that one of the goals of the City Manager was to develop the downtown with the top priority the corner of Railroad Avenue and Tenth Street, known as the Pink Palace/Salty Dog/The Cellar. The site consists of 27,000 acres, a .62 acre parcel occupied by a one story business, the Salty Dog and a two story building, The Cellar faced...
Cumberland Street. The intent was for the City to acquire the property and develop an intense development project on the site. In concept, a three story building with two stories of residential over ground floor commercial had been proposed.

A conceptual rendering was presented to the Commission depicting a U-shaped building with a plaza in the middle and 4,000 square feet of commercial on the Cumberland Street side and 4,000 square feet of commercial on the Railroad Avenue elevation. There would be 32 parking spaces, double loaded similar to what currently existed on the site. The parking spaces would be exclusively used for the residential uses above, with 28 residential units on the second and third floors to be built to condominium standards. The intent was to eventually sell the units in the future.

The City was currently working with the City Attorney and Consultants for the project to be owned and built by the Housing Authority, with the Housing Authority to relocate its current offices to the 4,000 square foot commercial site on Cumberland Street and with the 4,000 square feet of commercial space on Railroad Avenue to be leased for retail users. The second and third floors would have balconies and consist of four two bedroom units, four on each floor, with 12 one bedroom/den and one bedroom units.

Angled parking would be added on Cumberland Street with additional parking spaces on Railroad Avenue. The building design would utilize a traditional design reflecting the downtown with proposed colors reflecting some of the buildings in the downtown through the use of stucco, a heavy cornice and a strong tower element at the corner.

Some of the units could be affordable in the future when sold with space for the construction of carports, if necessary.

Mr. Jerome advised that the Architect had submitted a sign program which would require some exceptions and which would not be part of the application to the Commission on December 14. The signage would be considered separately from the design review. Staff would be meeting with a Main Street Consultant who would also review the proposal and signage.

Mr. Jerome explained that staff had spoken with the Housing Authority on the possible relocation of its offices which would work well for its operation. There was a bus line on East Tenth Street and Railroad Avenue which would be close to the site. There was also a bike route on Cumberland Street with bicycle parking located on the site.

Mr. Jerome acknowledged that the garbage areas were a difficult design element on the site and that element would have to be discussed further. He also identified a possible future public area between Cumberland Street and Railroad Avenue.

Mr. Jerome added that staff would be working with the Seventh Day Adventist Church which had been presented with the concept with the intent to retain the church. The church
had future plans for low income housing and other potential uses in the area, necessitating the need for a joint public parking area to be utilized by the subject building and the church. The church had presented the City with a letter of intent and interest to allow staff to enter its site and work with them. The General Plan called for joint parking facilities in the downtown rather than individual lots.

Commissioner Gordon commented that the main issue appeared to be the parking. Since the Housing Authority had a few City vehicles, he was uncertain where those vehicles would be parked and if in the parking lot with the residential units, they would be below the minimum development standards for the City. He was concerned with the City coming in with a project that a developer would not be allowed to build in terms of the required parking. He also pointed out that if parking was not provided for the retail uses, the retail would not succeed. He suggested the consideration of a reduction in the number of apartment units.

Mr. Jerome explained that the difference between this project and others was that it would be located in the downtown which had no parking regulations. Developments approved by the City over the past few years, included a stipulation for at least one parking space per dwelling unit. While the parking was constrained and handicap parking would be required, in speaking with the Housing Authority it would like spaces to park its own vehicles rather than the current arrangement where those vehicles were parked on the street. The intent was also for the apartment units to be leased by the Housing Authority for its clients and where the Housing Authority to control the parking.

Commissioner Gordon pointed out that if the units were to be sole in the future, particularly as a condominium project, the required parking would have to be provided. He again questioned where parking would be provided for the retail uses. While he liked the development, Commissioner Gordon stated that the parking constraints were a real concern to him.

Mr. Jerome commented that the project was located in an urban area and the parking demands sought a more dynamic mix, which was the reason why the public parking would be so important to reduce the amount of vacant asphalt.

Commissioner Ohlson inquired whether or not bike lanes would be installed fronting the building on East Tenth Street, to which Mr. Jerome explained that he had spoken with the Traffic Engineer who advised that the lanes must be widened since it was a truck route. He expressed his hope that some off-street parking could be achieved. He added that if widening was to occur on Railroad Avenue it would likely occur on the side where Bell’s Gas Station was located. The concept was for a more pedestrian oriented development with a de-emphasis on vehicular traffic.

Commissioner Ohlson understood that Cumberland Street was a former bike route, although he was concerned with the fact that from the Pittsburg/Bay Point BART Station
with bike lanes on Bailey and Willow Pass Roads, and with bike lanes conditioned in the future for North Parkside Drive, Range Road and the like, the bike lanes at Railroad Avenue could just stop.

Mr. Jerome explained that the Tenth Street Corridor was a gateway project the Redevelopment Agency was reviewing for additional development opportunities either through redevelopment or through the enhancement of existing facilities including a review of the character of the streetscape.

Commissioner Tumbaga liked the project and had no problem with the parking in that as the downtown was developed there could be less need for parking spaces since a pedestrian environment would be developed. As to Cumberland Street and the possibility for joint parking, she understood that it was still a street and she inquired if it would be open for through traffic. She also requested clarification on the potential for the Housing Authority to lease out the apartment units.

Mr. Jerome explained that Cumberland Street would not change at all other than its physical appearance. Details on the rental of the apartment units by the Housing Authority were still being negotiated. The Redevelopment Director had explained that 15 of the units must be 80 percent tax increment, with 13 Low to Moderate Income households using RDA tax allocation bonds. The intent was that the Housing Authority would eventually own the property and control the leasing of the apartment units for its clients. Eventually the units could be sold for affordable housing.

Commissioner Tumbaga suggested that the City would be making a big mistake if it went with 100 percent Section 8 housing, since there needed to be a mix of income development.

Commissioner Tumbaga suggested that it was an opportunity for the City to use the units for the Family Self Sufficiency Program for those who were on Section 8 and who were able to purchase a unit offering home ownership opportunities. She saw that as a better use of the apartment units rather than a public housing project.

Commissioner Gordon added that for the potential retail they would have to provide the population with the expendable income to support the retail. As an example, he suggested that the City had made a mistake turning the Marina Heights Apartment complex into an all affordable complex and then installing a new retail project across the street.

Mr. Jerome stated that issue would be investigated as well during a future meeting with a consultant who specialized in retail markets and who would likely offer some advice on the design.

Commissioner Dolojan understood that the Cellar building had a pit area. He inquired whether or not that area would be utilized as part of the building design. He also agreed that the required parking for the retail component must be addressed.
Mr. Jerome commented that they were considering retaining the existing buildings, although the efficiency of the Cellar building was questionable in that the building had issues related to structural integrity and seismic compliance.

Commissioner Tumbaga inquired if the Cellar building required a letter from the State Historic Preservation Agency, to which Mr. Jerome advised that the building had not been designated as a historic structure.

Commissioner Tumbaga commented that the building did not have to be designated as a historic structure but could still be a building of historic significance.

Commissioner Ramirez inquired whether or not elevators would be provided to the second and third floors of the building where the residential component would be located. He also spoke to the area to be designated by the Housing Authority and commented on his understanding that the Housing Authority currently had offices in the City in more than one location.

Mr. Jerome affirmed that elevators would be included in the design. The intent was for the Housing Authority to be completely combined in the subject building. The design would provide semi-private areas for public and private areas and for the remainder of Housing Authority staff.

Chairperson Garcia understood that the City did not yet own the property and he knew the owner of the old Elks Building who was unhappy with the offer and who had the property up for sale. He also inquired if the City owned the Pink Palace building.

Mr. Jerome advised that the City had a willing seller for the Pink Palace building.

Chairperson Garcia inquired of the architect for the project, to which Mr. Jerome explained that the Architect, Michael Woldemar and Associates, had offices in the City of Richmond and had worked with the City Manager in the past. He recognized that the City had local architects, one that was typically used by the City, although that architect was currently not available for additional work at this time.

In response to Commissioner Dolojan on an unrelated matter, Ms. Ayres acknowledged that staff kept track of attendance during the Planning Commission meetings and would be reporting to the City Council on Commission attendance.

**COMMITTEE REPORTS:**

Chairperson Garcia reported that the TRANSPLAN Committee had recently met with a report on a letter sent to congratulate a new Caltrans Director. The Committee had also
received a report on the State Route 4 Widening project which was ahead of schedule, and a report on the status of the Railroad Avenue Overpass project. It was hoped that once that project was complete work could begin with the Loveridge Road Interchange Project. The road would remain essentially the same although it would be wider with a BART median strip underneath, although there was presently no intent to use it.

A report had also been presented on eBART with a rendering of a future eBART system which would travel behind Home Depot on the spur track that could reach a height of 85 feet crossing Loveridge Road, California Avenue and dropping into the freeway west of Loveridge Road.

Chairperson Garcia expressed concern with the potential noise impacts with such a design on the nearby residential uses and an adjacent hotel. He expressed his hope that City staff was familiar with the plans. The TRANSPLAN Committee had also been presented with a status report on the recent passage of Measure J. He presented a report on the status of the SR 160 Bypass to City staff.

COMMENTS FROM COMMISSIONERS:

Commissioner Tumbaga commented that the Historical Resources Commission had not met. Since the City was now working on projects in the downtown, she urged that the Commission be made active and that its members not be comprised of the property owners in the downtown.

Commissioner Ohlson expressed concern with the volume of paperwork that had been presented to the Commission at the dais just before the meetings, without ample opportunity for review. He understood the same problems were occurring with the City Council.

Chairperson Garcia spoke to the K&B project located on Leland Road between Freed Way and Piedmont and requested that staff review the status of whether or not any plans for a signal light for Piedmont and Leland Road had been presented to the City.

ADJOURNMENT:

There being no further business, the meeting adjourned at 10:39 P.M. to a regular meeting of the Planning Commission on December 14, 2004 at 7:00 P.M. in the City Council Chambers at 65 Civic Avenue, Pittsburg, CA.

MELISSA AYRES, Secretary

Planning Commission Minutes
November 23, 2004