

CITY COUNCIL

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

VIA: Linda C. Lowry, City Manager 

TITLE: TENTATIVE TRACT MAP NO. 53430, ENVIRONMENTAL IMPACT REPORT (SCH #2003051102), MITIGATION MONITORING PROGRAM, ZONE CHANGE NO. 2005-03, HILLSIDE MANAGEMENT CONDITIONAL USE PERMIT NO. 2002-01, VARIANCE NO. 2005-03 AND TREE PERMIT NO. 2005-10 AND APPEAL.

RECOMMENDATION: Adopt the following:

- Ordinance No. XX (2006) approving first reading of Zone Change No. 2005-03.
- Resolution No. 2006-XX certifying the Environmental Impact Report (SCH #2003051102), issuing a Statement of Overriding Consideration and approving the Mitigation Monitoring Program.
- Resolution No. 2006-XX approving Tentative Tract Map No. 53430 and denying the appeal.
- Resolution No. 2006-XX, approving Hillside Management Conditional Use Permit No. 2002-01, Variance No. 2005-03 and Tree Permit No. 2005-10 and denying the appeal.

BACKGROUND:

The proposed project requires an Environmental Impact Report. A Draft Environmental Impact Report (DEIR) was prepared and circulated in August 2004. As a result of environmental issues such as geotechnical, drainage and comments from agencies, the applicant had to restudy and redesign the subdivision and its grading concept. From October 2004 to May 2005, the project was inactive. In May, the applicant informed staff that they have a new partner, hired a new geotechnical engineer and would be submitting a redesign of the subdivision. As a result of the redesign, an update to the DEIR was prepared to address the project's revisions. Finally, the project was deemed complete and ready for Planning Commission review.

On December 13, 2005, the Planning Commission reviewed the proposed project at a study session and public hearing. After receiving information from the applicant and public comments, the Commissions continued the hearing to the January 10, 2006 meeting to allow the applicant additional time to address their concerns regarding the proposed retaining wall

adjacent to Alamo Heights Drive. At the continued public hearing of January 10, 2006, the Commission considered new information from the applicant; and received additional testimony from the residents of Kicking Horse Drive. After their deliberation, the Commission recommended approval of the proposed project to City Council.

ANALYSIS:

A. Summary of December 13, 2005 Planning Commission Hearing

The Planning Commission and public comments were generally related to traffic, drainage, wildlife habitat, sewer/pump station, slope stability and improvement of Alamo Heights Drive.

The most important issue was related to the extension of Alamo Heights Drive and the use of a retaining wall from zero to twenty-six feet in height. The retaining wall will be located on the west side of Alamo Heights Drive at the rear property lines of Lots 4 through 10 of Tract 32482 and Lot 96 of Tract 30578. These lots front on Kicking Horse Drive. Since the existing street grades of Alamo Heights Drive is much higher than the rear of the referenced lots, the retaining wall is necessary to support and align the street with the adjacent project (VTTM 53670, a five lot subdivision).

Based on Tract Map No. 32482, there is a 40-foot dedicated easement reserved for improving Alamo Heights Drive. In addition, there is a 50-foot easement for slope purpose on lots that back up to the west side of Alamo Heights Drive. The applicant stated that he will construct the street improvements for Alamo Heights Drive and the proposed retaining wall within this total 90-foot easement. Also, the applicant stated that if he can obtain an additional 50-foot grading easement from the property owners of the lots on the west side of Alamo Heights Drive, the retaining wall could be eliminated and a two to one landscaped and irrigated slope could be constructed in its place. The slope would be maintained by the applicant and eventually by the homeowners association of the proposed map.

Due to the extreme height of the proposed retaining wall and the concerns of the property owners of the referenced lots, the Planning Commission continued the public hearing. The Commission directed the applicant to consider reducing the wall's height and to continue working with the property owners in obtaining the additional 50-foot grading easement.

B. Issues Raised By Residents of Kicking Horse Drive

Dr. Hofu Wu of 22368 Kicking Horse Drive (Lot 7 of Tract 32482) is not in agreement with the proposed project. He does not want to grant the developer a 50-foot easement adjacent to the rear property line of his property. He believes the wall is too high. Dr. Wu presented an alternative design concept that lowers the street grade of Alamo Heights Drive. However, he did not provide support information and technical analysis of the feasibility of lowering the street grade for Alamo Heights Drive. Staff met with Dr. Wu on January 12, 2006 and requested a copy of his presentation so staff could thoroughly review the concept; however staff has not received it. Additionally, staff offered to meet with Dr. Wu and the other residents to discuss the additional

grading easement with or without the applicant. At the writing of this report, Dr. Wu has not responded to this offer.

Mr. David Leong of 22372 Kicking Horse Drive (Lot 8 of Tract 32482) is not in agreement with the high wall and believes the property owners should be financially compensated for the 50 foot grading easement. He is concerned about the creek that is within the additional 50 foot easement, slope stability, liability, landscaping and maintenance within the 50 foot easement.

Staff Comments: The concerns expressed by Dr. Wu and Mr. Leong are shared by the other property owners on Kicking Horse Drive. Their concerns and issues are addressed in the DEIR. The mitigation measures set forth in the five-year Mitigation Monitoring Program includes a combination of on-site and off-site preservation, enhancement and or restoration at no less than a one to one ratio and tree replacement at a three to one ratio. Conditions of approval for this project hold the applicant responsible for the cost of building and maintaining the proposed retaining wall and cost of installing and maintaining landscaping/irrigation within the existing 40-foot grading easement. If the retaining wall is eliminated, the applicant is responsible for the cost of grading the two to one slope adjacent to Alamo Height Drive and within the additional 50-foot easement. The applicant is also responsible for installing and maintaining the landscape and irrigation on the two to one slope. Whether or not the proposed project is annexed into The Country Estates, a sub-homeowners association will be formed for the maintenance of open space within the project and the retaining wall and landscaping and irrigation in perpetuity. If the wall is eliminated the sub-homeowners association will be responsible for the maintenance of the two to one slope, landscaping and irrigation in perpetuity.

The creek the residents referred to is located within the 50-foot slope easement. It is supplied by run-off water from Alamo Heights Drive and irrigation. As noted during the geotechnical investigation, it is not supplied by ground water rising to the surface. If this project is constructed, an underground pipe will be installed that will carry the run-off water to Tonner Canyon for wildlife use.

The impacts to wildlife will not be significant because of the mitigation measures that are incorporated into this project and the California Department of Fish and Game and U.S. Army Corps of Engineers permits. Animals on the project site will move into other areas but mainly Tonner Canyon. For small animals with low mobility, a biologist will be on site to move these animals prior to any construction activities. This process has taken place for many years in other cities and Diamond Bar. The most valuable place for animals is Tonner Canyon which is a significant ecological area and not the project area because of the surrounding development.

C. Summary of January 10, 2006 Planning Commission Hearing

In response to the concerns of the Planning Commission and residents, at the hearing the applicant presented an alternative study for the extension of Alamo Heights Drive. The alternative study illustrated the gradual lowering of the street grade for Alamo Heights Drive beginning at the access point for the adjacent project (VTTM 53670 -

Yeh subdivision), and then the street grade rises again at the end of Lot 16 of the proposed map. The alternative study would result in the construction of three retaining walls approximately 10 feet high each. Two of the walls will be within the 90-foot easement at the west side and one retaining wall at the east side of Alamo Heights Drive.

The Planning Commission considered the alternative study and was not in favor of it because the alternative study will require an additional wall on the east side of Alamo Heights Drive where there is only an 8-foot wide planting area to mitigate its visual impact. The Commission believed that the ultimate goal is to eliminate retaining walls adjacent to Alamo Heights Drive. However, if the walls are to be built then they should be on the west side of Alamo Heights Drive within the existing 90-foot easement, the visual impact of the walls could be softened by the much larger planting areas.

The Commission recognized the considerable effort and progress made by the applicant toward discussing and resolving various issues with concerned residents. The Commission felt that the main concern is the proposed retaining wall adjacent to Alamo Heights Drive. The Commission appreciated that the applicant has made an effort to reduce the height of the retaining wall from a maximum of 26-foot high to two 15-foot high retaining walls. Because the 90-foot easement exists, the Commission concluded that the applicant could grade and build a wall or walls within this easement. As a result, the Commission recommended approval of this project to the City Council by a 4-0 vote (one Commission had an excused absence).

APPEAL:

Staff explained to Dr. Wu and Mrs. Leong that filing an appeal of the Planning Commission's recommendation was not necessary and an opportunity to discuss their concerns would be available at the City Council public hearing. However, on January 20, 2006, the City received a correspondence signed by six residents located on Kicking Horse Drive appealing the Planning Commission's recommendation to City Council. The reasons for the appeal are related to environmental concerns such as loss of wildlife habitat, excessive grading and height of the retaining wall. A copy of their appeal letter is attached with this report. Staff believed that their concerns are addressed in the EIR.

CITY COUNCIL OPTIONS:

The City Council may:

1. Approve the proposed project as recommended by the Planning Commission and deny the appeal.
2. Add conditions or modify conditions of approval set forth in the resolutions.
3. Continue the proposed project to a date certain.
4. Deny the project and approve the appeal.

If the Council concurs with the Planning Commission recommendation then adoption of the resolutions and ordinance should be in the following sequence:

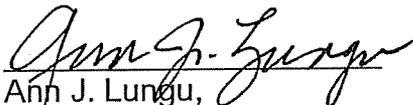
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1. Adopt City Council Resolution No. 2006-¹³XX certifying the Environmental Impact Report (SCH #2003051102), issuing a Statement of Overriding Consideration and approving the Mitigation Monitoring Program;
2. Approve the first reading of Zone Change Ordinance No. XX (2006);
3. Adopt Resolution No. 2006-XX approving Tentative Tract Map No. 53430 and denying the appeal; and
4. Adopt Resolution No. 2006-XX, approving Hillside Management Conditional Use Permit No. 2002-01, Variance No. 2005-03 and Tree Permit No. 2005-10 and denying the appeal.

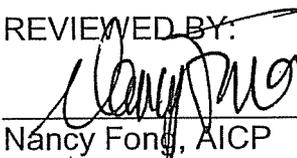
NOTICE OF PUBLIC HEARING:

Notice for this project was published in the Inland Valley Bulletin and the San Gabriel Valley Tribune on February 9, 2006. Public hearing notices were mailed to approximately 180 property owners within a 1,000-foot radius of the project site on February 1, 2006. A display board was posted on the project site and public notice was posted in three public places by February 1, 2006. Additionally and pursuant to Public Resource Code, Section 21092.5, agencies commenting on the project's Environmental Impact report were notified in writing of the February 21, 2006 City Council public hearing on February 6, 2006.

PREPARED BY:


Ann J. Lungu,
Associate Planner

REVIEWED BY:


Nancy Fong, AICP
Interim Community Development Director

David Doyle,
Assistant City Manager

Attachments:

1. Ordinance No. ____ (2006) approving Zone Change No. 2005-03
2. Resolution No. ____ (2006) certifying EIR and adopting the Mitigation Monitoring Program and Statement of Overriding Considerations
3. Resolution No. ____ approving the TTM 53430 and denying the appeal
4. Resolution No. ____ approving Conditional Use Permit No. 2002-17, Variance No. 2005-03 and Tree Permit No. 2005-10 and denying the appeal

5. Exhibit "A" –Tentative Map No. 53430 dated December 13, 2005
6. Draft Environmental Impact Report (Volume I) dated August 17, 2005
7. Technical Appendices (Volume II) dated July 22, 2004
8. Updates of Environmental Impact Report dated October 13, 2005
9. Volume III/Response to Comments dated November 16, 2005
10. Exhibit "B" – Location of Retaining Walls
11. Alternative study of street grade for Alamo Heights Drive
12. Chronology of meetings/phone conversations with owners of property adjacent to Alamo Heights Drive for John Bostick of Millennium Diamond Road Partners, LLC
13. December 13, 2005 and January 10, 2006 Planning Commission Reports
14. December 13, 2005 and January 10, 2006 Planning Commission Minutes
15. December 13, 2005-Letter from David Liu to Planning Commission
16. December 19, 2005-Letter from owners of properties located on Kicking Horse Drive
17. January 19, 2006-Letter from John Bostick to Mr. Choel Chung
18. January 19, 2006-Appeal Letter from owners of properties located on Kicking Horse Drive