

**CITY OF ANTIOCH  
PLANNING COMMISSION MINUTES**

**Regular Meeting  
6:30 p.m.**

**November 6, 2013  
City Council Chambers**

**CALL TO ORDER**

Chair Hinojosa called the meeting to order at 6:30 p.m. on Wednesday, November 6, 2013, in the City Council Chambers. She stated that all items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the decision. The final appeal date of decisions made at this meeting is 5:00 p.m. on Monday, November 18, 2013.

**ROLL CALL**

Present: Commissioners Pinto, Motts, Baatrup and Westerman  
Chair Hinojosa  
Absent: Commissioner Miller  
Staff: Community Development Director, Tina Wehrmeister  
Senior Planner, Mindy Gentry  
Public Works Director/City Engineer, Ron Bernal  
City Attorney, Lynn Tracy Nerland  
Minutes Clerk, Cheryl Hammers

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENTS**

None.

**CONSENT CALENDAR**

1. **Approval of Minutes:** October 16, 2013

***On motion by Commissioner Motts, and seconded by Commissioner Pinto, the Planning Commission approved the Minutes of October 16, 2013.***

**AYES:** *Hinojosa, Pinto, Motts, Baatrup*  
**NOES:** *None*  
**ABSTAIN:** *Westerman*  
**ABSENT:** *Miller*

**END OF CONSENT CALENDAR**

City Attorney Nerland gave an overview regarding making public comments with the applicant having 10 minutes to speak, the opposition having 10 minutes to speak, and each additional speaker having 3 minutes to speak. She indicated there were speaker

cards available and requested that speakers come to the podium to speak, mentioning the warning signal light. She said that there may be questions for staff and the applicant, that the hearing would then be closed for the commission to deliberate, and that there would need to be four affirmative votes to recommend approval of the project.

## **NEW PUBLIC HEARING**

2. Discovery Builders requests the approval of a General Plan amendment (GPA) from Low Density Residential to inclusion in the Somersville Road Corridor Focus Area and to add language to the General Plan waiving the requirements of certain applicable sections of the General Plan related to hillside development; a rezone from Hillside Planned Development (HPD) District to Planned Development (PD) District; an amendment to the zoning ordinance to provide the City Council with the discretion to determine if the Hillside Planned Development policies apply to a project; a Vesting Tentative Map; a Final Plan Development; and a Use Permit in order to create 60 lots intended for single family homes. The project is generally located west of the intersection of Somersville Road and James Donlon Boulevard (APN: 089-160-010). An Initial Study and Mitigated Negative Declaration are also being considered for adoption.

City Attorney Nerland reviewed the speaker rules for the Public Hearing, Chair Hinojosa introduced item #2 and Senior Planner Gentry presented the staff report dated October 31, 2013.

### **City Attorney Nerland**

And just before any questions. I would just like the public to know that there are copies of the letter that came in after the staff report was published and posted on the internet. So those are in the back for members of the public and on the dais obviously for the Planning Commission. And the applicant had already received copies of that letter.

### **Chair Hinojosa**

Thank you Ms. Gentry for that staff report. I'd like to ask my fellow Commissioners if they have any questions for staff at this time, Commissioner Pinto.

### **Commissioner Pinto**

The question I have is, even though we were not required to submit the project information to the State. What negative impact would it have by not doing so? Even though they are not required to do so?

### **Senior Planner Gentry**

There wouldn't be any negative impact. It would have extended the public review timeline by ten (10) days, which isn't necessarily a negative thing. And now that the public hearing or the public comment period is closed the City would have to go back out again and reopen the environmental document for a thirty (30) day period.

**Commissioner Pinto**

Thank you.

**Chair Hinojosa**

Do any of the other Commissioners have questions for staff at this time?

**Commissioner Baatrup**

Madam Chair, I have one or a couple of questions.

**Chair Hinojosa**

Commissioner Baatrup.

**Commissioner Baatrup**

As I read this and listened to the description, it seemed there was something related to CEQA that happened in March of 2013 and then the circulation of the ISMMD was in early October through late October. Can you describe what was going on in March and why nothing really happened until October, in terms of a formal circulation?

**Senior Planner Gentry**

When the document was completed in March, City staff was still working with the applicant to address concerns that staff had regarding the site plan and seeing that the applicant essentially ended up addressing the storm water concerns, staff made the decision at that time to also go forward, bring the item to the Commission and address any other concerns that staff had through the conditions of approval.

**Commissioner Baatrup**

Repeat that last part one more time. I didn't follow.

**Senior Planner Gentry**

So essentially the applicant addressed staff's concerns regarding storm water control issues and then at the applicant's request, city staff went forward with addressing further staff concerns through the conditions of approval.

**Commissioner Baatrup**

And once all of those had reached its conclusion, then the initial study, Mitigated Negative Declaration was deemed ready to be published and you did all the correct publishing on that.

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**Senior Planner Gentry**

At that time, staff made the determination that it was ready to go to hearing so therefore decided to release the document for public circulation.

**Commissioner Baatrup**

Okay. Forgive me if I'm the only one and I apologize if I received it but I don't remember receiving or reading this document. Can you refresh my memory when that was distributed to the Commission?

**Senior Planner Gentry**

I believe it was distributed a few months ago but there was a link that was included in the staff report if there were any questions regarding the environmental document.

**Commissioner Baatrup**

And then lastly, the document that I see, there are several of them sitting up here on the dais when we came in. I'd noticed that the summary page isn't signed, I assume Mr. Herring prepared this and who would be the one that actually declares that the Mitigated Negative Declaration is the appropriate document for this project?

**Senior Planner Gentry**

The hearing bodies of the City make that determination, essentially City staff eventually does sign it but it's based on action that is done by others at the Planning Commission or in this case, the City Council.

**Commissioner Baatrup**

That's all my questions right now.

**Chair Hinojosa**

Ok, not seeing any other questions from my fellow Commissioners, I have a couple for staff. I was wondering if you feel comfortable with the amenities that are being proposed and whether there is an opportunity to include more amenities at this site.

**Senior Planner Gentry**

What amenities do you have in mind?

**Chair Hinojosa**

So for example the pedestrian path that was being proposed was taken out of the project due to privacy issues and so I'm wondering if there has been any talks about how to include more recreation on site or an increase in parks on the project site?

**Senior Planner Gentry**

Overall, it's not a huge project. It does only contain twenty-one (21) acres and which the majority of it is slopes, over twenty-five (25) percent. So I think it would be kind of hard to, perhaps expansion of the pocket park or something along those lines would be an amenity for consideration. You know it would be maintained by the HOA so it is a private park and the applicant will be responsible for paying the, you know, park in-lieu fees that are required as part of the City code.

**Chair Hinojosa**

Ok, and also if you can just tell the Commission what were the significant issues that were triggering the need for an EIR?

**Senior Planner Gentry**

Essentially they pertained to aesthetics and land use.

**Chair Hinojosa**

And then also have a question about staff's recommended language to the General Plan amendment. I'm trying to get clarification here about what is being requested. It says that the staff recommendation is to add a residential designation to the site and to the Black Diamond Ranch subdivision and add General Plan section 4.4.11 and policy 10.3.2 pertaining to development on steep slopes. It is unclear to me if the Commission is asking to add that as waiver language, as part of this request.

**Senior Planner Gentry**

Essentially the language that staff is requesting being included in the General Plan amendment will eliminate any inconsistencies or conflicts with the General Plan. Does that clarify?

**Chair Hinojosa**

I think that's clear. So you are asking to include that as part of the waiver.

**Senior Planner Gentry**

Correct.

**Chair Hinojosa**

Okay, and then the request by the applicant for the General Plan amendment to waive section 5.4.14, if applicable, if it is shown that development conditions will be safe and in harmony with surrounding development patterns and uses. I'm just wondering how staff envisions determining compliance with this specific finding and whether that has

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actually been considered as part of this application package, if there have been specific determinations made about this finding, whether if you are changing the zoning designation, whether the project as it's being proposed meets the requirements to be safe and in harmony with the surrounding development patterns and uses.

**Senior Planner Gentry**

I think that it would be, you know the geotechnical reports would be looked at for safety purposes and an argument could be made that the homes blend in with the existing Black Diamond Ranch community.

**Chair Hinojosa**

And I have one last question and this is regarding the slope stability and the CEQA document. In reviewing the CEQA document it states that the proposed grading envelop will encroach into existing cut slope buttresses and sub drains systems of the existing Black Diamond Ranch subdivision and that, I quote, "the current grading plan indicated it incorporates cuts and fills slopes that are higher than recommended and are steeper than recommended in the design report" further it states grading improvements could "contribute to instability if not properly evaluated, engineered and designed" This section also states that landslides have the potential to affect roads, utilities and structures if not appropriately characterized and mitigated. I was just wondering if you could talk about the concerns that are being raised here in the CEQA document regarding the potential for landslides and instability of the hillside with such steep grading proposed to occur.

**Senior Planner Gentry**

Since this question pertains to the CEQA document, I'd differ to our environmental consultant to answer that question.

**Chair Hinojosa**

Ok

**Consultant Doug Herring**

Good evening Commissioners. I'm Doug Herring, Douglas Herring and Associates. I think essentially that the remedial grading and corrective grading measures that would be required as mitigation measures would address those stability concerns. It would require a registered engineering geologist to confirm in the field, both in terms of the design and then verifying in the field, that they are able to mitigate those issues.

**Chair Hinojosa**

So in looking at the section of the CEQA document related to geology and soils one of the measures that you are talking about which is meant to minimize this significant impact is for the applicant to prepare a report to address stability, buttress issues, sub

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drainage systems, grading, drainage foundations, landslides, utilities, roads etcetera. What happens if after they do that investigation report it is determined some of the lots are instable or not safe for development or the grading could potentially compromise the subdivision below it?

**Consultant Doug Herring**

If they were unable to remediate that, then that would essentially be a point at which the City would need to step in and halt the development. The mitigation measures are essentially conditions of approval to allow the development to proceed in mitigating those impacts and the mitigation monitoring and reporting program insures compliance with all of them and if any of them are not complied with and that would include adequate corrective grading techniques and foundation design, so forth, then that would be a bases for either restricting development on those lots or if it was site wide, halting the whole development.

**Chair Hinojosa**

Is that typical of a project like this on a hillside to have a mitigation measure that basically says, you are going to do a report and studies and essentially figure it out later?

**Consultant Doug Herring**

It's very common; you essentially establish performance standards in the mitigation that have to be met. It's not really deferring the analysis but its establishing performance standards. It's very common at this stage of development and very typically these kinds of concerns can be engineered. It may end up being a question of whether or not the applicant wants to, you know, if the remedial grading is so extensive, it may be a cost issue for the applicant to make a decision on but usually it's feasible to address these issues.

**Chair Hinojosa**

So the issues that have been raised in this section of the document were not related to the requirement to prepare and Environmental Impact Report.

**Consultant Doug Herring**

No.

**Chair Hinojosa**

Ok, I think that concludes my questions, thank you.

**Consultant Doug Herring**

You're welcome.

## **Chair Hinojosa**

And if none of the other Commissioners have questions for staff, I will go ahead and open the Public Hearing. If a member of the audience would like to speak, please fill out a speaker card. I have several of them here. The hearing is now open and I would like to invite the applicant to come forward and please address the Commission.

## **Louis Parsons**

Hi, my name is Louis Parsons. I'm with Discovery Builders. I'd like to thank the Commissioners for letting me speak on this item tonight. I'd first like to start off by thanking Mindy for a thorough report. This project we've been processing for quite a while, so I'm glad that all the background was provided. And, I'd like to thank the CEQA consultant for all his work on this project, so far. So I've got a brief PowerPoint presentation and then I can answer questions and then I know there seems like there is a lot of public speakers but any time you'd like to ask a question while I'm presenting or afterward, just let me know.

Mr. Parsons reviewed the PowerPoint presentation.

## **Louis Parsons**

I wanted to touch on a few things that were brought up about timing with the CEQA document and to where we are now. We've been meeting with staff on the conditions and so on and so forth and one of the items was that the new clean water requirements and so coming up with a design that City staff was comfortable with that we can make work those standards are complicated and difficult but we've been able to work and provide studies from her engineering that City staff was comfortable with so that was part of the process. And then every time once the CEQA document was drafted you go through the process and staff drafts the conditions of approval, we meet and so the fact that this document was put together in March or April and it got circulated four or five months later, I find that pretty typical of the process. I also wanted to mention that an Environmental Impact Report on a 20 acre site with 60 lots, I mean some of the analysis that we've done, the primary thing in the document was land-use consistency. And the way we address that is that we request an exception to those items which Mindy laid out, so that addressed land use consistency. And then esthetics as Mandy pointed out that's very subjective. And I don't think what we're doing when you look at the context of the Black Diamond Ranch project and you consider what's already approved and going to be built to the west of this project I don't think it's a significant unavoidable impact. I guess that's my time but I'm here to answer questions. We're excited about this project. We hope, as staff's recommendation is to recommend approval of attachment B to the City Council so we're hopeful that's the direction you go in. I'm here to answer questions and thank you so much for letting me speak on this.



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**Chair Hinojosa**

Thank you, Mr. Parsons. Do any of the Commissioners have any questions for the applicant?

**Commissioner Motts**

Yes.

**Chair Hinojosa**

Yes, Commissioner Motts.

**Commissioner Motts**

You were saying after grading is done it will be contiguous with Sky Ranch II. Is that, I realized that this project is somewhat in the view shed from East Bay Regional Park, is Sky Ranch II in that view shed too. Is that something you would see when standing at the entry of the park?

**Louis Parsons**

Sky Ranch II project, yeah it's immediately adjacent to the west. So Sky Ranch II is a much larger project. I think it is 150, 160 acres, which is going to involve similar grading, similar type of lot layout immediately to the west of this and it abuts the Moller Ranch project to the south and East Bay Regional Park District. So absolutely and probably very same, almost the same thing as to what's occurring to the 150 acres to the west.

**Commissioner Motts**

With substantially less grading I would imagine within Sky Ranch II.

**Louis Parsons**

No, Sky Ranch II has substantial grading throughout the entire site.

**Commissioner Motts**

Okay, thank you.

**Commissioner Baatrup**

Can I follow up on that?

**Chair Hinojosa**

Yes, please.

**Commissioner Baatrup**

Sky Ranch II has a lot of flat area from my observation so the southern part of that project has a significant amount of grading? That's what I would interpret what you said.

**Louis Parsons**

Sky Ranch II does not have a lot of flat topography; there is a lot of significant topography on Sky Ranch II. I want to make sure we're talking about the same thing. The topography for Sky Ranch II to the west is this area right here that is unbuilt. So this is Sky Ranch II, this is Highlands Ranch, this is what's referred to as the Chevron property, and then this is Sky Ranch II. And so the topography for this area it's up-and-down, rolling hills and so right now there is an approved project for 415 units that will be built on this project in the City of Pittsburg. It's going to involve quite a lot of grading, similar to the grading for The Pointe.

**Commissioner Baatrup**

And what is the greatest cut of hillside that you're taking down in Sky Ranch II.

**Louis Parsons**

Probably, I'm actually just thinking, probably 120 feet, 130 feet and then we have place water tanks and so on and so forth so just because the slope of your roads coming in there, you've got this max 16% in a lot of cities I think Antioch included only want you to max out at 12 as much as you can so when you have that topography with a residential density and you come up with the site plan there's not a lot of options except grading and so it's a big cut and a big fill. The one thing on The Pointe is that it's pretty much all a cut so a lot of the grading concerns, the questions about the grading that came up is we have reconnaissance reports, we do all the time but we have a detailed, we primarily use NGO and we have a detailed remedial grading plan that's completed, our remedial grading plan get submitted, it gets peer-reviewed by the City, sometimes the City has an outside consultant peer-review our remedial grading plans and you know this is a tentative approval so until such time City staff or the City Engineer or the City's third-party geotechnical consultant approves the grading approach were taking we can't get a permit to move forward and we can't record our final map. So this is a tentative map approval until we comply with the conditions of approval and comply with the mitigation measures.

**Commissioner Baatrup**

Thank you for letting me follow-up. I'll have some other questions.

**Chair Hinojosa**

Sure I believe Commissioner Pinto actually wanted to ask a question.

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**Commissioner Pinto**

Thank you Madame Chair. The traffic study I believe was conducted in 2010 and traffic conditions in that area have significantly changed since then and so the question is, was any recent study conducted to mitigate those issues.

**Louis Parsons**

I don't know what, I don't think any new traffic analysis has been done but I think that the analysis that was completed showed, I mean I think that was 60 lots, I mean I know CCTA doesn't even require you to do a traffic study if you are less than 100 trips but I think the City of Antioch have something that you do a traffic study if you are more than 50 trips. I think that's in the transportation section so, but no I don't think a new study has been done since 2010 but if memory serves in reviewing the CEQA document I think that additional traffic to the intersections and things, I think the increase was negligible but I don't think anything has been done since the original traffic study that was done by the CEQA consultant.

**Commissioner Pinto**

And I do have a follow-up question, Madame Chair and that question is about that grading of the hill. What steps have been taken that I'm maybe not aware of at the present time to ensure that there are no landslides or a shifting of any of the soil during minor earthquakes, what have you. In recent years we have had issues in Pittsburg where homes have slid down due to unstable ground conditions. Could you address that please, if you can today?

**Louis Parsons**

Have we gone out and done additional recon other than what is in CEQA document, no we haven't.

**Commissioner Pinto**

Thank you.

**Albert Seeno**

If I could step up to the podium, Albert Seeno with Discovery Builders, let me answer that question real quick for you, a little more clear. Yes, we have remediated all the soils conditions on that site. If you look at The Pointe site when we built Black Diamond Ranch we had to look at the upslope conditions were all these houses are built all along these areas. And we went in and did all the, I'm going to call it the open heart surgery. Where you go in and remove all the slides and anything that would affect the down slope conditions. We took care of all that. And I think that Louis is trying to say, Mr. Parsons is, when we come in, if we do come in, if this project does get approved, we will be making the cuts necessary, we will actually be offloading some of the unstable soils, if there is any better in the center of the hill, so to speak and as you make the cuts then

we'll take care at any other remedial grading that's necessary but once the houses are built there won't be any slides, there will be no sloughing, it will actually be flat pads, very stable just like (inaudible) and Black diamond Ranch. And actually Black Diamond Ranch had cuts and fills of well over 40 feet. So even though that sounds like a lot as you get to the top of the hill and you're taking down so much and it's getting larger and larger, you're making the pads for the homes. But Black Diamond Ranch with the approved Sky Ranch there will be 10 to 12 times the amount of grading that'll be needed for that Black Diamond Pointe on the next-door neighboring property and also within Black Diamond Ranch we did all the grading necessary there, which was for this part of Antioch was pretty extreme, in those times, which is 04-05, so hopefully that addresses some of the concerns there.

### **Commissioner Pinto**

Yes it did thank you. And whenever last question from me is, the existing retaining walls that are there, will there be any kind of impact of this grading to those retaining walls? And if so any steps that would be.

### **Albert Seeno**

There will be no impact to those retaining walls. All the retaining walls in the rear yards where I think you're talking about, in this area right here, there are those three-tier walls, there will be no impact to those walls. Those all have what's called geo grid and that goes into the hillside, you know, the block itself is more than just a façade so that looks nice, but geo grid is like a fabric that is laid in layers every so many feet and then compacted engineered fill is placed and then another layer of grid and that stabilizes those slopes before we made the cuts for those specific lots in that area. Another thing is, if you look in this area and I probably don't have that best slide, I'm not sure exactly how to go back, if you look in this area, right in here, these lots were left out years ago when we purchased this project it was already entitled by previous developer through the City and they left these lots out. They didn't leave them out for a specific reason other than it was always somewhat contemplated that something would go here. And that was going to the access to get up to the property. They left out so many because they didn't know if the street was going to lineup with, I think this is Suncrest Drive and Countryside Way I believe, or Street, and so what we did, we haven't built on a couple of these lots over in this area so we can come through and actually make the alignment in this area here but at one time there was an alignment that was proposed for this area so I'm not to put words in anybody's mouth but there was always some type of contemplation that something was going to happen with this and that's when we were able to get the approval to move forward with rezoning the property from the open space to designated developer remainder parcel. So if there's any other questions.

### **Chair Hinojosa**

I actually do have a question, thank you. Some of the features, the debris benches, head walls, drum water diversion pipe line, the v-ditches, regraded slopes etc., just to name a few, would warrant long-term maintenance and repair and to ensure their

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continuing function. I'm just wondering if you can explain how you propose to maintain these features and ensure that they're functioning properly?

**Albert Seeno**

Sure, on all the ditches and retaining walls that are in actual Black Diamond Ranch property rear yards, those will be maintained, if they're not maintained by the City, they are going to be maintained by those property owners. Everything within a heavy black line on this side of the property will be maintained by the Homeowners Association so there will be a Maintenance Association to cut the lawn on the tot lot, they will also go through and clean any v-ditches that get debris or leaves from trees and the catch basins etcetera, very similar to any HOA that is in this City or neighboring cities. That is very typical they will go through and clean out the sub drains every year for winter time and make sure everything is properly functioning and I think there's an engineer's report and a cost center that everybody will have to pay into. To a certain extent, we try to keep it very nominal because we don't want to overburden the homeowners but we'll try to put everything in here to where it is very easy to maintain and the Homeowners Association doesn't have to spend a lot of money doing that and they're long-lasting and have life expectancies of 25 to 30 years, things like that.

**Chair Hinojosa**

One of the concerns that was raised in the letter from the Black Diamond Ranch community was whether the HOA could continue to provide the necessary funding to maintain the infrastructure on-site. I'm just wondering if you are planning to provide some pre-funding or if there's been a considerations made on how to start that HOA and help fund it from the get.

**Albert Seeno**

Well sure we do many HOAs, none have to be pre-funded. You know usually there's a phasing plan and being that this doesn't have clubhouse and swimming pool, even though they are Maintenance Associations because that's really what they are because they are not that's what they are they are really providing a service where there's a lifeguard on duty or somebody that's turning on the lights inside of a community center or something like that but here it will be very nominal. I don't know what the cost would be but I'm sure it's probably well less than \$100 a month or something like that. Don't hold me to that figure but we try to keep it down to \$65-\$70 a month or something like that, in that range.

**Chair Hinojosa**

Thank you. Are there any other questions of Mr. Seeno? Commissioner Westerman.

**Commissioner Westerman**

Speaking of the HOA, the streets in this project are privately owned by the HOA also right?

**Albert Seeno**

Proposed, yes sir.

**Commissioner Westerman**

So then the HOA would be responsible for any maintenance of the streets, storm water drains, pocket park, water retention basin. It seems like a lot to me, it could be a fairly heavy burden on the HOA particularly when the time comes when you might need to resurface the streets or something like that and you mentioned that you're trying to keep it under \$100.00 per month. I mean do you have any better estimate, you know maintaining streets can be an expensive process after a bit of time.

**Albert Seeno**

And so what we do on these types of streets, we usually have a thicker section than what is the city standards and I don't know the city standard, I believe it's like 3 inches of asphalt over 8 inches or 9 inches of asphalt-base rock and then usually they have a fabric or what not and so what we'll do is we usually go a little bit thicker on that so the maintenance doesn't have to, that's all I have to do is slurry seal that every few years and they won't have to do actual asphalt repairs. The City will have, the way will propose it is, the City will have an easement to take care of any City water lines or sewer lines and then if the City doesn't want the storm drain the HOA will take that over also and there's very little storm drain here, a couple catch basin and everything usually flows down to City facilities and ties into the existing infrastructure within the Black Diamond Ranch property.

**Commissioner Westerman**

Okay so this is a gated community which of course means there's going to be a gate. It's going to be a card operated access, this is not going to be a manned gate is it?

**Albert Seeno**

No we will propose they have like a card access or they'd have like key fobs, You know they'll either pull out and flash that or it will be with the garage door opener clicker system or a punch code, if you have visitors. They can call and get a code or call one of the residents and so we'll usually put all those in together and then give that to the HOA manager and they'll program, and as we sell homes, they will have all the paperwork for the different codes for inputting and what not.

**Commissioner Westerman**

Okay. Thank you.

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**Chair Hinojosa**

Are there any additional questions for the applicant? Yes, Commissioner Pinto please.

**Commissioner Pinto**

So what is the life expectancy of the asphalt that you're going to be using, the thickness included, the sub-base, the entire package? What is your life expectancy of this road base that you're going to be building here?

**Albert Seeno**

I think roadways on this obviously will last 25 years. I'm not telling you that there won't be some maintenance just like any city streets the more traffic and you have to do crack sealing and you'll have to do some type of a seal coat or slurry but if you take care of that and to take care of any maintenance issues that go along with that it will last, you know, you have some roads in the city that, I'm sure have probably lasted 25 - 35 years.

**Commissioner Pinto**

Okay and also will the developer provide the maintenance requirements, the rotation, how often it has to be sealed and what have you? The HOA members are not necessarily going to be engineers and construction.

**Albert Seeno**

Correct. So we will get Homeowners Association or a person that will come in and they will create a range of assessments. It will be a book and it will talk about the roads, it will talk about sidewalks, it will talk about the gate, the motors, if there's lights on gates, you know, how many times they will have to change the lightbulbs, or if there's lightbulbs on the gates or if there's pathway lighting or if there's the pathways. It will tell you every year, what the frequency is and how much the cost would be. And so as the money accumulates upon the 60 people living there the money will go into a kitty and then that'll be used and appropriated as needed to take care of those items.

**Commissioner Pinto**

Okay, thank you.

**Albert Seeno**

Yes sir.

**Commissioner Motts**

Madam Chair

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## **Chair Hinojosa**

Commissioner Motts

### **Commissioner Motts**

Yes I have several concerns relating to some of the issues that have been brought up by the City and also by then citizens, which I think we'll probably hear. But mainly from and I'm not sure if you were provided with the documents from Save Mount Diablo and also East Bay Regional Parks. I am concerned with that view shed there with the acquisition of Moller Ranch at the entry to Black Diamond Mines Regional Park becoming what I believe to be their new headquarters for the park and the substantial change in the view from that area with this project and they outline some of the things in their letter here that would make it more acceptable and I don't know if you had a chance to take a look at those. I could read it real quick if you want.

### **Albert Seeno**

If you'd like, go ahead.

### **Commissioner Motts**

They're fairly major but I wanted to get your take on what that would be. Three or four of the Mitigated Negative Declaration shows and landscaping plan that contains two major east to west terraces that are used to buttress the houses along that ridgeline above. Removal of the housing units above these terraces would substantially reduce the visual impacts as seen from the preserve. At a minimum this would include elimination of units 19 through 34, as shown on figure 4 of the MMD. This would also require the removal of b drive and changing the plant materials in the proposed terraces to native grasses so they blend with the undisturbed slopes above. I just wanted to see how you.

### **Albert Seeno**

All I can be is pretty honest with you. I'm a homebuilder we are on one side of the fence and you know the Save Mount Diablo and East Bay Regional Park, I think they do a good job. They are good custodians of their property. We have a lot of properties where we neighbor each other and I think the Moller Ranch was a beautiful gift that was given by the Williamsons to them which they don't own yet and I know that they are anticipating that they are going to be the custodians of that property and you know I just like Black Diamond Ranch they had opposition letters on that and Sky Ranch and all the other properties that we've built and I think we just have to work together. I don't want to lose any units, you know I've reduced the property and scaled down the project over the years and the property has been in process for, I want to say for about nine years now, eight and a half years since the inception of starting to talk about what we are going to do and obviously the downturn in the economy might have slowed things down just a little bit but we have continued to process and so hopefully that's somewhat of a forthright answer that I can give you. I'd like to build the project and obviously I can't do



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it if there's 40 lots and it gets to the point where, I don't want to talk economics but you can't put in all that streets and do all the infrastructure, you just eventually if it doesn't work out, I don't know what you do, you move on, so.

**Commissioner Motts**

Thank you.

**Albert Seeno**

Yes sir.

**Chair Hinojosa**

Are there any more questions for the applicant at this time from the Commission? Seeing no additional questions, thank you Mr. Seeno and Mr. Parsons. Okay, now we are moving along to the public hearing portion of the agenda. I would now like to invite members of the audience to speak. I have several speaker cards here and I'm going to begin with calling those who people who indicated they would like to get up and speak. I will begin with Robert Williams, followed by Michael Mikel.

**Robert Williams**

Good evening my name is Robert L Williams and I live at Black Diamond Ranch and I have a couple of questions for the committee and for you. The developer must address these concerns and these concerns are we had a meeting in the Black Diamond in the terrace area this evening and that's why some of us are here and so I would like to give you this questions, okay? The safety mechanisms are in place for fire and emergencies, the question is, in the area now where are the fire department, the police department or any medical facilities there. Where are they located? Okay this is a safety hazard. If you build, where are you going to put the firehouse, the ambulance, the something for the children and the residents in this area? Second question, what is constructed type of a good neighborhood wall? We are talking a construction type wall? Is it going to be a T or an L? Okay L for water going one-way or another or just a T. And that is construction for you. Okay. Next question, what is the plan for inclusion of the safe walking way and sidewalks coming into the Black Diamond area there is no sidewalks at all. Several people have been killed; you can see the flowers out there, alright. Some of the animals have been killed, okay. Going into James Donlon highway okay coming from, I'm new in this area now, I've only been here since January 30th, so Somersville and James Donlon Boulevard there are no sidewalks at all, No stoplights, no sidewalks, no safety precautions but yet you want to build a new residential area with one road in. Where is another road out for emergencies? If James Donlon and Somerville, there's a bad accident what happens to the people that are already there in Black Diamond? Okay, nothing has been addressed to this. Utoh.

**Chair Hinojosa**

That indicates that you're running out of time, please go ahead and finish your thought.

## **Robert Williams**

Okay, let me move on real quick. I've got three more to go. Okay, what plan is improved to be made for the existing community? What construction plans are in place to allow the current residence of the Black Diamond Terrace community function without encumbrance the construction company or already negative impact area? The last one, the community impact study that reflects the current population must be complete by 2013, information I got from the City Hall to reflect the existing families and functions. In other words all of us okay, what have you (inaudible) fire department. I have a personal question where is the fire department in that area? That's it.

## **Chair Hinojosa**

Thank you Mr. Williams. Next up is Michael Mikel and following will be Roy Norwood. Mr. Mikel.

## **Michael Mikel**

Hello and thank you Commissioners for the opportunity to address you. My name is Michael Mikel I live at 3555 Countryside Way. Me and my wife bought our property in 2007. At that time it was a tough road in order to make, I know you remember in 2007 it was the height of the building industry at that time. And houses were expensive but we were able to scrape the money together and we bought that house in that development because we were hoping to not just live in the neighborhood but to live in a community. And over the last seven years that is pretty much what we have developed. We have neighbors that we know, we have neighbors from all walks of life and these neighbors over the last few years we have come together picnics, community meetings, where we block off the street and meet each other. We had a social website that we developed where we can keep each other up on what is going on in the neighborhood. This all came about through an effort and the reason we did this is because we wanted more than just the neighborhood we wanted a community and part of the problem, we have a number problems we have with the development that we are seeing. By the way, we have approximately 50 people that we were able to get in the short time that we had to sign on to our letter that you guys have and part of that is because of this community that we developed. And but we really want to make sure that you understand is that Black Diamond and Terrace development here is not just a number of homes they are a community and now we find out, just in the last few weeks really, I believe it was October 8th we got the letter that Seeno homes wants to put a gated community in the midst of our community. Now this is a gated community that we had no idea what's coming. When we bought our property in 2007 we were told that that hill was gonna remain open space. A number of people who were on that list, that signed petition, were told that that area was not going to be developed, ever. As a matter of fact, a number of people that bought homes there paid a premium for the lot because of the view of the hillside. Okay, then out of the blue, as far as we're concerned, they want to put this giant community and I say giant because they claim it's going to be executive homes, these will be large homes, but I don't consider them executive. As mentioned there's no swimming pool there, there's no extra amenities at all. It's just big homes in a

gated community, which will mean that they are going to separate us by design from everyone else in the community. We are not going to be able to meet these people. We are going to see them driving in and driving out, so the number one thing I wanted to make sure I got across to you is that we didn't have a chance to really have any input in this decision, up until now. I think if Discovery Homes wanted to build something in the midst of our community they would've taken the time, It would've been smart to take the time to talk to the community and let us know what they planned and get some feedback from us. We think that the Environmental Impact Report is a must. We need to have that. Everything else of these guys are coming up with is speculation but we are here to tell you the reality is that these are people living together trying to create community and it's going to be decimated by this development. Put in like an apartheid system between us and the rest these people. It's not necessary and I hope that you guys will take the time or at least allow us more opportunity to get some studies that we can present. Because again, I say we just didn't have the time. We were in shock basically when we found out about it.

**Chair Hinojosa**

Thank you Mr. Mikel we appreciate your comments. I'd like to just turn for a second to Ms. Nerland, I wanted to just confirm a time limit is three minutes for comments. I know I have a lot of speaker cards here and I want to make sure that everyone has the opportunity.

**City Attorney Nerland**

Correct, the typical time limit is three minutes. It is obviously the discretion of the Chair with her to allow people to extend, it's usually protocol to let people wrap up their comments but I think the Commission certainly wants to hear from everybody that you have speaker cards from.

**Chair Hinojosa**

Absolutely thank you. Okay so you are Roy Norwood?

**Roy Norwood**

I am.

**Chair Hinojosa**

Welcome.

**Roy Norwood**

Good afternoon my name is Roy Norwood. I'm resident of Black Diamond and I'm here to just simply say that I ask that you deny Discovery Builders request to build homes in our community. As the gentleman stated before, well first of all, I have heard nothing to suggest that they have done anything. There have been no environmental reviews on

how it would affect anything and for anything to be built on that hill there should be Environmental Review Impact Study. I mean, first and foremost they have not given any guarantees on the hill if it would be any sliding, which it will be. As stated before I am a resident there and there are slides in the Black Diamond resident as we speak now. Homes are cracking and so forth. Also, should they be allowed, which if the rules are followed the way they should, they should not be allowed to build there. There is also the issue, as a gentleman stated earlier, of the emergency needs. If a major disaster happened anywhere up in a particular area there is no way out of the area. There is one way in and there's one way out. As far as the traffic, traffic is just, I called the city and they said the builders responsible for the roads, the sidewalks, stoplights, for any more homes to be built up there all these things need and should be taken into consideration. There are no lights, no sidewalks, major accidents. And listening to the gentleman from Discovery and stated that one location would have no more grading and other, that's totally incorrect. Sky Pointe.II is relatively flat. I suggested the members go to each of the sites to view them and judge for themselves which ones going to need a considerable amount of grading and which one is not. And with that being said, I would just like to reiterate that it is clear that no guarantees have been given as far as impact or any studies that would have on the hill itself and with the residents that are living there now and there has been no guarantees. Thank you.

### **Chair Hinojosa**

Ok Thank you Mr. Norwood for your comments. Our next speaker is Regina Norwood, opps, sorry, I'm sorry. Okay, Nancy Woldering.

### **Nancy Woldering**

Hi Chair Hinojosa and Commissioners. My name is Nancy Woldering and I represent save Mount Diablo. Save Mount Diablo is really concerned about this project because the open space was set aside and if a developer can simply say later oh now we want to build that area we feel as though it sets of really bad precedent and I think East Bay Regional Parks echoes that concern. So that's the number one concern. And we're also very concerned that the project represents massive grading. You have a General Plan that says avoid massive grading. The project involves massive grading. The General Plan, it's an interesting General Plan and it's a good General Plan and it involves a lot of policies that basically function as mitigation. But the problem is this kind of proposal where they're asking you to waive the policies, if you have policies that avoid significant impacts, if you waive the policies, what are you left with but significant impacts. And so, we highly, we strongly believe an EIR should be prepared for the project because we don't think the impact has been looked at of what happens when you waive these policies and I think and actually your EIR consultant has done a good job at identifying a number of these issues like for land-use planning, absent approval of the General Plan amendments there are components of the proposed project, the project's conflict with low density residential designation would be a significant adverse impact. So please waive the requirement, that doesn't make sense. The CEQA process does allow, through any EIR, for you to decide you're going to adopt a statement of overriding considerations. Where you say, oh this is so valuable that we understand these impacts but other than that you are required to mitigate significant impacts and I

would argue that there are many issue areas. It is unheard of that grading, of, I've heard 104 feet, I've heard 125 feet I think in the environmental document, that a project of that magnitude does not go to the State clearinghouse so Fish and Game, so the Regional Water Quality Control Board and other agencies have the opportunity to review it and comment. And Save Mount Diablo really does not recommend development but should this site be developed, you as staff and as Commissioners have provided really strong guidance to the applicant by saying that the plan be substantially revised so that the form of the existing hills are largely retained and these are in the staff comments from 2007. That mass grading of the site not be allowed. That slopes between building pads and building lots left ungraded. That the environmental review process for any future entitlement application include a detailed visual and slopes analysis to determine how any proposed plan complies with all the city's General Plan and zoning and hillside development requirements. But in fact, you're looking at a plan that ignores all of your direction and as a result would result in many significant environmental impacts. And so I think you're being asked with this proposal is, are you willing to waive your planning framework. A planning framework that was developed to protect your community and if so what kind of precedent does that set. Thank you.

### **Chair Hinojosa**

Thank you Ms. Woldering for your comments. Okay are there any other members of the public that wish to speak on the item this evening please come forward. If you could had your form please to the secretary.

### **John Neal**

My name is John Neal. I live in the Black Diamond Estates area. I live on Roberts Court, 4020. I'm at the bottom end of the proposed summit entrance to the development. Currently I've had to invest approximately \$10,000 in regrading french drains, ground compaction. Within the last three years, my property has flooded, all three years during the high point of the storm seasons. This hill, if they take the top of the hill down is going to increase the runoff to the three stages of properties that are built above mine for two blocks and as well as my property itself I've already incurred a settlement of 4 to 6 inches from one point to the other, hence the additional soil being brought in and impaction, compaction and such to try and correct the flooding issues. I've see no reports of any kind as to what they would do to either mitigate or control additional runoff from the hillside. Another concern is all the construction going in and out is directly be behind our property. Is it going to be any kind durations or control of the vehicles in and out through there? We've had several accidents with construction vehicles, water tankers and such. I myself was almost hit three days ago with my daughter in the sidewalk by a water tanker it was not paying attention and ran through the stop sign. We have no control of the traffic in and out from Somersville to James Donlon connection right there and that's also been a safety concern for families. And those are my concerns.

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**Chair Hinojosa**

Thank you Mr. Neal for your comments, next I have Larry Tong Inter-agency Plan.

**Larry Tong**

Good evening Chairperson and Commissioners. My name is Larry Tong. I am the Inter-agency Planning Manager with the East Bay Regional Park District. As stated in our October 28, as indicated in your packet the East Bay Regional Park District believes that the city cannot make the findings needed to support the General Plan amendment, the rezoning, the tentative map, and the Mitigated Negative Declaration. I would not reiterate what is indicated in our letter but I would add in particular that the proposed removal of 104 vertical feet of hillside is the equivalent in height of 9-10 story building. That proposed project is simply not consistent with your General Plan. The Mitigated Negative Declaration does not adequately address the significant adverse impacts specifically land-use and aesthetics. The General Plan provisions regarding the community image and design are critical components of your quality of life. They should not be waived, they should not be ignored. Regarding the Seenos, the Park District has worked cooperatively with Seenos on other development project. This one we feel should not be approved. Thank you very much and I'd be happy to answer any questions you might have.

**Chair Hinojosa**

Thank you Mr. Tong I appreciate it. I'll bring you back up if we have any more questions. Thank you. Next I have Marty Fernandez.

**Marty Fernandez**

Commissioners I don't even live close to that area, I live off Gentrytown. But in the morning it's a madhouse. We don't have bus service for the kids. This area is going to be in our School District, so they'll be 60, 70, 80 parents bringing their kids to Mission School, which is just a mess in the morning. This morning I was going down Somersville. I was wondering why on the new freeway on the on ramp off Somersville there are three lanes. They were backed up all the way through the intersection all the way past Lowes and we're gonna put 60 more houses up there? It's just ridiculous. This item, you shouldn't even be considering it. Two Mayors ago, this was taken care of. They had their lawyers here, they had their planners here, they had everything and they were turned down, so turn them down again, thank you.

**Chair Hinojosa**

Thank you Mr. Fernandez for your comments. I have some additional comment letters here that was to be read into the record. Am I allowed to state the names of the persons commenting?

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## **City Attorney Nerland**

Yes, typically, you state the name and the comment can be ready in three minutes. You could read it, if your voice gets hoarse I'm sure we could take over or one of your colleagues can take over.

## **Chair Hinojosa**

Okay thank you. So this comment is from Regina Norwood, she says my main concern is safety we need more lanes on Somersville, a light signal placed at James Donlon and Somersville and buses that run up to Somersville to Black Diamond Estates. Enough deaths already, one is too many. Our kids walk to Gentrytown 1 to 2 miles just to take the bus to school. Traffic is horrible during commute hours on Somersville. No more houses until safety issues are fixed.

Another comment here from Darryl Parker. The comment is: when we bought our house the builder told us that the area will be open space. This is the main reason we bought our house.

Next comment from Margaret Ellen Verbin: Comment #1 Extreme grading will expose Torgensen Court for views of factories by California Avenue and Pittsburg Antioch Highway. #2 Not clear what intention is with Torgensen Court other than EVA; object to grading of hill behind my home. #3 would like more time to respond in writing to study etcetera if appropriate and further action is warranted.

And lastly, Radiah Mikel: And the comment is, this is not good. We purchased our home with Discovery and was told the hill will remain open wildlife space. The community does not want this to happen

And that is all the comment letters I have, I have an additional comment letter here from Louis Parsons but I think that was speaking on behalf of the project as the applicant. Are there any more public wishing to comment on the project at this time? Okay, seeing none. Actually I would like to ask if it was appropriate, since the public hearing is open to ask a question some of the speakers? Is that acceptable protocol? Okay. I'm curious and I'm not really sure you can address this question but this is regarding the letter received from Black Diamond Ranch Homeowners Association. I'm just curious if the CC&Rs have been reviewed to confirm that developer had promised to keep this area as open space? If anybody could address that question.

## **Michael Mikel**

I can't directly address that CC&Rs but I can tell you for certain the majority of the people that signed the petition told me that the salespeople told them that that area was open space. Looking at this brochure that we got, I can see now that at time that we purchased our home they were already beginning to try to get the change over from open-space to allowing the development. They never told us that and everybody that I talk to has said the same thing. Basically that this space would be open as I've mentioned earlier, some people bought lots at a higher price, a premium lot with the

idea that they would have a view of the mountain or the hill, okay. Never did anybody and I believe a number of the terraces who bought homes in the last few years were also told that that was open space. So if we had more time we could get a list of the people this was told to but I can tell you that some of the people that I talk to, it's a large majority of the people who've purchased homes and for myself and my wife that was a determining factor of the lot that we bought. Because we are at 3555 Countryside, we are directly facing the hill and we are two houses to the right of the Summit Way that they are now planning to cut into the mountain. I just want to bring one other thing up. I don't know if you been out there lately it really windy out there. We have lost the number of fences in the area, we're constantly fixing them up because of the shoddy fencing that they have there but the wind comes down from the mountain pretty strong and I don't know what effect that's going to have when they cut 125 feet off that mountain but at the very least we need to get some input from those who have the responsibility to do the environmental reports so that we as a community know what is happening in our community. Instead of just, you know, here this is a fait accompli, take it or leave it.

**City Attorney Nerland**

Could you just state your name for the record? I know you did before.

**Michael Mikel**

Michael Mikel

**City Attorney Nerland**

Thank you.

**Chair Hinojosa**

Yes Mr. Parsons.

**Louis Parsons**

I would just like to address that really quick. You know the CC&Rs, there is a section on future development that talks about that Sky Ranch II project today west but then there's the separate entire section in which talks about the remainder property and it says that there is an approximately 21.03 acres of undeveloped land located within the boundaries of the subdivision. The remainder properties surrounds portions of unit two and three located within the Black Diamond Ranch project. The remainder property is not open space, will not be available or accessible to the public for public use. The remainder property will be developed for up to 100 future homes including grading and improvements. Access points will be provided through existing two and three of the Black Diamond Ranch project these access locations will provide ingress and egress to the proposed subdivision on the remainder property existing streets and courts within units two and three of the Black Diamond Ranch project will be modified to provide access to remainder properties. These access locations are not known at this time.



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Owners of units one, two and three of the Black diamond ranch project may experience dust, noise, additional traffic due to future development and the construction of the remainder property. That's from the recorded CC&Rs and I can send those to city staff so they have copies of it.

**Chair Hinojosa**

Thank you Mr. Parsons. I appreciate you addressing the Commission on that. Yes do we have somebody else?

**Robert Williams**

I stay at 3518 Countryside Way. I just bought my home, January 31st and the real estate people said there will be nothing on this mountain. They should know because I asked them are you going to build anything on this mountain, no we're not, it's gonna be free. I'm from the City and the cows and chickens and so forth I enjoyed seeing it and you got long rabbits with long ears and so far and so forth but that's immaterial but what I'm saying is they told me no and I bought this house because it had a nice hillside and it was nice and quiet. Now you're going to tear it down and the man says he's gonna put a 9 foot, all this dirt is going to be 9 foot. This faces my backyard, okay, you should all come up there and see what they're going to do if you don't live up there at all, we'd be glad to have you and show you around, okay. Like I said I'm new and this is my first public speaking and I'm a little nervous okay but I want to thank you very much.

**Chair Hinojosa**

We appreciate you coming out and commenting. Do any of the Commissioners have any questions for any of the public speakers? I would actually like to ask Mr. Tong back up to the podium please, from East Bay Regional Park District to address the Commission. Thank you for coming to speak on behalf of this project. In the letter provided to the city on the project and environmental document, it's indicated here that a visual study was done from the proposed Moller Hill into and covering the Pointe project and I would just wondering if you mind explaining that a little bit more to the Commission?

**Larry Tong**

Yes as indicated in exhibit one there's a visual identifying the viewpoint on our proposed trail which is on the so called Moller property. So that trail will be an integral part of Black Diamond preserve. So that basically indicates that this Pointe area will be highly visible from the regional park and we feel that it will have a significant adverse impact as viewed from our park site. I would also reference exhibit 2 which is a letter from January of 2007 which highlights that the parcel in question this evening was designated as an open space parcel to be dedicated to the city of Antioch and that was also followed up by July 2007 letter which again indicated that the land was committed to be open space dedicated to the city within an approved subdivision. I'm sure that a review of the staff records of the approved subdivision will bear that out.

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**Chair Hinojosa**

Thank you. And just to clarify you are stating here that from the proposed trail on Moller Hill that the proposed project once developed will disturb a view shed and that has not adequately been considered within the existing environmental document?

**Larry Tong**

Yes.

**Chair Hinojosa**

Okay and your suggestion is that that needs to be evaluated in an environmental impact report or in a revised version of the environmental document?

**Larry Tong**

Yes

**Chair Hinojosa**

Okay, great those are my questions does any of the other Commissioners have any questions, no, thank you.

**Larry Tong**

Thank you very much.

**Chair Hinojosa**

Okay, seeing that there are no other speakers at this time I would like to go ahead and close the public hearing and actually take a ten minute recess if that is appropriate. So we will come back shortly after 8:25, if I could see the clock correctly from here. So public hearing is closed and we will adjourn to recess.

**CLOSED PUBLIC HEARING**

**Chair Hinojosa**

Okay we will reconvene the meeting at this time. Before we went to recess we closed the public hearing and believe that the item is now on the dais for consideration. I believe staff is going to put up the slide which presents that options that Ms. Gentry talked about doing her staff report. Since there is a lot of content to wade through here I'd like to suggest that we share any general thoughts and comments and then we can deliberate perhaps on the items individually working our way through the requested actions and entitlements as outlined on page 2, with the first a deliberation item being the environmental document. My fellow Commissioners, what is the pleasure of the Commission. Would you like to kick it off?

**Commissioner Motts**

Madam Chair, actually I wanted to ask a couple questions of staff before we got into that. A lot of what was put forth by the community here seemed to be safety concerns. Do you anticipate that the expansion of Somersville Road and then the eventual completion of James Donlon if it connects the way it's proposed will alleviate some of those issues as far as access to that area?

**Senior Planner Gentry**

I'm going to defer to Mr. Bernal to discuss the widening of Somersville and the James Donlon extension.

**Ron Bernal**

So the Somersville Road widening is scheduled to be completed by the end of next year so by the end of 2014 and what that would involve, as it currently stands, would be four laning Somersville Road, traffic signal at James Donlon and Somersville and sidewalk down the west side of Somersville so that's what's proposed by the end of next year. Regarding the James Donlon extension that's a further out project that is in the regional plan but probably won't be done for several years. So that connection, that second way out will take a while. The Chevron property to the north has a road that would connect into this development, when that's developed but that that is probably a few years out, as well. So as far as having a secondary access it's probably not to happen in the near future.

**Commissioner Motts**

Thanks Ron. One other question, the original switch from open space to residual development property. The reasoning behind that was it just that the developer has requested the possibility of developing that land or was there another? I know this goes back a few years but I'm assuming some of you might have been here.

**Senior Planner Gentry**

The original proposal included the subject parcel be dedicated to the city as open space, however in 2005 the applicant requested that they open space designation be changed to remainder parcel under the auspice that they were going to propose executive estate housing on that parcel.

**Commissioner Motts**

Okay, thank you.

**Chair Hinojosa**

Yes, Commissioner Pinto, please.

**Commissioner Pinto**

Did the developer meet the three-year requirement that was from the original approval? They had to resubmit?

**Senior Planner Gentry**

They had to submit a development proposal within three years and they did meet that requirement, yes.

**Commissioner Pinto**

Okay and the delays that occurred with this whole project that has come up to 2013 is due to all the other city initiated mitigation issues?

**Senior Planner Gentry**

There has been a variety of different review processes that the project has undergone from the preliminary development plan, to that residential development allocations, to the CEQA document, to staff analysis of the project, working with the applicant to get a site plan that the city could work with in terms of providing conditions of approval as recommendation for the Planning Commission. So it's not an overnight process to say the least, it's been a long process to bring it to tonight, to bring it here.

**Commissioner Pinto**

And one question of staff is; the community that is going to be impacted with this project and I've seen a lot of speakers here today, tonight I should say, and the question is did we have any kind of Townhall meetings or any other community outreach.

**Senior Planner Gentry**

The city was not involved in any type of community outreach meetings I'm not sure if the applicant did any on their own. Maybe they can answer that question if they did do that with the community.

**Commissioner Pinto**

And so before we even ask them to answer if they choose to, so the community basically based on statements made this evening did not know much about this project until the letter that they got just a few weeks ago?

**Senior Planner Gentry**

That's correct. The city followed the proper legal noticing procedures for the project.

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**Commissioner Pinto**

Sure, but no special outreach?

**Senior Planner Gentry**

No.

**Commissioner Pinto**

Okay, thank you.

**Commissioner Baatrup**

Madam Chair.

**Chair Hinojosa**

Yes, Commissioner Baatrup.

**Commissioner Baatrup**

A question for staff on the process first. It seems that there's a 1 and a 2A and a 2B I'll say. One would be the approval or the acceptance of the initial study, mitigated negative declaration but it doesn't seem that if we don't approve that that we can approve then go 2A item. Am I correct in my interpretation here?

**Senior Planner Gentry**

Essentially the environmental document needs to have a positive recommendation to Council of it being deemed adequate in order for the Planning Commission to act on any type of approval for the project. Does that answer your question?

**Commissioner Baatrup**

I wanted to just clarify that and I think you did, yes, thank you. Secondly, you mentioned in your staff report that there was conversation from earlier in the year until the release of the document of aesthetic conversations you were working out with applicant. Can you elaborate a little bit more on where you were having to work out with the applicant aesthetic issues that were covered by the document unless I misunderstood what you said.

**Senior Planner Gentry**

Because the potential of the environmental document to have a significant and unavoidable impact due to aesthetics. Is that the part of the staff report that you're referring to?

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**Commissioner Baatrup**

That part, yes.

**Senior Planner Gentry**

Okay essentially staff recommended that applicant submit in a General Plan and zoning amendments with their application, to address these aesthetic and other potential significant and unavoidable impacts. However I also wanted to point out that not like the other sections included in the CEQA checklist, the aesthetics section is a little bit more subjective. It's kind of a little more of a judgment call. There is no clear threshold to point to, so that's why the staff is kind of putting it before the Commission at this point to make a determination, in regards to that.

**Commissioner Baatrup**

Were there specific issues that he felt needed to be addressed either in the General Plan zoning that really were not, we're more subjective for initial study analysis, were their specifics you were concerned about? Or did you just felt that the materials were clear enough to convey the aesthetic impacts?

**Senior Planner Gentry**

I don't think that the analysis is substandard in anyway that is contained in the environmental document. However, it is more of a judgment call in regards to the aesthetics.

**Commissioner Baatrup**

Right but you brought that up as an issue. Were there specific issues that you felt you needed to bring that up that weren't addressed adequately or you felt needed to be brought out more for consideration? You raised an aesthetic issue that he felt had to be addressed but were there specifics of that?

**Senior Planner Gentry**

I mean I think that there could be an argument made in the aesthetics section, you know removing 100 vertical feet of the hillside could be an impact in the aesthetic section. They were all analyzed in the environmental document and brought forward however they were deemed to be less than significant.

**Commissioner Baatrup**

Okay, switching subjects a little bit. Now, if one brings forward a project that requires a General Plan amendment, how frequently does it warrant taking it to an Environmental Impact Report versus covering it through some sort of ISMMD?

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**Senior Planner Gentry**

I don't think there's any, I mean maybe, I don't think there's anything clearly that we can point to necessarily.

**Commissioner Baatrup**

And I'm not absolute I'm just saying generally half, some, a few, never?

**Senior Planner Gentry**

The city can only essentially entertain or approve four General Plan amendments in one year so we don't see a whole lot of this request come through and I think you have to look at a project as a whole and what kind impacts the projects is going to have and whether or not an EIR is the appropriate document or whether an MMD is the appropriate document. An ambiguous answer I know but it's kind of on a case-by-case basis.

**Commissioner Baatrup**

As typical with the CEQA. There's a lot of ambiguity that you have to work through the result what makes the most sense for your particular agency. I get that. I think that's all I have questions for right at the moment, thank you.

**Commissioner Motts**

Madam Chair.

**Chair Hinojosa**

Yes, Commissioner Motts.

**Commissioner Motts**

For myself given the background of just the issues that staff raised in consideration of the identified issues that could be a problem onto the more of the specific issues raised through Save Mount Diablo and East Bay Regional Park concerns, I can't see where it rises to a place for amending the General Plan at least initially here because even in your own discussion of, I know the general plan talks about a desire for upscale housing but the analysis there is that it's a very little impact as far as affecting the economy in that locality. So I'm not sure that it rises to, for myself, to that level and within the choices that we have here I think that it might be appropriate to recommend for the Environmental Impact Report. It might identify a lot of these other issues that everybody has been talking about and alleviate some of the concerns and then possibly move forward in a new way. Thank you.

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## **Chair Hinojosa**

Thank you, Commissioner Motts.

## **Commissioner Baatrup**

Madam Chair, I'll offer some comments now. I guess I'm not comfortable that the Mitigated Negative Declaration is an appropriate document for this project in the severity of the construction that's necessary and the exceptions that are necessary to meet General Plan and zoning conditions that have been established by the city and so I can't get on board to recommend adoption of a Mitigated Negative Declaration or at least what's in front of us tonight. I think there are too many significant exceptions to what has been put in place under the General Plan through the hillside ordinances or hillside policies that are out there through the General Plan and Hillside Development District. There is just too many exceptions here. I think the project comes forward to us in 2005 where it was proposed, at that time as open space. After 2005, sometime between that and February 2008 the property owner decided that it would be an opportunity to develop the project and I understand that it's perfectly within a right to do so but I think some of these property owners who bought in the 2007 time period were under the reliance of what had been approved which was either up in space or that the applicant could come back at some future time. And I think that there is a necessity to vet this a little bit better through an Environmental Impact Report is probably a more appropriate approach and I think that construction is just too severe so I think the actions that I would be willing to support is to not recommend that the City Council adopted Mitigated Negative Declaration and deny the project to the City Council at this time.

## **Chair Hinojosa**

Thank you Commissioner Baatrup. With any of the other Commissioners like to make a comment? Yes, Commissioner Pinto.

## **Commissioner Pinto**

Thank you Madam Chair. I am all for development and construction which creates jobs in the local community however I think this project as presented tonight and over several years is not something that I can support and for the following reasons. The issues are the traffic flow on Somersville and James Donlon especially one way in and one way out, two lane of roadway at the present time which could be extended I hope by completion of the 2014 project, the widening. That's an issue for me as is for the residents. The fact that the air-quality board did not review or be part of the EIR is also an issue for me. The bigger one is the hillside grading as proposed especially with the removal of I guess 104 feet of the hill. And last but not least, the kids who will be moving into this development if it proceeded, as is, some of them are going end up at Mission School so again traffic issues as presented will arise and I think this project is a good project however not very well thought out. And last but not least, is that the community was not involved in the decision-making process. They never got a chance to comment on their views of this project. I think an outreach should have been initiated



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either by the city and or the developer and none of that actually happened and I don't it's fair to the local residents to have a major project like this occur in their backyard, literally, with no input from these residents. So I will not be able to support this project as presented.

**Chair Hinojosa**

Thank you Commissioner Pinto. Commissioner Westerman would you like to make a comment?

**Commissioner Westerman**

Yeah it seems to me that the normal way of doing a project, is that you design the project so that it conforms to the various requirements and to zoning and to guidelines and that sort of thing. So the guidelines, you know all of this kind of defines with the project is. It seems like in this case the project came first and then we want to change guidelines and requirements and zoning to fit the project and I don't think that the proper way to go. Particularly with the General Plan and paragraph 5.4.14 that has to do with hillsides. You know I think if we would approve this it would be setting a precedent that would be undesirable, could result in other projects coming along and people saying well you approved for these guys, you should approve it for us. And that puts us in kind of a precarious position. So anyway to make short story long or vice versa I'm not supporting this project.

**Chair Hinojosa**

Well it seems that all the Commissioners have spoke. So I guess I will go next. First, I would actually like to thank the applicant for the interest in our community. I really like the proposal for executive and estate type housing and I believe that this type of development would be an asset to our community. The proposed project is in a beautiful area with the surrounding hills and East Bay Regional Park District however I just really wish that the applicant was proposing a development plan that is sensitive to the existing terrain, views, and natural land forms surrounding the site. I do agree with some of the arguments that were made that when you take a step back and look at this project and regional scale not just with what's happening in Antioch but also immediately adjacent to the site in the city of Pittsburg for the Sky Ranch property, that it's a little bit easier to place this project into kind of a regional perspective. The staff report points out that the site could be considered an infill parcel because it's surrounded by existing and entitled development, including the Sky Ranch project which proposes to be built at similar elevations as the proposed Pointe site. In essence, putting aside the massive grading and elimination of the ridge top and hillside policy issues, the project appears to be consistent with regional development plans. I think that kind of stepping back from it you need to look at the bigger picture in terms of what's happening through this corridor and the project at this site is not too unlike what is happening at Sky Ranch including a lot of the cut and fill and development of the site on ridges and hillsides. I do think that by creating a Planned Development Community the applicant is afforded greater density it allows for more flexibility in planning. Including to be able to be more compatible with the existing and the proposed development on

surrounding properties. I like the idea of a Planned Development to allow more flexibility at the site. There are some constraints with hillside development policies. I'm not saying I don't agree with all of them, in fact I very much support all of our hillside development policies, but I do believe that it's hard when you have such a constrained site to apply all the requirements. I do really struggle as to whether or not supporting this project should come on the back of exercising kind of freedoms and liberalities with the city's land-use plans and policies. In essence by allowing developers to pick and choose when certain regulations apply. I simply do feel like I can just not outright support a waiver of the hillside development policies. I really do believe that waiving these policies is not in the best interest of the community. So hearing the recommendations from my fellow Commissioners, we seem to have a couple statements to be outright denial with Commissioner Motts stating that, and please correct me if I'm wrong, that you would consider supporting an Environmental Impact Report be conducted for this project.

### **Commissioner Motts**

Yeah, if I'm understanding the way this is written here that it's not requesting an Environmental Impact Report is not considered a denial and that would accomplish I think most of the things that we're talking about here. I would be in support of that.

### **Chair Hinojosa**

Thank you for clarifying. This issue as indicated in packet we have all the history here on the various times it's come to the Planning Commission and time and time again the Planning Commissioners have indicated concerns with the lack of compliance with the Hillside Development District as well as policies. And there have been some modifications made to the proposed development plans to address some of those concerns but the most glaring and obvious being the steep grading and just not complying with all of the plans and its totality. I would like to give a developer the opportunity to pursue the project by preparing an Environmental Impact Report. Having the opportunity for the people who have submitted comment letters, on behalf of the project, to have their concerns also addressed adequately within an environment document. And so rather than outright deny a project, I would like to allow applicant if they so choose to prepare an Environmental Impact Report be it on the proposed project in front of us or if they'd like to go back to the drawing board and deal with the existing zoning and General Plan designations in place.

### **City Attorney Nerland**

So if I might, through the Chair. You had a number of possible resolutions for action. What you don't have before you but we can work on language would be a resolution recommending the denial of the Mitigated Negative Declaration and direction that an Environmental Impact Report would be appropriate. However I would say that if a majority of you feel, fundamentally CEQA is about providing information and if a majority of you feel tonight that there really isn't likely going to be more information that could be brought forward to support why a General Plan or rezoning would be appropriate then the alternative approach would be, not to take action on the environmental review and

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to recommend denial of the project, which is denial of the General Plan amendments, denial of the zoning and denial of the vesting tentative map. So, I think as the Chair indicated some of you have expressed thoughts one way and some have expressed the other but those are kind of the two approaches at this point based on what the Commission has indicated.

**Chair Hinojosa**

Thank you, Ms. Nerland. If I could just clarify if we were to recommend denial of the MMD but determined that an EIR would be appropriate, that would require them to go back, prepare an EIR and then come back to the Commission for consideration, But what I'm hearing you say if some of the fellow Commissioners feel like after preparing an EIR we are going to get much farther or different answers or be able to address the significant concerns then what's the point of doing that.

**City Attorney Nerland**

Right and then you then would be making a recommendation to the city Council which is the final approval body. So, exactly.

**Chair Hinojosa**

What I'm also concerned about is if we recommend denial of the project outright tonight then the project can be appealed to the City Council and then what is going to happen is the City Council has the opportunity to act on the item and to overturn the decision by the Planning Commission.

**City Attorney Nerland**

I would clarify that your action tonight is a recommendation so the City Council was always going to have final approval authority of this project.

**Chair Hinojosa**

But if we decide, if we were to move the direction of allowing additional environmental review that would be something that wouldn't move forward to the Council level until that was done.

**City Attorney Nerland**

I'm not sure whether the applicant would except your action as final.

**Commissioner Pinto**

Madam Chair.

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**Chair Hinojosa**

Commissioner Pinto, please, yes.

**Commissioner Pinto**

If I may comment. Based upon the last information the City Attorney just provided us which is that the applicant may not necessarily be satisfied with the decision that we make tonight which is anything other than approving the project and then they can appeal before the Council. My recommendation would be and I'm willing to change the recommendation into a motion to take the second option as presented by staff and deny the project.

**City Attorney Nerland**

And if I may just clarify the applicant is here and certainly can be asked if they would be willing to consider an Environmental Impact Report given the public testimony at this point. I did not mean to speak on behalf of them I was just sort of laying out the options as I saw them.

**Chair Hinojosa**

I appreciate that. If we were to ask the applicant to address the Commission we would need to reopen the public hearing?

**City Attorney Nerland**

Yes and then just close it again.

**Chair Hinojosa**

Can I get a nod whether or not you would like to speak to this and I will be open the public hearing. Okay, we will reopen the public hearing to allow the applicant to address the Commission.

**Louis Parsons or Albert Seeno**

Just very briefly I'm not going to belabor this, we believe and we've conveyed to staff that this project does not warrant the preparation of an Environmental Impact Report. So we would not be amenable to funding and preparing an Environmental Impact Report for consideration of this project.

**Chair Hinojosa**

Okay we'll go ahead and close a public hearing.

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**Commissioner Baatrup**

I'd like to make a motion.

**Chair Hinojosa**

Yes, Commissioner Baatrup.

**Commissioner Baatrup**

I'm going to follow the action that was recommended for consideration in a staff report that says we would not take action on the environmental document and we would pass a resolution recommending the denial of the General Plan amendment. We would adopt a resolution recommending denial of the amendments, zoning amendments and that we would recommend the denial of the vesting tentative map.

**City Attorney Nerland**

As well as the final development plan and use permit as set forth in the three resolutions as attachment C?

**Commissioner Baatrup**

Yes, thank you for that clarification.

**Chair Hinojosa**

Thank you Commissioner Baatrup. We have a motion do we have a second to the motion for denial of the project as outlined in attachment C.

**Commissioner Westerman**

I will second that motion.

**Chair Hinojosa**

We have a second on the motion for denial of the project. We have the motion on the floor, I guess that nobody else wants to deliberate before we cast vote. Although, the vote has already been cast a half of one of the Commissioners. I just want to make sure that nobody else has any additional questions before we call for the vote. Okay seeing none, please cast your vote. Okay and the vote is five votes unanimous denial of the project as outlined in attachment C of the staff report.

**City Attorney Nerland**

Which again is a recommendation to the City Council for denial so this matter will be going to the City Council. I just want to make sure there is an understanding on that.

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**RESOLUTION NO. 2013-17**

***On Motion by Commissioner Baatrup and seconded by Commissioner Westerman, the Planning Commission recommends to the City Council denial of the amendments to the City of Antioch's General Plan.***

**AYES:** Hinojosa, Pinto, Motts, Baatrup, Westerman  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** Miller

**RESOLUTION NO. 2013-18**

***On Motion by Commissioner Baatrup and seconded by Commission Westerman, the Planning Commission recommends to the City Council denial of the amendments and rezone to City of Antioch's zoning code found in Title 9 of the Antioch Municipal Code.***

**AYES:** Hinojosa, Pinto, Motts, Baatrup, Westerman  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** Miller

**RESOLUTION NO. 2013-19**

***On Motion by Commissioner Baatrup and seconded by Commissioner Westerman, the Planning Commission recommends to the City Council denial of the Final Development, Vesting Tentative Map, and Use Permit (PD-08-01, PW 608, and UP-08-01) to construct 60 single family homes including associated infrastructure improvements, an approximately 10,000 s.f. pocket park and two open space parcels.***

**AYES:** Hinojosa, Pinto, Motts, Baatrup, Westerman  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** Miller

**NEW ITEMS**

**3. Election of Vice Chair**

SP Gentry said that with one member of the Commission absent, this item can be postponed to the next meeting.

Commissioner Baatrup said that it would be worthwhile for all to participate and he would like to continue to the next meeting.

Commissioner Motts confirmed with staff that the recruitment is still in process.

Commissioner Pinto recommended that the Commission proceed in selecting the Vice Chair.

Commissioner Westerman said that he agreed with Commissioner Baatrup and that it was a good idea to wait until the next meeting.

**On motion by Commissioner Westerman, seconded by Commissioner Motts, the Planning Commission members present continued the appointment of a Vice Chair to the next meeting.**

**AYES:** *Hinojosa, Pinto, Motts, Baatrup and Westerman*  
**NOES:** *None*  
**ABSTAIN:** *None*  
**ABSENT:** *Miller*

#### **4. Appointment to Trans Plan**

SP Gentry said that it would be a good idea to appoint rather than continue to the next meeting.

**On motion by Chair Hinojosa, seconded by Commissioner Baatrup, the Planning Commission members present appointed Commissioner Motts to serve on the Transplan Committee.**

**AYES:** *Hinojosa, Pinto, Motts, Baatrup and Westerman*  
**NOES:** *None*  
**ABSTAIN:** *None*  
**ABSENT:** *Miller*

#### **ORAL COMMUNICATIONS**

Commissioner Motts said that Measure C passed which is a huge step for Antioch.

SP Gentry said that the next meeting will be November 20<sup>th</sup>.

There was a discussion of December meetings and that although both dates are anticipated, that two of the Commissioners will be doing some traveling during the month of December.

#### **WRITTEN COMMUNICATIONS**

None.

#### **COMMITTEE REPORTS**

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None.

**ADJOURNMENT**

Chair Hinojosa adjourned the Planning Commission at 9:13 p.m.

Respectfully Submitted,  
Cheryl Hammers