A regular meeting of the Pittsburg Planning Commission was called to order by Chairperson Jack Garcia at 7:02 P.M. on Tuesday, October 12, 2004 in the City Council Chambers of City Hall at 65 Civic Avenue, Pittsburg, CA.

**ROLL CALL:**

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

Absent: None

Staff: Director of Development Projects Randy Jerome; Planning Director Melissa Ayres; Associate Planner Noel Ibialio; Assistant Planner Dana Hoggatt; Assistant Planner Christopher Barton; Planning Intern Jill Pirog; Senior Civil Engineer Alfredo Hurtado; Assistant City Engineer Keith Halverson; City Engineer Joe Sbranti; and Kathleen Faubion City Attorney’s Office.

**POSTING OF AGENDA:**

The agenda was posted at City Hall on Friday, October 8, 2004.

**PLEDGE OF ALLEGIANCE:**

Councilmember Michael Kee led the Pledge of Allegiance.

**DELETIONS/WITHDRAWALS/CONTINUANCES:**

There were no deletions, withdrawals or continuances.
COMMENTS FROM THE AUDIENCE:

WILLIAM ROSS identified himself as the Attorney representing Seecon Financial and Construction Company. He spoke to the agenda item for the Vista Del Mar project and to the Final Environmental Impact Report (FEIR) for that same project. He submitted a summary of remarks and a portion of a transcript from a recent City Council meeting for review.

Planning Director Melissa Ayres advised that the item could be discussed under the agenda item for the Vista Del Mar development but was not a separately called out hearing in that the California Environmental Quality Act (CEQA) did not require a public hearing on the FEIR. In the context of that project, however, the Planning Commission could discuss the FEIR.

Mr. Ross disagreed in that he had been in attendance during the last City Council meeting on October 4, 2004, when the issue had arisen as to whether or not the FEIR would be considered by the Planning Commission. When asked during that meeting, the Vice Mayor had indicated that it would be submitted to the Planning Commission for review. He read into the record the comments made by the Vice Mayor at this time, which comments had included a discourse with City Attorney Ruthann Zeigler.

Mr. Ross noted again that the FEIR was not on the agenda of the current Commission meeting and neither was the Development Agreement for that project, which he stated was part of the entitlement package referenced as Condition No. 8 to the Tentative Map. He questioned how a member of the public could comment if it was not a part of the review package.

Mr. Ross pointed out that the Brown Act prohibited the discussion and consideration of a matter not on the agenda. The FEIR was not noticed on the agenda. He added that the same issue had been raised at the meeting on September 28, 2004. In order to comply with the law, he requested that the matter be continued so that the FEIR could be noticed pursuant to the Brown Act and could be considered along with the Vista Del Mar project. Mr. Ross reiterated the City Council’s understanding that the normal process would be followed which meant that the FEIR would be presented along with the project to allow members of the public to rely on that information. He suggested that it would be appropriate to continue the Vista Del Mar application to the Planning Commission meeting of October 26, 2004 when the Development Agreement was due to be finalized so that all matters could be considered concurrently.

Ms. Ayres disagreed with the comments since the City did not notice Negative Declarations or Mitigated Negative Declarations which were just the environmental documents used to evaluate a project at the time it was evaluated, and which did not have to be noticed separately.
Chairperson Garcia commented that with every other project before the Planning Commission the EIR would be submitted to the Commission. He understood in speaking with staff that the EIR was to have been submitted to the City Council for review and that it would have been returned to the Planning Commission, although at this time the FEIR was scheduled to be submitted to the City Council for certification and would not be returned to the Commission for review. He added that under normal circumstances the Commission had always made a recommendation to the City Council on an EIR for certification. He was uncertain why the process had been changed but he emphasized that it was not what had been followed in the past.

Ms. Ayres noted that the FEIR could be discussed at the current meeting. She stated that there had been quite a bit of discussion about the FEIR in the staff report. The Planning Commission had received copies of the FEIR which was in part what was being reviewed and considered when the Commission considered a project. It was therefore appropriate and suitable to discuss the EIR in the same way that the Commission discussed a Negative Declaration or a Mitigated Negative Declaration when evaluating a project before any recommendation was made to the City Council.

Ms. Ayres reiterated that CEQA did not require the Planning Commission to make a recommendation to the City Council on an EIR which was confirmed by the new City Attorney when she determined how the City was to process CEQA documents henceforth.

Chairperson Garcia stated that he had received a ruling from another individual this date who had stated that the document must come before the Planning Commission for recommendation prior to being submitted to the City Council. He reiterated that the process which had been followed for years was not now being followed. He added that he had received complaints from members of the public and that a letter to that fact had been included in the staff report for the Vista Del Mar project.

Commissioner Gordon commented that during a recent City Commission workshop with the City Attorney when the Brown Act had been discussed, he had raised an issue with the City Attorney regarding the same matter. The City Attorney had stated that the City Attorney’s Office would have a representative present to explain the issue to the Planning Commission for this meeting.

Kathleen Faubion, representing the City Attorney’s Office, stated that the legal requirements under CEQA and the CEQA Guidelines were that the Planning Commission was to consider the environmental document before it made a recommendation or took action on a project. The staff report had been clear that the Planning Commission would be considering and had been presented with a Draft EIR and an FEIR and would consider those documents along with public testimony as the Commission decides its recommendation on the project.
Ms. Faubion added that CEQA did not require that the Planning Commission certify a document when it made a recommendation to the City Council. CEQA did require that the ultimate decision maker, in this instance the City Council, certify the document before taking final action on the project. The City Council must also have been presented with the document and having considered it and the document must represent the independent judgment of the approving body.

As to the comments regarding the Development Agreement for the Vista Del Mar project, Ms. Faubion pointed out that as indicated in the staff report for the item, the Development Agreement had been scheduled for a public hearing before the Planning Commission on October 26, 2004. Such a process was not inappropriate in that the purpose of the Development Agreement was to vest approvals. At this point there were no approvals to vest. By October 26, 2004, the Development Agreement could then follow upon the various public hearings on the rest of the project and would then be in a better position to vest whatever decisions had been made. She added that did not mean that a Development Agreement could not go contemporaneously with projects.

Mr. Ross suggested that it was not a question of CEQA but Brown Act compliance. In that regard, specifically referencing Page 3 of the correspondence he had presented to the Planning Commission, he noted that Government Code Section 54954.2 required that matters to be discussed on which action was to be taken, such as opening a hearing and taking testimony, must be agendized. He reiterated that the agenda item for the Vista Del Mar project did not mention the FEIR with respect to all seven of the land use permits that would be required for the project. He asked that the Commission seriously consider his comments.

Ms. Faubion stated that in the opinion of the City Attorney’s Office, there was no Brown Act violation in this instance. Again, the Planning Commission was not taking action on the FEIR, nor was a public hearing required on a DEIR or a FEIR.

**PRESENTATIONS:**

There were no presentations.

**CONSENT:**

There were no consent items.

**PUBLIC HEARINGS:**

Commissioner Tumbaga stepped down from the dais as a result of a potential conflict of interest with Public Hearing item No. 1, Old CC Bank Building Minor Subdivision.
Item 1: Old Contra Costa Bank Building Minor Subdivision. AP-04-136 (MS-676-04).

Application by Adam Iraqat of Adams & Associates requesting for approval of a tentative map to subdivide a 0.51 acre parcel into 2 lots at 415 Railroad Avenue, (Downtown); APN 085-109-001

Assistant Planner Christopher Barton presented the staff report dated October 12, 2004. He recommended that the Planning Commission adopt Resolution No. 9526, approving Minor Subdivision Application No. AP-04-136 (MS-676-04), with the conditions as shown.

PUBLIC HEARING OPENED

PROPONENTS:

ADAM IRAQAT, Adams & Associates, P.O. Box 9146, Pittsburg, stated in response to the Chair, that he had read and was in agreement with the draft resolution and staff recommended conditions of approval.

OPPONENTS: None

PUBLIC HEARING CLOSED

MOTION: AP-04-136 (MS-676-04)

Motion by Commissioner Ramirez to adopt Resolution No. 9526, approving Minor Subdivision Application No. AP-04-136, to subdivide a 0.51 acre parcel into 2 lots at 415 Railroad Avenue, for “Old Contra Costa Bank Building Minor Subdivision,” (MS-676-04), with the conditions as shown. The motion was seconded by Commissioner Gordon and carried by the following vote:

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

Commissioner Tumbaga returned to the dais at this time.

Item 2: Willow Brook Residential Subdivision. AP-03-79 (PD/RZ).

Public hearing on an application by Dan Boatwright of the Castle Companies requesting rezoning of 7.4 acres from IL (Limited Industrial) District to PD (Planned Development) District and approval of a PD site plan for the construction of 54 single-family detached and eight duet (single-family attached) houses on lots ranging in size from 2,160 to 5,360 square feet. The property is currently used for vehicle storage and is located at 1055 North Parkside Drive; APNs 086-00-017, 086-020-018, 086-020-019 and 086-020-020.
Assistant Planner Dana Hoggatt presented the staff report dated October 12, 2004. She recommended that the Planning Commission rescind the prior resolution (Resolution No. 9517) and adopt a new resolution approving the PD site plan and supporting the PD rezoning. She noted that the application was being brought back because Staff had determined that pursuant to the Muni-Code, the Commission must approve a P-D Plan at the same time it recommends approval of a P-D rezoning application.

Ms. Hoggatt understood that the applicant was not present since he was on vacation but would send an alternate to address the item.

When it was clear there was no one present to represent the item, Chairperson Garcia noted that although the Planning Commission had a policy that when an applicant was not present the item would be continued, he would like to act on the item at this time anyway, since the Commission had seen it before.

PUBLIC HEARING OPENED

PROPONENT: None
OPPONENTS: None

PUBLIC HEARING CLOSED

Commissioner Ramirez inquired whether or not staff would be opposed to continuing with the item with the applicant not present.

Ms. Ayres advised that the applicant had previously publicly stated his agreement with the staff recommended conditions of approval.

MOTION: AP-03-79

Motion by Commissioner Gordon to adopt Resolution No. 9528, rescinding Resolution No. 9517, approving a PD site plan and recommending that the City Council adopt an Ordinance rezoning 7.4-acres at 1055 North Parkside Drive from IL to PD, for “Willow Brook Residential Development” (AP-03-79), with the conditions as shown. The motion was seconded by Commissioner Ramirez and carried by the following vote:

Ayes: Commissioners Dolojan, Gordon, Ohlson, Ramirez, Tumbaga, Williams, Garcia
Noes: None
Abstain: None
Absent: None
Item 3: Inclusionary Housing Ordinance.
Public hearing on a City-initiated proposal to establish an inclusionary housing ordinance.

Assistant Planner Hoggatt presented the staff report dated October 12, 2004.

Ms. Ayres identified correspondence received from Bob Glover dated October 12, 2004, and a six page letter from Richard A. Marcantonio, Managing Attorney for Public Advocates, Inc.

Ms. Ayres presented an amended Inclusionary Housing Ordinance to the Planning Commission for review with copies made available to the public for the discussion.

Ms. Hoggatt clarified that the original draft ordinance which had been presented to the Planning Commission on September 20, had included a suggestion for developers of Medium Density projects to provide either 20 percent Moderate, or 9 percent Moderate and 6 percent Very Low Income housing units. Based on comments from the public regarding the differences in median incomes in the City and the prices of homes for those prototypes, staff now suggested that the requirement be 20 percent Low, or 9 percent Low and 6 percent Very Low Income.

Ms. Hoggatt recommended that the Planning Commission adopt Resolution No. 9527, recommending that the City Council adopt the Inclusionary Housing Ordinance, identified as Attachment 2 in the staff report.

In response to Commissioner Ohlson, Ms. Hoggatt explained that under the basic requirement of the ordinance, the changes referenced had been listed on Page 6, Section C of Exhibit A and Page 3 of the staff report.

Commissioner Gordon spoke to Page 7 of the draft ordinance for the minimum occupancy level. He understood that section had been eliminated.

Ms. Hoggatt noted that it had been removed since it was redundant. There was a definition of appropriately sized households identified on Page 3, Section D. She noted that the section on Page 7 set up the maximum occupancy levels and was what was on Page 3, which did the same thing in terms of an appropriately sized household based on Redevelopment Law and which assumed one person per room, excluding kitchens and bathrooms. She clarified that four people in a two bedroom household would be considered overcrowded per Redevelopment Law.

Ms. Ayres clarified that was not to say the unit could not be rented or sold to a four person household, it was to set the prices which were based on not overcrowding the property or so there did not have to be a seven person household in a two bedroom unit to be affordable. The price of a 2 bedroom unit would be set as to what would be affordable for a three person household.
Commissioner Ohlson spoke to Page 2 of the definitions and the discussion for the first year for the various percentages. He questioned what would occur after a few years when those who qualified for specific income categories had increased his/her income level.

Ms. Ayres explained with respect to for sale units, nothing would occur in that under State law the individual would not need to be requalified. The incomes would be reevaluated or checked annually for rental units, but not for ownership properties.

Commissioner Tumbaga understood that the rule of thumb for the rental units was two persons per bedroom plus one, and that five people could occupy a two bedroom apartment.

Ms. Ayres noted that the rental housing association, used that threshold as a guide to landlords to clarify what maximum occupancy standard could reasonably and legally be established for rental property. The occupancy standard referenced in the discussion was the State standards for setting affordability rates, if the unit was to be counted for the 15 percent requirement. She clarified that the State standard was intended to set the price that would be affordable to an appropriately sized household so that there would be no need for overcrowding in order to afford the unit.

PUBLIC HEARING OPENED

PROPPONENT: City of Pittsburg

INTERESTED SPEAKERS:

GREGORY OSORIO 325 Cumberland Street, Suite F, Pittsburg, commended the City’s consultant and the staff on the drafting of the ordinance. He suggested that the ordinance would create affordable units for the long term in the City. He expressed his hope that the ordinance would create something that developers could build and profit from while still meeting the needs of the community.

Mr. Osorio also expressed his hope that there would be compliance with the maintenance standards so that there would not be pockets of problems in the community. He also expressed concern with equity participation.

Mr. Osorio suggested that in order to maintain a long term affordability component there had to be limited increases in home prices, except for hardship issues. He encouraged the Commission to discount that end of the ordinance since it was a win for a family to get into a home and would be for the next family as well.

Ms. Hoggatt explained that as indicated on Page 6 of the ordinance, performance standards had been established for all affordable units. As to the interior, the draft ordinance would allow some reduction in interior finish. There were also general and
property maintenance standards in Title 18 of the City’s Municipal Code. She explained that when the Code Enforcement Bureau had complaints about overgrown weeds or shrubs at a property, as an example, there was a section in Title 18 that would allow maintenance complaints to be addressed. While not in the draft ordinance, that issue had been addressed elsewhere in the City’s Zoning Ordinance.

Mr. Osorio asked that the issue be strengthened in the ordinance in that if an individual was lucky enough to obtain a unit that individual should be required to maintain the unit.

Ms. Hoggatt stated that the draft ordinance recognized that a Low Income family in an estate sized lot would not be able to maintain that kind of property. There were provisions in the ordinance that would allow smaller single family lots for the affordable units as part of a larger residential project. The intent was that a smaller single family lot would not have that much of a yard to maintain.

Speaking to the issues with respect to equity participation, Ms. Hoggatt referred to Page 13 of the ordinance where any affordable housing unit that was a single family unit/ ownership unit would be restricted for at least 45 years for affordability, consistent with Redevelopment Law. That same section would allow the City Manager, or his/her designee in certain cases and where appropriate, to participate in an equity sharing program. If there was an equity participation agreement for a unit, the unit would not be subject to the 45 year term.

Mr. Osorio questioned why the City would not want to have a uniform basis where the units were all under the same constraints.

Ms. Hoggatt explained that the intent was that some Low Income families would have the opportunity to gain equity in the homes he/she had purchased. Equity sharing programs would allow the City to take a fraction of the equity which could then be reinvested into another affordable unit.

Mr. Osorio disagreed with that section and asked that it be eliminated. He expressed concern with the potential loss of the affordability component and the profiteering that could result. He objected to that clause in the ordinance.

Commissioner Tumbaga understood that Mr. Osorio was suggesting that the equity participation clause be eliminated and that the units be maintained at 45 year affordability. She inquired whether that section would be applicable to all owners/buyers of the affordable units or whether it was something the City considered as an alternative.

Ms. Hoggatt reported that the equity participation agreement was an alternative that would not necessarily be applied to every affordable unit that would be built.
Mr. Osorio reiterated his opinion that section should not be included in the ordinance. He expressed concern with the potential for discrimination.

Commissioner Tumbaga suggested that as long as the buyer remained in the unit he/she would benefit in the long term in terms of the benefits associated with the purchase of the home. She added that equity participation was beneficial for a number of reasons, such as when and if the City had a program for acquisition there could be some percentage of the total amount of money put into the property.

Commissioner Tumbaga understood that Mr. Osorio did not want the equity participation sharing agreement and that every unit constructed under the ordinance would include the 45 year deed restriction on the units.

Mr. Osorio acknowledged that was his desire. He urged consistency of a simple formula. Commissioner Tumbaga commented that it was possible to utilize the equity participation funds and to reinvest those funds into the same property to make it affordable for the next individual who might purchase the property, although Mr. Osorio suggested that would be an unnecessary complexity associated with the proposal.

Commissioner Gordon spoke to the discussions on the ordinance and suggested that the ordinance would broaden the availability of housing for those who might not be able to afford the payments associated with a Moderate Income home or those who might not have the necessary down payment to purchase a home. The policy would broaden the scope for affordable housing in the City.

Mr. Osorio noted that the City had a First Time Homebuyer Program that could be used to address a needed down payment. He again reiterated his argument that the equity participation agreement should not be included in the ordinance.

Ms. Hoggatt commented that when the St. Vincent de Paul project had been considered, Moderate Income housing had been suggested. The homes had been estimated to cost approximately $325,000 for a family of four.

EVELYN STIVERS, Campaign Director, Non-Profit Housing Association of Northern California, agreed with Mr. Osorio’s comments. She commented that she was impressed by the staff report and the consultant’s work and was glad to see the ordinance coming to fruition, although she noted that the goal was to meet the needs of Very Low and Low Income residents. The overall goal of the ordinance was not to meet Moderate Income housing, but to produce Very Low and Low Income units.

Ms. Stivers spoke to the targeting based on density and noted that some communities had changed the income targeting based on product type. She suggested that it was important for the City to focus the units on where the City wanted the units to be built. While she understood that there was a larger gap between the market rate selling price for a hillside
home and a Low Income home, she suggested that there was also a greater market margin. Through other types of flexibility and inducements or a lower percentage of units produced, she suggested that the City could still meet the Very Low and Low Income ranges.

Ms. Stivers spoke to Page 9 of Exhibit A, B1, which had shown the land dedication in-lieu on the true value of the lot or lots to be dedicated. Rather than true value, she recommended an equal number of units at a lower affordability or more units at the same level of affordability. Therefore, if a developer could produce more units at a lower level of affordability it would be better than having a lot of equal value.

Ms. Stivers also spoke to Page 11 Section D, and commented that by purchasing existing units and placing an affordability level on existing units, that would not create new Very Low and Low Income housing. She asked the Commission to focus on the goal of creating Very Low and Low Income housing units in the community.

RON JOHNSON, Pittsburg, spoke to Page 9 of the staff report. He expressed concern allowing the standard of what was infeasible or not to be done in-house with no guidelines. He suggested that some standards be set for infeasibility and that those standards not be left to the discretion of staff since it could be subject to abuse and could create off site affordable housing with possible ghetto areas.

THERESA KARR, California Apartment Association, Pleasant Hill, explained that the Association was the Nation’s largest Statewide rental property association with several local chapters and divisions throughout the State, and which represented over 50,000 rental property owners and management professionals and multi-housing developers who built and operated two million rental housing units in the State.

Representing the developers of the multi-housing units, Ms. Karr noted that the Association was not a proponent of inclusionary zoning ordinances since they were of the opinion their members provided affordable housing for a great majority of people. She pointed out that over the past four years only 50 percent of the housing needed in the State had been produced. She asked that the item be continued to allow time to review the ordinance and allow questions to be brought back for discussion. She noted that the Association was of the opinion that the proposed inclusionary ordinance was a form of rent control.

Ms. Karr asked that the Commission consider if a developer received no financial assistance and used no incentives from the City whether or not some State requirement could be used as a shorter restriction time for other units that could be in the fair share category. She also asked the Commission to consider offering a developer a 2 for 1 arrangement where the development had the yearly restriction and had a companion development that was unrestricted with both developments presented to the Commission at the same time and constructed at the same time.
Ms. Karr added that over the past year, of the 45 cities in the Bay Area that had produced housing under inclusionary housing ordinances had produced 31% less after adoption of an ordinance. She further questioned the use of Redevelopment Law in the ordinance. She commented that occupancy standards originated with the Department of Fair Employment Housing and the US Department of Housing and Urban Development (HUD), which used the standard of two persons per bedroom plus one for the occupancy not for the sale.

CRAIG CASTELLENET, California Affordable Housing Law Project, spoke to Page 11, Section D of the ordinance and the purchase of off-site covenants. While that section would involve existing housing, whether rental or for sale housing, the existing home would involve the purchase of covenants for those homes.

Mr. Castellenet understood that section was at the discretion of the City Manager or his/her designee. He suggested that developers would pursue that option since it was less expensive than other options. He urged staff to follow the history of having an ordinance that would strengthen that section. As to the issue of rent controls, he stated that the courts had reviewed inclusionary ordinances to determine whether or not it represented rent control. The courts had found that it was not the same thing. Rent control did not limit inclusionary housing.

PUBLIC HEARING CLOSED

In response to the comments from the speakers, Ms. Ayres referenced Page 11, Section D and explained that language had been taken directly from Redevelopment Law, which offered an opportunity to meet a 15 percent requirement by placing restrictions on existing units. She also spoke to the last sentence of the second paragraph of that same section, which had indicated in part “for the purpose of meeting an affordable unit requirement, two units described under this section will count as one affordable unit.”

Ms. Ayres commented, therefore, that there could be twice as many units. That would expand the number of units as opposed to a requirement on new development which might be more costly and where a developer might own an apartment complex in the City and be able to transfer that requirement under that provision and get twice as many units in a place that could be more accessible and suitable for affordable housing since it could be close to transit, schools and parks.

That section would also allow the City Manager or his/her designee to evaluate whether or not that was an appropriate location for affordable housing before that decision or option was made available. If the option was made available it would result in more units.

Chairperson Garcia suggested that section should be amended at the discretion of the City Council, not the City Manager or his/her designee.
Ms. Ayres noted that was up to the Planning Commission. References in the ordinance to the City Manager could be amended to read the City Council.

In response to the standards for feasibility, Ms. Ayres advised that the burden was on the developer to show why it was not feasible since it was not in the ordinance at this time. She advised that there were economic consultants who could review a pro forma of a developer, analyze the information and make a recommendation to the City Manager as to whether or not the information substantiated such a finding without necessarily placing it in the public arena.

Commissioner Gordon asked that that section also be considered by the City Council.

Ms. Ayres added that staff was trying to develop standards to simplify the in-lieu fees and keep those standards constant. The 9 percent Low and Moderate and 6 percent Very Low Income was consistent with Redevelopment Law. She noted that over 60 percent of the community was in a Redevelopment Project Area and the City would like proposed units to comply with those requirements. She understood that Ms. Stivers’ comments were that many community members tended to the Very Low Income levels.

Ms. Ayres explained that staff was not purporting that estate lots or low density was where Very Low Income houses should be placed, in that staff recognized it was more appropriate that those units be placed in the medium to high density areas where the units could be built more affordably and where the income to maintain those small lot infill developments, townhomes or condominiums would be available.

As stated in the ordinance, Ms. Ayres advised that the 9/6 options was available under all density scenarios. Moderate Income would be appropriate in outer areas since it would have less transit opportunities. As such, staff had targeted the 20 percent Moderate Income option in the outlying areas and the 20 percent Low Income option in the medium density areas where there could be townhome or condos, and the Very Low and Extremely Low options in the high density areas where it was hoped that housing would be encouraged closer to public services.

Commissioner Ohlson spoke to the request for a continuance. Since members of the public had requested changes to the ordinance, he expressed concern with the lack of an opportunity to review all of the comments and the recommendations from staff.

Commissioner Dolojan referenced Page 10, Section B regarding land dedication and new construction. He suggested that section was an escape clause for developers in that if a developer did not want to build on the areas identified for land dedication a developer could dedicate the lot to the City and allow the City to build the affordable housing. He pointed out that there were vacant lots on Railroad Avenue that were owned by the City and that had remained stagnant with no development.
Commissioner Dolojan also spoke to Page 11, Section C, which he suggested was another avenue for developers to not provide the affordable housing and only build higher end housing. He expressed concern that those two sections weakened the ordinance and the intent to provide affordable housing. As such, he suggested that those sections be eliminated.

Commissioner Gordon spoke to a document that the Commission had been presented this date, regarding 30 years of inclusionary housing in the State in terms of what had and had not worked or had not been productive. Based on that information the most productive ordinances in the State allowed off site alternatives. They also all used in-lieu fees.

Commissioner Gordon recognized that there were areas of the City where infill projects applicable to apartment or townhome development were preferred. He agreed that some items should be up to the discretion of the City Council and not the City Manager or his/her designee. He referenced Sections B and C on Page 10 and sections on Page 11 which he suggested should be at the discretion of the City Council.

Commissioner Gordon again noted that approximately 80 percent of the inclusionary housing ordinances in the State included Moderate Income housing, including the cities of Richmond and Berkeley. He suggested that the Moderate Income housing should remain in the ordinance to broaden the ordinance.

Commissioner Williams commended staff on the preparation of the ordinance. She agreed with some of the recommended revisions, such as the City Council’s discretion as opposed to the City Manager or his/her designee’s discretion. She otherwise noted that there was no chart in the ordinance to identify the dollar designation for Very Low, Low, and Moderate Income households. She referred to the County designations for the affordability categories and requested the dollar designation in that case.

Ms. Hoggatt referenced a Feasibility Study that had identified the income categories and typical occupations which was available for public review.

Chairperson Garcia spoke to Page 3 of 6 of the staff report and disagreed that developers could reduce the amount of parking even with Very Low, Low or Moderate Income housing, since there would likely be two, possibly three, vehicles per household.

Chairperson Garcia suggested that staff had done a good job incorporating the comments recommended by the public. Speaking to the 45 year restriction, he noted that the Very Low, Low, and Moderate Incomes for that time period would increase and he assumed that the incomes of those qualified families would increase and the home would have some equity which could be used by the family to move up leaving the home as affordable for another family.
Ms. Ayres explained that if there was a unit with a 45 year deed restriction, the home could be sold to another Low Income household and the income would be defined by the income standards presented by the State for that time period, which she acknowledged would likely increase each year.

Commissioner Tumbaga suggested that staff had done a good job and should be complimented. She also commended the number of workshops for community input which had allowed the creation of an understandable document. She otherwise preferred that the in-lieu fee section for purchasing off site covenants be removed. She also preferred something a little more stringent in terms of how developers would be able to build or include affordable housing within existing developments since there was not a lot of land available in the City.

Commissioner Tumbaga spoke to the issue of equity participation and agreed it was a viable alternative and something that should be retained in the ordinance. She did have an issue with the placement of all Very Low Income housing in the higher density areas. She also suggested that feasibility should be more clearly defined.

Commissioner Ohlson spoke to the correspondence that had been received and identified by staff during the staff presentation. He inquired how the concerns expressed in that correspondence would be addressed.

Chairperson Garcia commented that it was clear that the item would be continued to allow staff the opportunity to review all of the comments received.

Chairperson Garcia spoke to the fees and noted that one of the associated fees was $329,000 a unit while the lowest fee for the Very Low Income unit was in the $200,000 range. Given the price of land, particularly in the hills, he suggested that other areas be designated for Very Low Income units to allow more buildable and less expensive construction. In response to the concerns with respect to placing affordable housing in high density development, he noted that those eligible for the units would be homeowners and if there was no pride of ownership, regardless of where the home was located, those individuals would not be good neighbors.

Commissioner Tumbaga spoke to the maintenance issue and commented that some of the issues could be addressed through education in that many future homeowners were likely not currently homeowners and did not have that background. The same standard should hold true for any homeowner or resident of the community whereby if one was held to a standard to maintain the exterior of a home, any homeowner regardless of income should be held to the same standard.

Commissioner Tumbaga suggested that new property owners were able to learn how to be successful homeowners through a homebuyer's program which was generally required by
most first time home buyer programs offered by many communities. She emphasized the importance of making the workshops available to the community at large.

Commissioner Gordon understood that any development with five or more units would require inclusionary housing. If a developer proposed an eight unit infill development he questioned how that developer would comply with that requirement.

Ms. Hoggatt explained that the inclusionary housing would be based on the percentage option chosen. If, as an example, with an eight unit development the developer chose to build 20 percent Moderate Income units, that would require 1.6 units of affordable housing. As proposed in the ordinance, the developer would have to make two of the units affordable in an eight unit development. A six unit development, assuming 20 percent affordability, would result in a 1.2 unit affordability requirement. In that instance, the developer would be required to build one affordable unit and the 0.2 net fraction would be paid by in-lieu fees based on the fee calculation. Those funds would then be placed into a specific account.

Ms. Hoggatt noted that the 1.6 unit scenario could not be paid through in-lieu fees as staff had recommended in the ordinance, in that anything that required 1.5 units and up would be rounded up. Anything below 1.5 units would be rounded down with the payment of in-lieu fees.

Commissioner Tumbaga was not opposed to continuing the item although she emphasized the need for the Commission to offer staff direction on what it did and did not want in the ordinance.

Chairperson Garcia requested that staff indicate the changes to be made to allow the Commission to review the document and identify what it wanted to be changed, or not, with a goal of reaching consensus at the next meeting on the identified issues.

Commissioner Gordon inquired whether or not staff had enough information to make changes before the next meeting.

Commissioner Ohlson suggested that any changes proposed by Commissioners be submitted to staff in writing to allow the Commission to review those changes, in writing, prior to the next meeting.

Ms. Ayres advised that if written comments were received by Commissioners in writing by October 15, they could be provided to the Commission as an attachment to the next staff report.

**MOTION:**
Motion by Commissioner Dolojan to continue the hearing on Inclusionary Housing Ordinance to the Planning Commission meeting of October 26, 2004. The motion was seconded by Commissioner Gordon and carried the following vote:

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

Chairperson Garcia declared a recess at 8:56 P.M. The meeting reconvened at 9:06 P.M. with all Commissioners present.

The Chair requested that the remaining agenda items be taken out of order at this time.

**COMMISSION CONSIDERATIONS:**

**Item 5: Delta Gateway Multi-Tenant Building, Master Sign Program/Sign Exception. AP-03-58 (DR).**

Application by Timothy Seiler of Sierra Pacific Properties requesting design review approval of architectural and site development plans for the construction of a 9,100 square foot multi-tenant building on a 1.39-acre parcel located at 4400 and 4428 Delta Gateway Boulevard (Century Plaza II). Included in this application is a request for a master sign program and a sign exception to the sign placement regulations. The property is zoned CC (Community Commercial) District; APNs 074-460-025, 026.

Assistant Planner Barton presented the staff report dated October 12, 2004. He recommended that the Planning Commission adopt Resolution No. 9523, approving Design Review Application No. AP-03-58 (DR), with the conditions as shown.

In response to Commissioner Williams, Mr. Barton explained that the draft resolution would require the applicant to meet the City’s code requirements. Having spoken to the architect during the recess, he advised that there might be a way to meet those requirements and lose only one parking space on the northern portion of the parking lot.

Mr. Barton added with respect to the request for the sign exception that it was not uncommon for staff to receive such requests. Staff had reviewed the configuration of Century Boulevard and the connector road. The only alternative was for the applicant to install another sign on the building instead of another freestanding sign. He commented that City code was written in such a way that it was preventing the applicant from identifying the site the best way possible. As such, staff had determined that a sign exception in this instance would be appropriate.
Commissioner Ohlson spoke to the fact that the development would be adjacent to State Route 4 and the fact that the elected officials on the TRANSPLAN Committee were unhappy with the fact that Circuit City had been built so close to State Route 4. Given that situation, he noted that Circuit City might have to be purchased by the Contra Costa Transportation Authority (CCTA) and demolished to be able to allow the widening of State Route 4. He inquired whether or not staff had spoken to the CCTA or TRANSPLAN regarding the proposed widening of State Route 4 to learn whether or not it would be acceptable to develop the building where proposed.

Mr. Barton advised that the project had a long history and had been in process with the City for over a year. Staff had routed the project through TRANSPLAN. No concerns had been raised at that time. He acknowledged that there had been no recent follow up on that issue with TRANSPLAN.

Chairperson Garcia clarified that the property was not located near State Route 4.

Mr. Barton also clarified that the property was situated far to the north side from State Route 4 and one foot north of an existing PG&E easement.

Commissioner Ohlson spoke to Plans L7 and the proximity of the building to the freeway. While he would accept the statement that the proximity of the building to the freeway had been addressed, he expressed a preference to get an indication from TRANSPLAN as to whether or not the building would be a problem with respect to future freeway widening.

Commissioner Ramirez spoke to Condition No. 9 related to the repair or maintenance of stamped concrete areas and questioned whether or not the other businesses in the area had also been required to provide stamped concrete.

Mr. Barton advised that the other developments in the area had stamped concrete at the entrances. The applicant’s plans had identified those areas of stamped concrete although the colors had not been finalized and were left to the review of Planning staff once a color had been selected by the developer.

Commissioner Ramirez commented that if the stamped concrete color was faded it had to be repaired or maintained immediately and could be difficult to match he understood that there was a condition of approval in the resolution requiring the maintenance and/or repair of the stamped concrete when needed.

Chairperson Garcia commented that he was a member of the TRANSPLAN Committee when the initial development had been discussed. With respect to the issues surrounding the location of the Circuit City building, he noted that it had later been determined that an error had been made by TRANSPLAN staff. He spoke to the background of that matter including the need to relocate the pylon sign due to the future freeway widening he
understood that according to the CCTA, the freeway could be widened with no problem with the Circuit City building.

PROPOSED:

DOUG MESSNER, Sierra Pacific Properties, 3890 Railroad Avenue, Pittsburg, spoke to the time involved with the project with City staff including issues that had to be resolved for the trash enclosure and the need for a traffic study. He stated that the property was part of the Delta Gateway Shopping Center and was not a separate piece of property. Some of the requirements were those that had been included in the development CC&R’s, such as the use of stamped concrete to ensure that the property was a fine development for the City.

Mr. Messner advised that the applicant was in agreement with most of the staff recommended conditions of approval. He agreed with the conditions with the exception of condition 3 for the expansion of the island to provide a 10 foot setback.

Mr. Messner explained that the property line traveled to the middle of the drive coming into Century Boulevard which was also landscaped and included area across Delta Gateway which was also landscaped. Only in one small area there was not 10 feet. He suggested therefore that there was compliance overall.

Mr. Barton advised that the Municipal Code had been written in such a way that the required yard was measured as being on the street line into the property. The street line included pedestrian and vehicle accesses. When the CC&R’s had been written for the subdivision there was a sidewalk and street for those access points between the lots. Front setbacks are measured from the back of the sidewalk which had resulted in the 10 foot requirement. That was also the case around the entire property where the setbacks had been measured. He suggested that the applicant could apply for a variance, which would be the appropriate method to reduce the 10 foot landscape setback.

Mr. Messner noted that compliance with the required landscaping would result in the loss of one parking stall.

Mr. Barton advised that there was ample parking on site. City code required 60 parking stalls per the developer’s assumptions since no uses had been identified at this point. The revised drawings on the northern drive had shown only the loss of two parking spaces; one to address the aisle way problem to the north and one lost parking space at the south to address the minimum required planting area.

Commissioner Gordon spoke to the south side of the building and inquired whether or not that area was completely landscaped. He also inquired of the width of that area.
Mr. Barton advised that the south side of the building had been landscaped.

Mr. Messner identified that area, including the sidewalk, as approximately 45 feet wide.

Mr. Barton explained that the front yard had a 15 foot requirement. The side yard facing the street required a 10 foot setback. The definition of the front yard setback was the shortest property line facing the street. The Delta Gateway connector road at the back of the building was technically the front of the lot, and technically the applicant was required to provide a 15 foot setback of which the project was compliant. At the south end, the required setback was 10 feet.

Mr. Messner commented that along the Krispy Kreme site and all of the other approved projects, the setback had been much smaller at 5 feet along the entire length east along Krispy Kreme.

Chairperson Garcia inquired what percentage of the property was landscaped. He was advised by Mr. Messner that the property had 16 percent landscaping not including those areas south of the driveways that were part of the parcel.

Mr. Barton clarified that a minimum 10 percent landscaping was required on all properties in the Community Commercial zoning district.

Chairperson Garcia suggested that there was more than ample landscaping without the inclusion of the 10 foot area.

Mr. Barton reiterated the landscaping requirements in that there was a 10 foot required yard regardless. Pursuant to the Municipal Code, the required yard must be landscaped.

Chairperson Garcia understood that a variance would be required for the 10 foot landscaping setback and that a separate application for a variance would need to be filed if the applicant did not want to landscape that area.

Mr. Messner stated that the applicant would accept the staff stipulations.

OPPONENTS: None

MOTION: AP-03-58 (DR)

Motion by Commissioner Gordon to adopt Resolution No. 9523, approving AP-03-58 (DR), Design Review approval of architectural and site development plans for the construction of a 9,100 square foot multi-tenant building, and approval of a Master Sign Program, and Sign Exception for wall sign placement located at 4400 and 4428 Delta Gateway Boulevard, (Century Plaza II) for “Delta Gateway Multi-Tenant Building, Master Sign Program and Sign Exception,” with the conditions as shown. The motion was seconded by
Commissioner Ramirez and carried by the following vote:

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

Item 6: Pittsburg Medical Center. AP-04-130 (DR).
Application by Jennifer Yang requesting design review approval of architectural and site development plans for the construction of an 8,362 square foot medical office building on a 0.9-acre site located at the southeast corner of East Leland Road and Loveridge Road. The property is regulated under the CS (Service Commercial) Best Fit Zoning District. APN 088-161-013-3.

Planning Intern Jill Pirog presented the staff report dated October 12, 2004. She recommended that the Planning Commission adopt Resolution No. 9529 approving Design Review Application No. AP-04-130 (DR), with the conditions as shown.

PROPONENT:

JOHN HA identified himself as the Project Architect. He referenced the conditions of approval as proposed by staff and stated that the applicant was in agreement with those conditions, with the exception of Condition No. 25. He commented that originally the access had been designed with the entrance from Leland and Loveridge Roads. After working with City staff, it had been suggested that the access road should be from the private road from the hospital.

In order to provide that access the applicant would have to work with the hospital to obtain a reciprocal access easement. In the event that the easement agreement could not be reached, Mr. Ha asked that the Commission consider permitting access from Loveridge Road to allow the land to be developed. He also understood that the future pad had been designed to the rear corner, although he would like to shift the building more towards Leland Road so that there could be more frontage and to allow conformance with the Neighborhood Commercial area that was closer to the street.

Mr. Ha clarified that no parking would be lost with that revision in that they would be able to swap the future pad to the front with the parking at the rear.

Associate Planner Noel Ibalio explained that since there was no existing building, it would be acceptable to switch the location of the pad, as proposed by the architect. If there were a building in place he would have recommended that the application be continued to allow an analysis of the design. When the building was developed, a design review application would be required for Planning Commission review.
As to the redesign of the driveway, Mr. Ibalio commented that he also saw no problem with that revision, although he would recommend as a condition of approval that the reciprocal access agreement be obtained prior to the issuance of a building permit.

Chairperson Garcia requested that staff or the applicant verify the ownership of the roadway in that when the property was sold to the hospital, a corner parcel had been retained but had later been sold on more than one occasion. Chairperson Garcia did not see that the intent was to box in that property where one could not get in and out of the property. He questioned whether or not East Leland Road had a bus turnout.

Mr. Ibalio verified that a bus turnout was on East Leland Road as required by the Engineering Department.

Commissioner Ohlson spoke to the access from the hospital roads and with the fact that Loveridge and Leland Roads were major arterials where the City preferred to minimize driveways. He suggested that the City Engineer would not permit separate driveways to be built so close to the corner and the driveways of the existing hospital. He suggested that matter should be resolved before any action was taken on the project. He also expressed his hope that the City Engineer had analyzed the parking given that the developer was desirous of relocating the building pad. He understood that would require a permit from the hospital. He also recommended that the applicant ask the City Engineer to analyze the circulation of the site.

Mr. Ha advised that the property owner had agreed to do everything possible to obtain the reciprocal access agreement. He had also spoken to the City's Traffic Engineer regarding the access on Loveridge Road. He understood that Leland Road had already been converted to a bus turnout.

Chairperson Garcia noted that there was a condition of approval to address that situation in the resolution and the issue of access would be left up to the Traffic Engineer.

The property owner advised that he had a family emergency which had prevented him from following the project as closely as he should. He stated that he would contact the owner of the hospital property to determine whether or not a reciprocal access easement could be obtained for the use of the driveway. At this time he had no objection to the staff recommended conditions of approval or the revisions as earlier identified by the project architect.

In response to Commissioner Williams, Mr. Ibalio explained that the relocation of the existing pad would require the submittal of revised plans. A separate design review application would be required at a later date for the building design.
Ms. Ayres recommended that if the applicant wanted to move the pad forward that a condition be written that the revised parking circulation plan be reviewed and approved by the City Engineer prior to the issuance of a building permit.

Commissioner Ohlson recommended that if the building pad was relocated that trees of a species similar to those planted on the hospital property be planted on the subject property. He also requested that bicycle parking be provided as part of the project since it appeared that had not been included in the resolution of approval.

OPPONENT: None

Commissioner Williams stated that she was impressed with the project which she believed would be a good addition to the City. She made a motion to adopt the resolution of approval, as conditioned, with the applicant to submit revised parking/circulation plans to the City Engineer prior to the issuance of a building permit.

Commissioner Ohlson requested an amendment to the motion that the applicant provide a reasonable amount of bicycle parking and that the trees in the parking lot be of a species similar to those in the hospital parking lot.

Commissioner Williams accepted the amendment to her motion.

MOTION: AP-04-130 (DR)

Motion by Commissioner Williams to adopt Resolution No. 9529, approving Design Review Application No. AP 04-130 (DR), to establish the Pittsburg Medical Center, an 8,035 square foot building, along with a 2,500 square foot finish pad, on a vacant site located at the southeast corner of East Leland Road and Loveridge Road (APN 088-161-013-3) with the conditions as shown and subject to the following additional conditions:

- The applicant shall submit revised plans to the City Engineer prior to the issuance of a building permit;
- The applicant shall provide a reasonable amount of bicycle parking; and
- The trees in the parking lot shall be of a species similar to those in the hospital parking lot.

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

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

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; 2) that the text in General Plan Policy 2-P-87 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 537 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 563 units; and 7) that a vesting tentative map be approved to subdivide the 293 acre site into 537 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. APNs 097-122-004, 097-160-013, 097-160-014, 097-160-015, 097-160-047, and 097-180-004.

Ms. Ayres reminded the Planning Commission that while the agenda item description had not included the Final Environmental Impact Report (FEIR), the Commission could evaluate and consider environmental documentation for any project brought before the Commission, which was suitable for discussion at this time.

Associate Planner Noel Ibalio presented the staff report dated October 12, 2004. He recommended that the Planning Commission take public testimony, deliberate on the project, provide feedback on the draft conditions and then continue the public hearing to the October 26, 2004 Planning Commission meeting.

Chairperson Garcia requested clarification as to the identification of the property owners of the project.

Mr. Ibalio clarified that the property owners were comprised of William Lyon Homes and Alves Ranch LLC for the portion that would be retained on the north side of West Leland Road and the portion of the school site owned by Alves Ranch LLC. The remainder of the property was under an agreement with William Lyon Homes.

PUBLIC HEARING OPENED
GREG MIX, Area Manager, William Lyon Homes, introduced the development team consisting of the Project Manager, Project Development Consultant, the Alves Ranch LLC representative, Legal Counsel and Civil Engineer.

Mr. Mix spoke to the background of the developer William Lyon Homes, which had developed homes in California, Arizona and Nevada, and with development in the Bay Area from Roseville to Fort Ord in Monterey County.

Mr. Mix advised that the project consisted of a 293 acre site, with 1,100 residential units being proposed along with commercial development. The property was located in the southwest area of the City, a quarter of a mile west of the Pittsburg/Bay Point BART station, an infill project between Oak Hills to the east and the San Marco development to the west. Within the development, the original General Plan had recognized 1,100 total units. The commercial component allowed for a variation up to 20 acres with the project to be just below 15 acres, representing approximately 257,000 square feet. He identified the location of the 560 High Density Residential units, to be a combination of for rent and for sale products. The area of West Leland Road was also identified as was the connectivity point from the east to the west. Access from Oak Hills, San Marco and the new elementary school would be via that roadway.

There would be 117 acres of open space to be provided with most identified as habitat for endangered species. The school site was identified as 11.3 acres of land set aside for the K-8 school. The project would also include a 15 percent affordable housing component.

SCOTT HANKS, SDC Consulting Services to Alves Ranch LLC and William Lyon Homes, identified the background of the project as well. He stated that the Alves Ranch was currently owned by the Alves family and consisted of 293 acres of which 117 acres would remain as open space in perpetuity.

Mr. Hanks pointed out the high density and commercial office space, which property would be retained by the Alves Ranch business entity, Alves Ranch LLC. He also identified the detention basin which was intended to hold the entire flood from the site to meet a 100-year storm event. The outfall would be directed to Willow Pass Road and eventually into Suisun Bay. A second outfall on the site would address the drainage water, a portion of which was currently coming off of the San Marco development. Two storm drain lines would be improved into the Town of Bay Point and out into Willow Pass Road, over land and then to Suisun Bay.

Mr. Hanks noted that the project would provide water infrastructure from a water treatment plant to the site with water provided in excess of the project to serve the southwest area. The sewer would be solely and exclusively for the proposed community and extend north all the way to Willow Pass Road. The storm system for the proposed community would
handle the entire water outfall of the site.

Mr. Hanks identified the location of West Leland Road and noted that the developer had agreed with staff to commence with the development of the West Leland Road extension as the highest priority. The goal was to have the West Leland Road extension open this year for students and commuters although that had not occurred. The commitment to the City was that the project be a high priority so that the work on West Leland Road could occur next year.

Mr. Hanks described the various neighborhoods being proposed for the development community. There would be five residential communities, identified as Neighborhood A, a cluster product consisting of 102 single family detached six pack cluster units, in a quad. Neighborhood A would also include open space and a tot lot. There would be a Homeowner's Association (HOA) since there would be joint use driveways and parking on the roadways for that community. A conceptual street scene of the community was presented.

Neighborhood B would be designed for 4,000 square foot units and was intended as a move up product from Neighborhood A. The product would consist of detached homes consisting of 132 units. A conceptual street scene of this community was also presented. Mr. Hanks reiterated the location of the school site and noted that the playground for the school would be a joint use park with the City. The developer had agreed to this portion of the design irrespective of whether or not the school was actually constructed, as stipulated in the project Development Agreement. The park would be designed in a co-design effort with the Mt. Diablo Unified School District (MDUSD) and the City to ensure that it would meet the needs of both the City and the MDUSD.

Neighborhood C would be located south of the PG&E transmission lines traversing the site east to west. Both Neighborhoods C and D would consist of 6,000 square foot minimum lot sizes to be designed to handle two different types of product.

The estate lots were also identified and were intended to be custom lots. William Lyon Homes did not plan to build this home product which he indicated would be at the highest end of the spectrum of the community.

Mr. Hanks stated that the plans represented essentially a smart growth development/community intended to provide a full spectrum of product, located close to mass transit with the highest density of homes located closer to the mass transit corridor.

Mr. Hanks highlighted the area identified as permanent open space and noted that as of July 23, 2004, the California Tiger Salamander had been deemed an endangered species in the area. As part of the approval the developer would be required to install some breeding ponds for the Tiger Salamander. The intent was for the ponds to fill up from runoff from the spring and dry out in the summer.
Mr. Hanks reiterated that the West Leland Road extension was a high priority for the City which the developer had committed to as an initial part of the community. The developer had also committed as part of the Development Agreement to mitigate all traffic impacts through the Traffic Impact Fee or through the Traffic Mitigation Fee, and to pay the fare share rate. The developer had also agreed to a 15 percent inclusionary requirement for the community taking the community from Very Low Income units to extremely luxurious estate lots. He reiterated that the water master plans had recently been approved by the City Council and the developer had agreed to install phase 1 & 2 improvements which is beyond their nexus requirement for water infrastructure.

Mr. Hanks added that the school was intended to be for Kindergarten through 8th grades with the park intended to be a joint use with the MDUSD and the City, which would offset costs to both the City and the MDUSD and provide benefits to all.

Mr. Mix added that they had reviewed the draft conditions of approval and those conditions appeared to be on target although they would be working with staff on some of the timing requirements which at this time appeared to be acceptable. He emphasized that if the project approvals remained on track and the West Leland Road extension could be open by next September and would be first as part of the grading operation when the project commenced.

Commissioner Williams understood that the developer, William Lyon Homes, was known for a quality development and she was pleased that the firm would be building in the City of Pittsburg. She inquired whether or not there had been any agreement with the MDUSD for the school site.

Mr. Mix commented that the MDUSD was anxious to build the school site although the City could not bind the MDUSD to build anything. The developer would reserved the site for the MDUSD to purchase at fair market value which was the way that all school sites were purchased. The school site would be disclosed to future homebuyers as was typically done. The disclosure would also identify the fact that it was up to the MDUSD to make the determination to build or not to build the school site on the property.

In the event the MDUSD decided not to build the school, Commissioner Ohlson inquired of the timeline for the development of the park.

Mr. Mix explained that the park would be provided as an amenity for the residents of the development with the intent to build the park early which was the reason it had been structured in that manner. Through a Landscaping and Lighting District, the property owners would be charged a greater rate than other similar districts in the City.

The residents of the community and the school district would pay for all of the maintenance.
of the park and no burden would be placed on the City in that regard. It was intended that the park would be built at an early date when the subdivision was being marketed as an amenity for the homebuyers. When acquired by the MDUSD, it would then become a portion of the school site under a joint use situation.

In response to Commissioner Ohlson as to whether or not there were other joint use agreements involving a park and school site in the City, Chairperson Garcia understood that the new school at the San Marco development had the same arrangement.

Ms. Ayres advised that the MDUSD was known for using joint use agreements. The City’s Recreation Director was active in working with the MDUSD to negotiate the use of the playground and possibility some of the rooms at the school as well.

Commissioner Ohlson spoke to Page 7 of 18 of the staff report and the discussion on the Vesting Tentative Map which had shown the construction of at least two lanes of the West Leland Road extension. Since he understood that the developer had planned to build the entire West Leland Road extension he requested a clarification of that situation.

Mr. Mix explained that the developer’s obligation for the project was to build two lanes of the extension. The City needed a four lane road and it would be inefficient for the City to build the additional 2 lanes. As a result, through a fee credit arrangement and reimbursements, the developer would construct the entire four lanes at the same time at the outset of the development.

Commissioner Ohlson spoke to Page 8 of 18 of the staff report and the discussion of the Development Agreement having an 18 year build out period. He inquired of the normal life of a Vesting Tentative Map and what the City would be getting for the 18 years.

Mr. Mix noted that development agreements were very common in large projects. In this instance there would be a longer period of time for build out, not because of the residential component but because of the high density and commercial components which were marketed differently.

Commissioner Ohlson also referenced Page 10 of 18 of the staff report and the discussion of the affordable housing component, with the details to be included in the Development Agreement. He inquired if the agreement would tentatively follow the Inclusionary Housing Ordinance which had yet to be approved by the City.

Ms. Ayres explained that the project would not follow the Inclusionary Housing Ordinance specifically, however, the development would include a 15 percent affordable housing component.

Commissioner Ohlson further spoke to Attachment 2, Tentative Conditions of Approval, for Vesting Tentative Map No. 8448, Condition No. 4, and identified a typographical error.
where the condition should read:

4. **Revise the Vesting Tentative Map to modify Street N from Streets C to G shall be 48” from face of curb to face of curb, 60 feet right of way prior to submittal of the Final Map.**

Commissioner Ohlson also spoke to Condition No. 16, d, and recommended a revision, to read:

16d. **The lots shall be drained with swales, which slope two percent and discharge to a suitable outlet.**

Commissioner Ohlson spoke to Condition No. 16 f, as shown, and commented on his understanding that the development would not involve crawl space under homes but rather post tension waffle slabs.

Mr. Mix affirmed Commissioner Ohlson’s understanding with that condition in that no crawl spaces were being built.

Commissioner Ohlson also referenced Condition No. 18 and the language where the developer “may include construction of ‘V-lined ditches’.” He questioned the use of the term “may” and questioned whether the material would be included or not.

Mr. Mix noted that the grading plan would be approved subsequent to that condition which was not a part of the entitlement process and which was something that would be submitted afterwards and might or might not include a number of features.

In response to Commissioner Ohlson, staff also identified the intent of Condition No. 19, as written.

Commissioner Ohlson spoke to Condition No. 28 which had included a condition for wells on the property. He requested clarification whether or not wells would be included.

Mr. Mix advised that there would be no wells on the property.

Commissioner Ohlson further spoke to Condition No. 40, and the reference to the Joint Powers Authority (JPA) and the cities that were included in the JPA. He inquired why the City of Oakley had not been included in the JPA.

Civil Engineer II Alfredo Hurtado clarified that the City of Oakley had just become a City not too long ago and was not a member of the JPA.

Chairperson Garcia concurred that the City of Oakley was not a member of the original JPA and had not been a City when the JPA had originally been formed.
Finally, Commissioner Ohlson referenced Condition No. 47. He pointed out that San Marco Boulevard had been called out in the City’s General Plan as a bicycle facility and that the free right turns were not compatible with bicycle lanes. He commented that he would have to speak to the City Engineer regarding that issue.

Commissioner Ramirez understood that a HOA would be included in the development, to which Mr. Mix clarified that a HOA would only be part of the cluster home development with a Landscaping and Lighting District to address the cost of maintenance.

Commissioner Ramirez spoke to the water coming into the area, and the fact that the City Council had recently approved a Water System Master Plan. Having viewed the property he had seen a report on the entire water system and how it would be developed in stages. He inquired where the initial water would come from for the first phase of the development.

Mr. Mix explained that they would be connecting to the existing infrastructure in the area at the same time the amendment to the City’s Water System Master Plan included a three phase construction for the entire water infrastructure in the southwest area. The project would build the first two phases, better than half of the entire infrastructure as required for the entire area. The developer’s fair share obligation for the construction of the water infrastructure was approximately 15 percent although the developer would be building in excess of that requirement. The developer would receive compensation for that through fee credits, with the developer’s water fees to be put towards that portion they were not obligated to build within some reimbursement with the City to ensure that everyone in the southwest area had water when needed. He clarified that the existing water line was owned by the City, an issue that had been resolved.

Chairperson Garcia disagreed in that the City owned the pipe but another developer owned the rights to the water in the pipe since that developer’s assessment district had paid to bring the water line to the area. The Alves property owner had refused to join the assessment district at that time. He expressed concern with a potential lawsuit once the developer tried to tap into that water line. He also noted that although he had previously asked for the plan, the Planning Commission had not been provided with the Water System Master Plan, particularly for the southwest area of the City and were unaware who would pay for the water.

City Engineer Joe Sbranti explained that the Capacity Reservation Agreement had been executed between the City of Pittsburg and a prior development some years ago. He understood the concerns and the difference of opinion as to whether or not the City had the rights to tie into the existing water pipe.

Mr. Sbranti reported that the City had received a letter from the developer [Albert Seeno,
Jr.] dated September 27, 2004, who had entered into that agreement and had indicated that he would only essentially agree to the use of the water line to be used if bonding was in place for all future improvements.

William Lyon Homes and Alves Ranch LLC had agreed to place a bond in addition to paying their fare share, and along with the City, that would suffice to ensure the developer [Albert Seeno, Jr.] as he had requested as well as building the improvements as necessary.

Mr. Sbranti also clarified that there did not need to be a water line running from the water treatment plant to the property in order to accommodate the first 150 to 200 homes of which Mr. Seeno had agreed if the bonding condition was in place.

Chairperson Garcia inquired how in the future the City would finance the 20 inch line from the water treatment plant to the property.

Mr. Sbranti advised that the cost of the line eventually would be paid by all of the developers in the southwest hills on a percentage basis. Initially the City would front the costs and would be collecting the fees.

Chairperson Garcia questioned whether or not that process was a good idea. He questioned why an assessment district was not being formed for all of the property owners that were involved.

Mr. Sbranti noted that the subject property owner would be paying his fair share in advance of infrastructure. The other developers would also be required to pay their fair share of the costs.

Chairperson Garcia suggested that should be obtained in writing prior to construction and prior to the next Planning Commission meeting. He also suggested that staff obtain a more recent letter from Mr. Seeno on the matter.

Mr. Sbranti noted that the language was in the Development Agreement which would be discussed at the next Commission meeting. As to whether or not two or four lanes of West Leland Road would be constructed, he clarified that the four lanes of construction would take place through the Alves property when reaching the property immediately to the west where it would drop down to two lanes until such time as the frontage improvements for that development were required.

Chairperson Garcia expressed concern with the City becoming involved in a lawsuit which could delay the project. He otherwise saw no problem with the project in that there were a number of conditions that would be imposed.

Commissioner Ramirez requested a copy of the water report that had recently been
approved by the City Council, to which Mr. Sbranti advised that he would provide a copy after the completion of the discussion.

Mr. Mix clarified in response to the Chair that the school site would be buildable.

WILLIAM ROSS, the Attorney representing Seecon Financial and Construction, reiterated his comments made during public comment regarding his assertion that the Brown Act had been violated since the FEIR had not been agendized for discussion. He again reiterated his request to reserve the right to comment on the proposed FEIR at a properly noticed hearing that complied with the Brown Act which would allow for a meaningful discussion of conditions on all of the project entitlements based on all of the information that should be presented to the Planning Commission.

Mr. Ross spoke to an earlier reference that there was no need for the agenda to reference the FEIR since it was clear in the staff report. In reviewing the public notebook, he stated that the FEIR was not present. The staff report also indicated that the Vesting Tentative Map was not attached. He questioned how members of the public could comment on proposed conditions to the map if it was not attached to the staff report.

Mr. Ross stated that the Planning Commission was the advisory agency under the Subdivision Map Act and must make findings, with a recommendation to be made to the City Council on the zoning changes. He questioned the rush to move forward and suggested that it would have been better to have all of the information before the Commission so that many of the questions and the intent of the Brown Act could be fulfilled.

Mr. Ross further spoke to the reference to correspondence from Mr. Seeno dated September 27, 2004. He clarified that there had been no formal response to that letter.

Chairperson Garcia advised that Mr. Ross had submitted written comments during public comment which were to be part of the public record. He also recommended that the Commission not move forward until staff returned with an agreement on the water issue since there appeared to be a disagreement in the FEIR. He reiterated his concern with the potential for a lawsuit.

Ms. Ayres stated that the threat of a lawsuit should not stop the Commission from making a recommendation on the project. She added that the project should not be held hostage or subject to required approval from another property owner as opposed to the City Council.

Ms. Ayres also identified for the record correspondence from George Harris of Rainbow Homes dated October 4, 2004. She reported that Mr. Harris had also expressed concerns that the FEIR had not been subject to Planning Commission approval.
Chairperson Garcia asked that the letter be forwarded to the City Council. Chairperson Garcia also spoke to Page 9 of 18 of the staff report and the discussion of the future extension of San Marco Boulevard. He noted that if the blast zone adjacent to the Concord Naval Weapons Station was never released for development, the road would still have to go somewhere.

Mr. Sbranti explained that the same comment had been raised during the DEIR period. The General Plan referred to the road extension in in conceptual terms, as to an approximate location, not specifically a precise alignment of the roadway.

Chairperson Garcia reiterated that if the Concord Naval Weapons Station was not developed and the blast zones were retained the alignment of the road would be a concern.

Ms. Ayres advised that when the Bailey Estates project had been reviewed, Mr. Seeno had submitted comments on that EIR. She explained that Mr. Seeno had made a case that the alignment shown on the General Plan was, in fact, unsuitable due to the existing topography. He had proposed an alternate location further south through his San Marcos Meadows project and through the Bailey Estates project. Based on Seecon’s comments, the Bailey Estates project was redesigned with a 100 foot right-of-way to accommodate a southerly alignment.

Based on Seecon’s comments on the Bailey Estates EIR and based on the State Department of Fish and Game having identified the area as a high priority for endangered species, Ms. Ayres advised that staff was of the opinion that the northerly alignment should be abandoned.

Chairperson Garcia requested that such a condition be added to preserve a 100 foot right of way across the site for the extension anyway.

Mr. Sbranti also spoke to the concerns with the threat of lawsuits if the City were to draw upon the water from the existing line on Leland Road. He noted that when the Planning Commission reviewed the Development Agreement at its next meeting, the Commission would find an indemnification clause should there by any lawsuits, which would not be at the cost of the City but at the cost of the developer to defend the City.

Chairperson Garcia further commented on the fact that grading was not allowed during the winter. He inquired if that regulation would be effective if there was a drought.

Mr. Hurtado explained that grading was allowed during the rainy season as long as it was not raining at the time. Grading was controlled through the Regional Water Quality Control District (RWQCD) and allowed, as long as the proper permits were in place.

Commissioner Dolojan referenced Attachment 2, Condition No. 11 and the reference to a Mello Roos District. He inquired if that would be required of the development.
Mr. Mix explained that the developer would do exactly the same as the neighboring developments with respect to a police Mello Roos district.

MOTION:

Motion by Commissioner Gordon to continue the public hearing for Vista Del Mar Development AP-03-33, (GP,PDRZ, PD Plan and Subdivision 8448) to the Planning Commission meeting of October 26, 2004. The motion was seconded by Commissioner Tumbaga and carried by the following vote:

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

STAFF COMMUNICATIONS:

Ms. Ayres advised that correspondence had been sent to the property owner of 742 Stoneman Avenue, Pittsburg regarding an issue raised by the Commission at an earlier meeting.

Mr. Sbranti introduced the new Assistant City Engineer Keith Halverson who was welcomed to the City by the Commission.

COMMITTEE REPORTS:

There were no Committee Reports.

COMMENTS FROM COMMISSIONERS:

In response to Commissioner Gordon, Ms. Ayres reported that staff had received no response from the correspondence sent approximately a month ago to Wal Mart. Staff would follow up on that issue.

Commissioner Gordon stated that he would not be present for the Planning Commission meeting of November 9 and possibly November 23 due to upcoming back surgery scheduled for November 8.

Commissioner Ohlson noted that Roberts Rules of Order did not state that the maker of the original motion must agree or not to an amendment to the motion.
Commissioner Williams commended the job done by staff. She also advised that she was a Keynote Speaker and would be out of State and not present for the October 26 Planning Commission meeting.

**ADJOURNMENT:**

There being no further business, the meeting adjourned at 11:03 P.M. to a regular meeting of the Planning Commission on October 26, 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