

**MINUTES**

**CITY OF PACIFICA  
PLANNING COMMISSION  
COUNCIL CHAMBERS  
2212 BEACH BOULEVARD**

November 20, 2017

7:00 p.m.

Chair Nibbelin called the meeting to order at 7:01 p.m.

**ROLL CALL:** Present: Commissioners Kraske, Stegink, Cooper, Campbell,  
Clifford and Chair Nibbelin  
Absent: Commissioner Gordon

**SALUTE TO FLAG:** Led by Commissioner Kraske

**STAFF PRESENT:** Planning Director Wehrmeister  
Asst. City Attorney Sharma  
Sr. Planner Murdock  
Asst. Planner O'Connor  
Asst. Planner Smith

**APPROVAL OF ORDER  
OF AGENDA** Commissioner Clifford moved approval of the Order  
of Agenda; Commissioner Cooper seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Kraske, Stegink, Cooper, Campbell,  
Clifford and Chair Nibbelin  
Noes: None

**APPROVAL OF  
MINUTES:** None

**DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF NOVEMBER 27,  
2017:**

Commissioner Stegink confirmed that he will be the liaison.

**ORAL COMMUNICATIONS:**

None

**CONSENT ITEMS:**

None

**PUBLIC HEARINGS:**

**1. UP-84-17  
PE-175-17**

**USE PERMIT UP-84-17; AND PARKING EXCEPTION PE-175-17**, Submitted by Dr. Molly Rice to Allow for the Conversion of an Existing Two Story Non-Conforming Single-Family Residence to a Conforming Commercial Veterinary Clinic on the Ground Floor with an Apartment Unit on the Second Floor at 439 Harvey Way (APN 022-031-190). Recommended CEQA Action: Class 1 Categorical Exemption, Section 15301.

Asst. Planner O'Connor presented the staff report.

Commissioner Clifford referred to mention of soundproofing, and he asked if the new windows and exterior were going to provide soundproofing.

Asst. Planner O'Connor mentioned that the Municipal Code has four standards for veterinary clinics to meet, one being that the structure be certified by an acoustical engineer. She added that because of no overnight boarding, they thought there would not be a need for soundproofing of the entire building to be certified by an acoustical engineer.

Commissioner Clifford got the windows attenuating the sounds because dual or triple pane windows will do that. He was curious about the idea that Hardy siding is going to do anything to deaden sound and if anything will help transmit sound. He asked if they proposed any sound insulation, mentioning being one that was fire and sound deadening.

Asst. Planner O'Connor stated that they did not.

Commissioner Clifford asked what was to the south and north of the building.

Asst. Planner O'Connor stated that it was non-conforming single family residences, adding that there was a single family residence to the east.

Commissioner Clifford concluded that there was residential around it even though there are a few businesses nearby.

Commissioner Cooper stated that they typically give recommendations when they propose a project, and he asked why staff recommended two bicycle parking spaces in the property as he didn't think customers would normally carry their pet on a bike.

Asst. Planner O'Connor stated that it was required by the code.

Commissioner Cooper asked if it was practical as they look to staff for guidance.

Asst. Planner O'Connor stated that it may not be practical that clientele use a bicycle, agreeing that it was hard to carry an animal on a bike but it might be practical for the staff.

Commissioner Cooper thought the parking spaces appear to go into the street. He asked if the sidewalk was in the street.

Asst. Planner O'Connor stated that the parking spots at the property line and the sidewalk occur within the street right-of-way, adding that Engineering has reviewed and approved this design as acceptable.

Commissioner Cooper asked if they were granting an easement for this as he assumed it was private use.

Asst. Planner O'Connor stated that it was a sidewalk.

Commissioner Cooper stated that the sidewalk was almost six feet into the Harvey Way right-of-way. He stated that the three-foot sidewalk was a non-conforming ADA sidewalk and he assumed they will make an ADA sidewalk which he thought was five feet.

Asst. Planner O'Connor thought it was four feet wide.

Commissioner Cooper asked if it was going to a non-ADA sidewalk, and they were asking her to put in a larger sidewalk.

Asst. Planner O'Connor responded affirmatively.

Commissioner Cooper concluded that, based on the drawing, the curb line would go in to Harvey Way and back out as it attaches to the other sidewalks.

Asst. Planner O'Connor stated that the adjacent sidewalks were on private property and there needs to be some curvature to connect the two.

Commissioner Cooper asked if there are cars parked next to the sidewalk now to allow cars to park parallel to the street. He felt that, if they have cars parking in, there will be cars backed into the space.

Asst. Planner O'Connor stated that she did not have the answer to that question.

Commissioner Cooper stated he was curious as to how that looked and why the city would approve going into a city street. He stated that they were saying the applicant will only see cats, pets, etc., and he asked why they didn't just say domesticated animals which are lawful, and asked what they would do if they brought in an animal that was not allowed in the city code and it gets out when they are visiting the veterinary clinic.

Asst. Planner O'Connor stated that she used the term house pets and provided a few examples.

Commissioner Cooper asked if there was a legal designation of what a house pet is.

Asst. Planner O'Connor stated that she didn't know if there was a legal definition, but these were terms she found.

Commissioner Cooper concluded it was on other sites, and he asked if she was comfortable with that term.

Asst. Planner O'Connor stated that she was.

Commissioner Cooper asked, on looking at the outdoor commercial use, the pet relief area and outdoor employee break area, whether that break area was a designated smoking area. He asked if that was typically allowed or not allowed, adding that it seemed it was not within 50 feet of an entrance building and would not be allowed.

Planning Director Wehrmeister stated that they don't regulate smoking and it would be subject to standards of any other commercial business.

Commissioner Cooper concluded that it was within 50 foot. He stated that would be his concern with the neighbors, if the employees were smoking. He thought they might want to look at that. He stated that he was not a veterinary expert, but he mentioned that they called for a natural grass pet relief area. He didn't know if that was the healthiest thing. He stated he would save that question for the architect as he assumed you would have a buildup as he didn't see how you keep grass clean with all those pets doing things on it.

Asst. Planner O'Connor asked if he was concerned with grass.

Commissioner Cooper stated that Condition No. 4 would require that the veterinary clinic maintain a natural grass pet relief area with the animal feces to be immediately picked up and he wasn't sure that was something he would want to restrict as it might not be the best for the business as far as cleanliness. He thought they were being counter to requiring a natural environment as it might not be the best regarding cleanliness. He stated he will ask the architect.

Asst. Planner O'Connor stated that staff's thinking behind that was that a natural grass area would process the urination and feces residue better than a turf.

Commissioner Cooper commented that, with people who walk in his neighborhood, his grass dies often and he didn't think ten times the traffic would help.

Commissioner Stegink asked confirmation that under no conditions would this veterinarian be treating agricultural animals.

Asst. Planner O'Connor stated that was what the condition of approval would restrict.

Commissioner Stegink asked her to reiterate which animals would be treated there.

Asst. Planner O'Connor stated that the condition uses the term house pets, including dogs, cats, rabbits, birds and reptiles.

Commissioner Stegink referred to the natural grass pet relief area condition, and he agreed that in a medical setting you would not have that as a waste disposal area. He asked how the waste will be disposed, such as a once a week or daily pickup.

Asst. Planner O'Connor thought they could ask the applicant.

Commissioner Clifford didn't have another question but had an answer for Commissioner Cooper's question about parking in that area. He stated that it was pretty tight at this time, adding that he came through on his way to the meeting to see what it was like when everyone was home

and it was completely parked across from the building and where a guard rail was, a van had backed in between the guard rail and the hillside where Highway 1 is. He thought that gave them an idea of how much parking was required already. He stated that, during the day when the tire place is running and another business that works with steel girders is there, it was a very narrow one way street and has a lot of parking during the day and at night there is also substantial parking. He didn't know how they open the doors of the vehicle between the guard rails.

Chair Nibbelin referred to the requirement for a use permit for an animal hospital and the notion of needing plans and specs that bear the certification of an acoustical engineer, and asked if these plans and specs bear the certification of an acoustical engineer.

Asst. Planner O'Connor stated that they do not.

Chair Nibbelin asked the city attorney to make sure, stating that it wasn't written in a discretionary way, and he understood that staff's intent was generally being addressed with the totality of the circumstances, but he was concerned about the language of the ordinance code. He thought it seemed fairly directive and he wondered what their thinking was on that.

Asst. City Attorney Sharma understood that it was not a discretionary requirement, adding that the code does not specify the use of any specific materials to use as sound proofing and it would be important to keep that in mind.

Chair Nibbelin stated that, assuming they were correct with respect to the assessment, he was curious what the process would be to get a certification from any acoustical engineer and why they wouldn't require that the plans and specs bear that certification.

Asst. Planner O'Connor stated that they thought they could make the findings that it wasn't necessary based on the special circumstances under which the veterinary clinic operates.

Planning Director Wehrmeister thought there was an argument that could be made that there was some interpretation that says animals shall be kept within an enclosed sound structure and if the business model was coming in with the owner, getting treatment, leaving, and the question was whether they were being boarded or kept in a situation where any noise or barking would be addressed by an attending human.

Chair Nibbelin stated that he didn't go to the ordinance code but saw that there were various requirements that appeared to exist under 9-4.2307 and they looked like each was a separate requirement.

Dr. Molly Rice, applicant, stated that she has been a veterinarian on Palmetto for 12 years, and had applied for the same permit. She referred to the sound issue, stating that was one of the reasons she was looking for a new location. She was now in a very tiny commercial space underneath a residential space and it was very loud for her and the patients when the upstairs tenants vacuum. She stated that the cat patients are very stressed, and she would like the opportunity to soundproof the building to make it more comfortable for her clients and patients. She stated that the most noise from her clinic area was from the neighbors behind them whose dogs bark constantly. She stated that her patients aren't making noise because they were there to relax with acupuncture treatment and then leave. They don't have any cages and do not do boarding. They use a lot of other clinics in Pacifica and they do complimentary medicine, stating

that they do x-rays and surgery but she didn't think any clinic boards. She stated that emergency care was done elsewhere. They did a different style of veterinary medicine and she needs a larger space to do it better. She stated that it didn't mean it will be a nuisance and she hoped to improve the area. She referred to the parking, and felt it was constrained on Harvey Way. She stated that, if she could have rented or bought a building with a parking lot on Palmetto Way, she would have. She has been trying and not succeeding and was ecstatic to get this property in Pacifica and grow, but if there are too many constraints, she won't be able to do it. She was not a developer and was working within her means but they were limited. She stated that she was hearing a mixed message regarding the parking, that they want it returned to a conforming commercial use but concerned about the parking constraints. She thought that if the building was used in a different use that did not require a use permit, it would have a larger parking burden on the street. She asked if the city could work with her and put green areas on the street or improve it and make it more commercial friendly, or rezoned if it stays residential. She appreciated working together to create a more clear intention with the street than telling her they want it commercial but she can't have any more clients because they might need to park. Regarding the pet relief area, she thought the name was a little bit misleading. She stated that it was not a dog boarding or day care and there was not a lot of pet relieving. She stated that sometimes they need to collect a urine sample which goes in a little cup and is sent to the lab. She stated that they sometimes need the poop sample and it goes to the lab. She didn't think there will be a large area with concentrated pet waste.

Commissioner Stegink stated that they frequently hear about a financial hardship on a staff report when a developer wants to put a building larger than code allows or isn't allowed to develop the parcel to his wildest dreams, and he was curious if there was a specific item of the report or the process that she found unduly onerous.

Dr. Rice stated that the whole process was more onerous than she expected. She stated that the issue has been that the expensive check list she got in order to submit the use permit was a fraction of what she needed to submit, and she wished she had known that up front, adding that maybe she wouldn't have taken this on. She stated that the street sidewalk redoing was extensive and more than expected which she understood.

Commissioner Stegink asked if she stated extensive or expensive.

Dr. Rice stated that it was both.

Commissioner Cooper stated that she did great work. He asked her for her honest opinion. He asked if she required any bicycle spots for her employees or anyone else.

Dr. Rice stated that she has never had a client or employee come on a bike.

Commissioner Cooper asked if she liked the grass provision or wanted some options.

She stated that she would rather have some options, especially ones that did not need water.

Commissioner Cooper asked if she has looked at the parking in front of the building and was comfortable with the way the spaces are laid out. He stated that he owns a dog and he gets him out of the back and would hate for a car to be going down Harvey Way and get him.

Dr. Rice stated that she and Asst. Planner O'Connor talked about the way the parking lot was designed there would not be parallel parking in front of the parking lot and the area against the separation from the highway and Harvey Way would not be parking as it required her to redline it which is no parking but also opens up more turning radius for people coming and going from the parking lot. She stated that, unless someone is going 50 mph down Harvey Way, it was pretty safe.

Commissioner Cooper asked if she thought about putting a mirror so people, when backing out, can look down Harvey Way in the opposite direction.

Dr. Rice thought it would be feasible.

Commissioner Cooper stated that it was just for safety, as he doesn't want anyone to get hit on the street.

Chair Nibbelin opened the Public Hearing.

Louis Marcheschi, Pacifica, stated that he has lived on Harvey Way for approximately 19 years and is a neighbor to the proposed pet hospital. He stated that their bedroom and kitchen windows face the yard that has the proposed waste area. He stated that when they got the notice their heart sank as they didn't realize about her practice being holistic rather than a traditional veterinary clinic, and the fear of noise and potential odor has brought him to the meeting. He stated that the street is a unique area in Pacifica that they love. He agreed that it has a horrible parking situation which he thought has to do with the tire shop and service station at the end. He concluded that parking, barking and odor directly by their windows was his concern. He stated that from what he has heard and read, her practice sounds great and nothing he had expected. He stated that they didn't want to have an addition to Highway 1 when they opened the tunnel and let the other people through with the added sound, adding that they would like to live with their windows open.

Charles Kaufman, Pacifica, stated that his house is directly behind her house. He stated that he has a dog and he is a yapper. He was concerned that, if people are in the backyard, she will be yapping all the time and disturbing him and the rest of the neighbors. He asked if they were going to build up higher as it will kill his view. He stated that he bought the house because it had a view of the ocean and when they built across the street, it killed about 75% of the view.

Dan Lyttle, Daly City, stated he is a client and has been taking their dogs there for a number of years. He understood some of the concerns voiced by the speaker and Commission was odor and use of the green space. He stated that his first dog has gone to her for a number of years for ailments and they have never had to use any open space for their animal, including their new dog. He stated that there are only two clients inside the clinic at any one time and it was a quiet and serene area designed for relaxing the animals. He stated that you can't hear anything from the outside of the clinic. He understood some of the concerns voiced by the neighbors but he assured them that it is a quiet, lovely environment with no undue impact to the environment outside of the clinic.

Chair Nibbelin closed the Public Hearing.

Commissioner Campbell asked if there was any discussion of privacy trees.

Asst. Planner O'Connor stated that there wasn't.

Commissioner Campbell stated that they used to encourage that in plans where people were building big over another house. He asked if that would get at some of the privacy issues that one neighbor discussed, if there was enough room.

Chair Nibbelin asked that the applicant respond to the concerns raised.

Dr. Rice stated that it was also a concern of hers. She stated that there was a landscape plan in the documents that includes native, drought-resistant tree shrubs along the whole perimeter of the property for privacy for the neighbors as well as for her.

Commissioner Campbell asked if they would go above the fence.

Dr. Rice stated that they were quite high.

Commissioner Campbell apologized for not picking up on it.

Dr. Rice stated that she wasn't sure of the exact height but the intent was to make a green screen around the property. She stated that her original idea was bamboo but it was changed to native drought resistant plants. She stated that the landscaper has put in a lot of work.

Commissioner Cooper stated that he didn't have any problem with the project but just had some concerns regarding parking and safety. He thought the city engineer has taken a look at it. He was ready to make a motion when everyone was done speaking.

Commissioner Clifford liked the project, adding that he had a concern regarding the red striping of the area across from the project because of the parking restraints already there with the existing businesses and residential. He thought the area was about 4-5 car lengths and will impact the area. He clarified that he wasn't saying he wouldn't vote for the project but he was surprised there weren't more people from the neighborhood saying they have to have the parking.

Commissioner Campbell stated that he was going to comment on the parking, referring to a past meeting on the commercial development in Pedro Point. He thought they were being a little liberal about parking when it comes to commercial. He understood the comments from the next door residents, and if it were a normal business facility, he would have an issue about incompatibility but with a small group of clients coming for a serene type of treatment, he didn't have a problem. He stated that, while it is zoned commercial, this is one of the quieter options and he was in favor of it.

Chair Nibbelin stated that he was pleased with the proposition that they were not losing a unit of housing and the apartment component was important to him. He thought the ordinance code was clear about what was required for this sort of permit. He preferred they include a condition that made clear that they would get a certification from an acoustical engineer to verify that the proposed structure will prevent the sound. He acknowledged that staff was working diligently with the applicant, but he didn't see how the circumstance trumps the language in the ordinance code. He thought they would need something in the ordinance code authorizing the Planning Director to waive the requirement in appropriate cases or honor the text of the ordinance code.



Commissioner Campbell agreed with him.

Chair Nibbelin asked staff if they could speak to that point.

Commissioner Cooper commented that it was hard to eliminate sound and he mentioned previously having discussed noise levels and they felt what was acceptable wasn't acceptable and he thought they would have to throw a figure in somewhere from a specific distance from the building in order for it to be enforceable. He questioned how they could restrict it unless they had an expert on acoustics. He stated that you cannot say "none" which he would consider unrealistic.

Chair Nibbelin stated that he was speaking to the explicit terms of the ordinance code which requires a verification that the proposed structure will prevent sounds emanating from the building from going beyond the property line.

Planning Director Wehrmeister thought they could add a condition that restates the code provision with the understanding that, with the description and nature of this business, an acoustical engineer may find that the standard upgrades being proposed actually meet this standard.

Chair Nibbelin agreed that was probable and he was fine with that.

Commissioner Clifford stated that there are insulations that are sound deadening and they will have to put insulation in the building anyway and he didn't think the upcharge would not be that much. He stated that he has done a lot of soundproofing for people and there have been different issues including partying neighbors next to the bedroom. He added that he has had to deal with this in the normal course of his business and he knows that Hardy board isn't soundproof.

Commissioner Stegink stated that he would caution against any conditions that prohibit sound from escaping the building, adding that the cost of soundproof windows and that level of assurance may be prohibitive.

Commissioner Campbell referred to the privacy screening and asked the Planning Dept.'s view on the adequacy of the trees or shrubs proposed. He couldn't get his hands on the arborist's report.

Asst. Planner O'Connor stated that the applicant proposed a number of species for the landscape plan and there was a condition of approval that a final landscape plan be submitted and will verify the species at that stage to be sure it meets the screening concerns he mentioned.

Commissioner Campbell stated that Commissioner Clifford just gave him the landscape key, mentioning there were 15-gallon shrubs and bushes and they were pretty big.

Commissioner Cooper stated that his motion will include two modifications, deleting provision #6, the bicycle stands, and with provision #4, he wanted a permeable surface in the back but he didn't care if it was grass or not and they should just say "permeable in the back" and delete the words "and natural grass turf." He asked if anyone had any concerns or comments in regard to that.

Chair Nibbelin stated that he would be supportive of a motion requiring the certification of the acoustical engineer as set forth in the ordinance code.

Planning Director Wehrmeister stated that staff had a concern about deleting the bicycle parking which is a code requirement.

Sr. Planner Murdock thought it wasn't shown on the plan.

Asst. Planner O'Connor agreed.

Sr. Planner Murdock stated that it was restating the Municipal Code requirement to modify the plan but they have noticed the parking exception to deviate from the bicycle parking standard.

Chair Nibbelin assumed it would require another hearing to go that route.

Commissioner Cooper moved that the Planning Commission finds the project is exempt from the California Environmental Quality Act; APPROVES Use Permit UP-84-17 and Parking Exception PE-175-17; by adopting the resolution included as Attachment B to the staff report; including conditions of approval in Exhibit A to the resolution, modifying the words on condition #4 and strike out natural gas trees but keep it permeable, reiterate the condition of having an acoustical engineer certify that they meet the standards of the city; and incorporates all maps and testimony into the record by reference; Commissioner Stegink seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Kraske, Stegink, Cooper, Campbell,  
Clifford and Chair Nibbelin.  
Noes: None

**2. GPA-93-16  
RZ-195-16  
SUB-234-16**

**General Plan Amendment GPA-93-16, Rezoning RZ-196-16, Subdivision SUB-234-16 and Authorization to Remove Heritage Tree**, Submitted by Applicant Michael O'Connell of Roundhouse Industries, Inc., to Change the General Plan Land Use Designation from High Density Residential to Low Density Residential, to Change the Zoning Classification from the C-3 (Service Commercial) Zoning District to the R-1 (Single Family Residential) Zoning District, to Subdivide a 2.42-Acre Lot into Six Lots Ranging in Size from 5,035 to 36,104 Square Feet for Future Single-Family Residential Development, And to Authorize the Removal and Replacement of Heritage Trees, at the Project Site Located at the Western Terminus of San Pedro Terrace Road, Pacifica (APN 023-075-050). Recommended CEQA Action: A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program Have been Prepared and Are Recommended for Adoption.

Asst. Planner Smith presented staff report, with Sr. Planner Murdock adding some clarification on one item.

Commissioner Cooper commented that the amount of material on line for the San Pedro Creek in that area was immense, including the amount of EIRs, provisions, etc. He thought some of the maps seem to be a little incorrect in the EIR reports in that they just identify where the rehabilitation center is but not the parcel in between which was the parcel they were discussing. He thus is concerned about what the regulations are when you subdivide a parcel so close to the wetlands and creek. He stated that it seems to be mentioned in some but not all EIR reports as the maps are vague. He felt this parcel seemed to have an arrow point that says CalTrans property and it wasn't CalTrans property. He asked how their investigations played in their recommendation.

Asst. Planner Smith asked clarification that the total portion of the site being subdivided was the area of land to which he was referring.

Commissioner Cooper stated that it was actually the area just to the west of it where the wetlands currently exist. He stated that the whole report was about expanding the San Pedro Creek from its original bed area to all the way to where the path is now. He stated that his other question was in reference to the maps that show a tributary that appears to go right in front of the rehabilitation center on the hillside. He stated that, on looking at it, there seems to be a culvert that is next to the center. He asked where that is taken into account on the provisions in the maps as he didn't see it discussed.

Asst. Planner Smith stated that, in regard to the first question, it relates to the environmental review that was conducted as part of the former creek widening project. He stated that the EIR covered a large portion of the San Pedro Creek area. He stated that the application site was part of the creek widening project, and as part of the environmental review for this project, the previous environmental reviews were analyzed to ensure that any environmental considerations that were previously highlighted were carried through in this report. He added that, as part of the creek widening project, a large portion of fill was incorporated onto the site to bring the site out of the flood plain.

Commissioner Cooper then referred to the second question regarding the tributary that he saw on one of the maps.

Asst. Planner Smith stated that he was not too familiar with the location of the tributary yet.

Commissioner Cooper asked if he looked at the property and sees the culvert that was next to the rehabilitation center.

Asst. Planner Smith stated that there was a former storm water culvert that runs adjacent to the rehabilitation center and not for storm water purposes, as that has been abandoned, and in the past, for the rehabilitation center to address their waste water, the storm pipe now has a waste water pipe running within the former storm drain and is providing the rehabilitation centers waste water services.

Commissioner Cooper asked if he was talking about waste water or storm water, because storm water goes to the creek and waste water goes to the plant.

Asst. Planner Smith stated that there is an existing storm water drain that runs over the creek and along the side of the rehabilitation center.

Commissioner Cooper explained that it was the culvert that he sees next to that plant that seems to have water in it when he was there earlier in the day. He was curious where it shows up on the plans. He is concerned because he sees it in one of the maps on which he was doing research. He stated that it showed a tributary coming off the hill and was concerned as to whether it was taken care of, done underground, etc.

Asst. Planner Smith thought this was a good question for the CEQA consultant, but as part of the application process, the Army Corp of Engineers have done a wetland delineation study to identify sensitive locations. The California Department of Fish and Wildlife have also assessed the creek bed alterations that the applicant has put forward. The applicant's biologist has also done an extensive review of the area as part of CEQA process.

Commissioner Cooper asked if it was specifically for this project.

Asst. Planner Smith responded affirmatively.

Commissioner Clifford stated that he would like to make an addition to the signage on the fence or at least have staff consider it. He stated that in the report there was talk that people were to stay out of the riparian setback area except for weed abatement. He was concerned that no chemicals be used for the weed abatement, such as Roundup, and be sprayed along the area as this could get into the creek and there were several endangered species there. He then stated that 25 feet seems a short distance to the riparian area, as he is used to hearing 75 or 100 feet before they get to it, and he has concerns about that. He asked why 25 feet seemed to be okay.

Asst. Planner Smith stated that the actual creek bed is set back significantly from the line of the 25 foot riparian corridor and is actually taken from the drip line of the willows, and the creek itself lies beyond that. He stated that the proposal for the 25 foot setback was included as part of the CEQA analysis, adding that the biologists have reviewed that setback and have found that it was sufficient to be able to protect the species on the site and the habitats available there. He

stated that the only intrusion into the habitat was the storm water outfall construction which was being mitigated through a habitat replacement mitigation measures in can alternative location on the site. He stated that the 25 feet may seem like it is a narrow setback but it has been thoroughly reviewed as part of the environmental review.

Commissioner Clifford asked if he was saying the 25 feet was to the willows.

Asst. Planner Smith clarified that it was taken from the drip line of the willows.

Commissioner Clifford asked how far it was from the creek.

Asst. Planner Smith checked the plans and then he clarified that the creek bed was meandering through the area, and he thought that, at one of the narrowest points, the distance from the edge of the creek bed to the willows was approximately 55 feet and then the additional 25 feet.

Commissioner Clifford concluded that they were talking about 80 feet.

Asst. Planner Smith responded affirmatively.

Commissioner Stegink stated that he visited the property. He asked to look at the second slide again, and stated that his concern was regarding that area (commissioner Stegink indicated the area along the north east boundary of the site). He asked what the final outcome for the trees that are currently there will be.

Asst. Planner Smith stated that the tree report was included in the appendix. The majority of the trees in that area are eucalyptus trees and would not be protected as part of the heritage tree permit protection. He stated that there are heritage trees that grow within the eucalyptus trees and the arborist report identifies that those trees are not necessarily in great condition because of the way that the eucalyptus trees have grown around them. The limbs are spread wide creating a greater risk of limb failure.

Commissioner Stegink asked for confirmation that he didn't see any designation of that area being a wild life corridor in the staff report.

Asst. Planner Smith did not recall that there was any designation for a wildlife corridor.

Commissioner Stegink asked if there was a designation in the staff report of what species of animals were on the property.

Asst. Planner Smith stated that there is reference to the CEQA document within the Staff Report that lists the individual protected species within the area. He stated that he can look up the species that are present on the site.

Commissioner Stegink stated it would be great as he was there about 5 p.m. and in seven minutes, he saw five raccoons and a deer in that specific spot of trees. He asked if the applicant's biologist can address that.

Asst. Planner Smith stated that the particular species were the yellow warbler, migratory birds, San Francisco garter snake, west pond turtle, California red-legged frog.

Commissioner Stegink asked if it was a list of less than 20 items.

Asst. Planner Smith stated that it runs to eight.

Commissioner Stegink stated that was all right.

Asst. Planner Smith clarified that those species were identified in the CEQA analysis to see if there would be an impact on those species, and they may not necessarily be present on site.

Commissioner Cooper referred to the entry way on sheet C5.01, and he thought it looks like the driveway encroaches on a CalTrans easement. He asked who owns the property to the west.

Asst. Planner Smith stated that in earlier iterations of the design, because of the narrow width of the site entrance, the applicant was proposing to have a portion of the site entrance on the adjacent property. He stated that they identified with the applicant that it wasn't appropriate and the design has been revised to the design set out in the site plan. He stated that in drawing C3.02 they see that the entirety of the proposed development is within the application site. He stated that it was a previous design that wasn't updated as part of the drawings.

Commissioner Cooper asked if he was doing the street improvements for that area to where the bollards are at the edge of the street, showing going into San Pedro Terrace Road. He thought the bollards were along the property line. He asked if he was doing the road improvements on San Pedro Terrace Road to his driveway. He asked what prevents any traffic from continuing and whether they were going to relocate those bollards and put a fire siding.

Asst. Planner Smith stated that as part of the proposal, he was proposing to move the bollards and an existing bench and a trash receptacle and those features will be replicated slightly further back on the trail.

Commissioner Cooper asked if he was taking the responsibility to pay for all that.

Asst. Planner Smith responded affirmatively.

Commissioner Cooper stated that, on looking at the private road, it was quite large compared to the entryway making the turnoff into that property, and he asked if it has been laid out and if the fire department was comfortable with that.

Asst. Planner Smith stated that the applicant has included the radius turn and circle into the property and it was marked on a drawing, a turning radius of 28' feet.

Commissioner Cooper referred to the rehabilitation center into this pathway, and asked if he was providing an ADA access ramp down to the path.

Asst. Planner Smith stated that the connection to the existing path and the proposed sidewalk will be accessible. He stated that the conditions of approval were included from the engineering department to that effect.

Commissioner Cooper referred to the berm that goes into the creek, stating that he thought that area has been filled when they did the creek restoration. When the lot is subdivided, what prevents anything, like people's fertilizer, going down into the creek. He asked if there was going to be any barrier, such as riprap to improve the side bank wall so it doesn't decay as people walk on it. He asked what he was specifically doing and if there will be any improvements to the creek.

Asst. Planner Smith stated that there were physical improvements for stabilization measures proposed.

Commissioner Cooper asked if Fish and Game didn't care.

Asst. Planner Smith stated that Fish and Game were consulted on the application. They required a lake bed and stream alteration agreement if it was significant enough to warrant it. He stated that the Department was consulted, they reviewed the proposal and provided no comments, effectively giving permission for the development.

Commissioner Cooper stated that, from his standpoint, if he approves subdividing these parcels, what prevents someone from building a house there and not doing any protection in that area. He stated that they could stomp and put construction equipment and cave it in as it is just fill.

Asst. Planner Smith stated that there were a couple of requirements if a future homeowner were proposing to make alterations.

Commissioner Cooper asked if he was referring to building a house.

Asst. Planner Smith stated that there were a number of conditions that restrict structural development within and beyond the 25 foot creek riparian corridor and are set out in the staff report. He stated that, if they were making alterations to the creek bed, they would be subject to permits from Fish and Wildlife.

Commissioner Cooper stated that it wasn't alterations to the creek bed. He stated that if he was putting a residential building next to a creek, he would want some sort of protection. He asked if it comes back to the Commission when they want to build there or once they do this it is done.

Sr. Planner Murdock stated that it does not come back, clarifying that in this zoning district, construction of a single family residence is not a discretionary permit issued by the city and this project is for the general plan amendment zoning change as well as the subdivision but it does not contemplate the homes built in the future. He stated that the area of concern for a lake and streambed alteration agreement extends beyond the creek bed and the adjacent riparian habitat, to his understanding, and would also be affected by the Dept. of Fish and Wildlife jurisdiction. He stated that the city may not be involved but periodically they refer applicants for a building permit in an R1 zone to contact the Dept. of Fish and Wildlife even though they don't have a permitting mechanism to withhold a permit or impose a condition on that.

Commissioner Cooper asked, if he bought a parcel and stayed on his side of the fence, whether anyone would be involved in construction activities or would have any say as long as it falls within the R1 district.

Sr. Planner Murdock asked to which fence he was referring.

Commissioner Cooper stated that there was a fence along the side of the property that borders the creek. He assumed that was the boundary line they have. He assumed that, if he didn't go into that area with his construction, he didn't have any say and they can build to whatever the zoning restrictions allow.

Sr. Planner Murdock stated that he was saying "I" in both contexts. He asked if he was saying "I" as the developer and "I" as the city.

Commissioner Cooper asked, if he was a private individual and he wanted to develop that piece of property and build a house, whether his plan would ever come before the Commission again.

Sr. Planner Murdock thought it was likely they would not unless he was seeking a variance.

Commissioner Cooper concluded that, if he kept on his footprint and built to the zoning requirements, it would never come in front of the Commission again.

Sr. Planner Murdock responded affirmatively, adding that steps have been taken through the map and installation of the fence and the monoliths to try to designate and restrict development and activities that would damage the riparian habitat as part of the subdivision and he stated that, in all likelihood, the Commission would not see the application for the single family construction.

Commissioner Cooper mentioned that there was a home on Adobe that was built next to the creek. He asked if the city put any restrictions to building a wall there to keep them out of the riparian area or keep drainage from going into the creek. He asked if that was something they did at the Commission or they do with the individual.

Sr. Planner Murdock stated he was not familiar with that project but he thought along that area of the city there are sites that may be in zoning districts other than R1 and have overlays. He stated that it was possible they received a discretionary permit or did not, reiterating that he was not familiar with that specific project.

Commissioner Cooper asked why they were replacing a non-native plant. He knew the willow tree was there, and he mentioned that they had this issue with the Bowl. He stated that they last about 50 years and then die and were not native to the area so he asked if, just because it was there, they want to replace it in kind. He asked if they could say they would put something a little bit more feasible in the area.

Asst. Planner Smith stated that the intention of the replacement was to ensure that the habitat in existence was being replaced to serve the protected species that will be using it. He stated that it was like for like replacement for the willow taken out.

Commissioner Cooper assumed a willow was a protected tree versus a eucalyptus.

Asst. Planner Smith stated that the willow was considered a species that is providing a habitat for protected species.



Commissioner Clifford asked, for clarity, if each of these lots could put in an accessory dwelling unit.

Asst. Planner Smith stated that it would be part of the R1 development standards.

Commissioner Clifford concluded that was an additional potential for more units there.

Commissioner Stegink asked, if the ADU is built at the same time of construction as the original home or within 30 days afterwards, whether it would come to the Commission.

Sr. Planner Murdock thought it was likely it would not, adding that it was unlikely that it would be constructed concurrently as they have an owner occupancy requirement in the ordinance and the applicant would be unable to satisfy that requirement if the home did not exist.

Commissioner Stegink referred to the 36,104 square foot parcel, and asked, if it was to be subdivided in the future, whether it would come before the Commission.

Sr. Planner Murdock stated not necessarily, explaining that a one-lot subdivision under the city's ordinances potentially could be approved by the city engineer without a public hearing.

Commissioner Stegink referred to numerous cases in other states in flood areas where cities have allowed construction, have had liability and paid out when the areas eventually did flood, and asked if the city had any potential liability for this construction if, through an act of God or any act, it would flood.

Asst. City Attorney Sharma stated that at this point she did not have any facts that suggest that the city would be exposed.

Commissioner Stegink asked if there would be any possible scenario where the city would have liability.

Asst. City Attorney Sharma stated not to her knowledge.

Commissioner Kraske referred to the possibility of one-third of the property becoming impervious surface and he asked for more information about the storm water outfall mechanism that they put in the power point presentation. He also asked if appropriate agencies approved this outfall mechanism.

Asst. Planner Smith asked if he would like him to go back to that image as it would be useful. He stated that the plans for this detailed design were the plans sent to the Department of Fish and Wildlife and they have reviewed the area that will be disturbed as part of the construction. He stated that, in terms of a regulatory body, they were satisfied that they don't need a creek bed alteration as part of the development. He stated that the Army Corp of Engineers has also been consulted and there have not been any specific comments in relation to the construction. He stated that, in relation to the impervious surface, the applicant has provided the hydrology calculations for a 100 year storm event and also the C3 provision which would normally be the vehicle by which you would regulate impervious and pervious surfaces. This has been reviewed by the City engineer and was incorporated in the conditions of approval.

Commissioner Kraske understood that the San Pedro Creek was a migratory path for steelhead trout, and he asked if this outfall unit would need to be approved by other federal agencies and are you satisfied they have approved this outfall unit.

Asst. Planner Smith was not aware if they have or have not, or whether they have been consulted on the proposal. He suggested that it may be a good question for the applicant, adding that their permit requirements would be different to the city's.

Chair Nibbelin opened the Public Hearing.

Mike O'Connell, agent, stated that, before he responds to some of their questions, he will point out a couple of community benefits that the project has. He stated that currently it was difficult for fire trucks and ambulances to use the end of the road. They frequent the rehab center because of the nature of that use. He walks by there several times a week with his dog and he sees that they are always struggling to turn around. He thought the cul-de-sac will enhance their ability to do that. He stated that the trail is great but it gets a lot of abuse with graffiti, trash and illicit behavior at night with drugs and alcohol and no neighborhood to keep an eye on that. He stated that the people who use the rehab center come and go mostly during the day and are not present at night when that stuff is going on. He stated that it was a constant effort for Public Works who are there weekly cleaning things up. He thought this project will create a neighborhood watch and that may improve conditions on the trail. He referred to Commissioner Cooper's question regarding the entryway. He stated that the site has approximately 22 feet of frontage on San Pedro Road and the fire department would like to have 20 feet clear because, if there is a fire truck parked, another emergency vehicle needs to get around it and the fire trucks are closer to 8 feet. He stated that an important part of the project is having the sidewalk connect to the existing sidewalk at the driveway of the rehab center with a four foot minimum for ADA but they can't have four feet for the sidewalk and 20 feet for the fire access because there is only 22 feet of frontage and they can't encroach onto the adjacent parcel deeded to Pacifica by CalTrans with a very restrictive deed that only permits it to be used for flood control purposes. They went through several iterations with Public Works and the City Attorney to figure out if they could use a "hair" of that property, only 18 inches, to enhance the entrance to get 20 feet for the fire department and four feet for the sidewalk but because of the restrictions on the deed it wasn't possible and that was when they approached the fire department with a smaller width but a rolled curb that would allow them to roll up onto the sidewalk if they had to get by another stopped vehicle. He referred to Commissioner Stegink's questions about the future subdivision of lot 6, stating it would not be possible because most of that lot was the drainage easement for the city and they wouldn't be able to meet the zoning regulations. He referred to the flooding issue, stating the site has been mapped by FEMA since the flood control improvements and the creek was within the flood plain but the area adjacent to it is not. He stated that, as an added precaution, the floors of the buildings are anticipated to be 2-3 feet higher than the top of the bank. Then, regarding C3 and storm drainage, he explained there was a detention pipe in the street which is sized to hold a certain volume of water. They are trying to reduce or limit the post development to less than or equal to the predevelopment runoff. He stated that now the site doesn't have a lot of runoff because it was pervious, not much slope and water doesn't tend to flow anywhere. He stated that the detention pipe was very large and very long, 24 inches and approximately 500 or 600 feet long. He stated that, at the end of the detention pipe, there was a manhole structure inside of which there is a weir and orifice with the orifice smaller than the 24 inch pipe, approximately 6 inches, which allows the predevelopment flow rate to pass through and the weir blocks the higher flow rate causing it to back up into the pipe. He stated that was

sized for the 100-year storm. He stated that there was a check valve on the outfall to prevent high flows from backing up into the system. He referred to the storm water treatment, stating that it has been reviewed with CEQA, civil engineer, peer review and by the Regional Quality Control Board and there was a bio-retention area adjacent to the road into which the water sheet flows and is treated there before being discharged into the storm drain. He stated that on each lot there was conceptual bio-retention areas shown to treat the runoff from the roofs of the houses. They were not proposing any impervious area in the front or rear yards of the lots except for the driveways, so any patios will be pervious material. He stated that there was the nationwide permit from the Army Corp of Engineers for the outfall itself and this is in process. He stated that they refer the permit to other agencies as a consultation. He stated that the lake or stream bed alteration agreement was determined to not be required by Fish and Wildlife. In conjunction with the Army Corp of Engineers permit, the Regional Quality Control Board needs to issue a 401 water quality certification, related to the C3 treatment for which they have done a preliminary review of the treatment plan with comments that are included in the current document. He added that it was not uncommon for these federal level permits to lag behind the local entitlements as they typically take longer because of dealing with the federal government which moves slower than local governments. He stated that the project biologist, Joe Rigney from Toyon Consultants, is present if they have any questions for him and he was ready to answer any other questions.

Commissioner Cooper asked if he was surprised that there were no embankment improvements or protections.

Mr. O'Connell stated that he wasn't. He stated that when they rebuilt the creek it was all engineered material.

Commissioner Cooper concluded that it was structural fill and was engineered material that they can actually build on when they put it there.

Mr. O'Connell stated it was select fill as part of the creek widening and flood control project.

Commissioner Cooper asked if they ran curves on it so they don't have to dig it up and can build on it.

Mr. O'Connell responded affirmatively, adding that it was solid like a graded pad. He stated that they did a lot of geotechnical investigations and did supplemental borings as part of the CEQA process to address liquefaction and slope stability and it all checked out.

Commissioner Cooper stated that the fire department wants the 20-foot clear, and if they have a sidewalk with a curb on the other side and they are down 24 or 23 inches, he asked if the fire department was okay with that.

Mr. O'Connell stated that was why the curb on one side is a rolled curb, a mountable curb. If you are in a fire truck during an emergency and you have to get by, it was analogous to some of the driveways you see in a townhome subdivision where the driveway does not depress but you roll up on it.

Commissioner Campbell stated that in 2007 there was a study session and they expressed some support for a four-lot subdivision as opposed to six, and he asked him to explain the thinking. He

questioned if the housing size goes up on the four as opposed to the six on the lot size, and asked him to explain why they went from four to six.

Mr. O'Connell stated that he was not familiar with that plan, but recalled studies of potential commercial developments and a 12-unit development. He stated that they felt six was appropriate for the site and it works for the project's pro forma. He didn't know what the land value was in 2007 but it was more now.

Commissioner Campbell stated that he wondered if there was more to it than that.

Mr. O'Connell stated that there was not.

Commissioner Stegink stated that he noticed the culvert roughly parallel to the center sewer line that Commissioner Cooper mentioned, and he asked what was going to become of that culvert.

Mr. O'Connell stated that he was confused on which culvert they were talking about. He clarified what Asst. Planner Smith said about the sewer line. He asked if he wanted to talk about the culvert or sewer line first, as they were different.

Commissioner Stegink stated that there was a sanitary sewer line marked specifically in the culvert towards the creek from the sanitary sewer line.

Mr. O'Connell asked for clarification that it was the culvert in the creek.

Commissioner Stegink stated that it was a secondary channel completely.

Commissioner Cooper thought it was perpendicular to the creek, going up against the rehabilitation center towards the mountain, and is full of water now.

Mr. O'Connell responded if you are standing on the existing smaller asphalt cul-de-sac.

Commissioner Cooper stated that he was on the wrong side. He stated that this is between them and the rehabilitation center. If you were to stand on that property line, you would be in a culvert.

Mr. O'Connell asked if it was at the front or back of the site.

Commissioner Cooper stated that it was the back. It runs perpendicular to the creek, pointing out the location on the map.

Mr. O'Connell stated that he didn't think it was on their site but on the rehab site. He stated that the way their topography works, they have a berm built up around the back of their property and he thought it was difficult for them to get the water out because of the berm and that was where that culvert is.

Commissioner Cooper assumed it was on their property, not on this property.

Mr. O'Connell responded affirmatively, adding that there was another existing culvert if you go down in the creek and look at it. He thought it was for the rehab center.

Commissioner Stegink stated that the culvert he observed was not on the rehab center property. He referred to the stream bed alteration permit and asked if the feds did not respond or did they state one was not required.

Mr. O'Connell thought they did not respond.

Commissioner Stegink asked if he could go over how notice was posted on the site. He stated that he visited the site twice and walked the parameter and passed it by a half mile and did not see any notice posted on the site at all.

Mr. O'Connell thought it was posted on the joint pole immediately adjacent to it.

Commissioner Stegink asked if he posted the sign.

Mr. O'Connell stated that he did not.

Commissioner Stegink asked who posted the sign.

Mr. O'Connell stated that he did not know.

Commissioner Stegink asked if the city posted that sign.

Asst. Planner Smith stated that they posted the sign.

Commissioner Stegink asked if the city used a vendor or the Planning Department.

Asst. Planner Smith stated that the Planning Department posted it, and he did it.

Commissioner Stegink asked if he posted it personally.

Asst. Planner Smith stated that he did.

Chair Nibbelin stated that there were no questions unless he had anything further to add.

Mr. O'Connell stated that he could clarify the sewer line.

Chair Nibbelin stated that he could do that.

Mr. O'Connell stated that there used to be a storm drain pipe that crosses the creek and is kind of suspended above the creek going from bank to bank. He stated that, before the city did the flood control project, the rehab center had a sewage ejector pump that would fail when the power went out and they would discharge sewage into the creek. As part of the flood control project, the city installed the culvert for the rehab center and then instead of using the storm drain line for runoff, they put a sewer line through it and the rehab center doesn't rely on an injector pump any longer and there are no sanitary sewer discharges to the creek when the power goes out. He stated that there was a public sewer line that runs parallel to the creek and then crosses over the creek.

David Blackman, Pacifica, referred to the density stating that the existing General Plan allows 39 or could be said it requires 39 the way the city interprets it, 29-51 units and that was a lot. He

stated that this was a really good deal now. He stated that the state is starting to put mandates in. He stated that, if this project came in this year, it would be difficult for them to approve anything less than 39 units. He stated that they can speak to the Planning Director about this. He stated that this was a super good deal. He stated that six units seems like very few, very low impact and the state is really putting mandates and tying their hands and he thought it was a great project the way it is and he hoped they approve it at this meeting. He stated that he lives in Vallemar and, in his neighborhood, all the storm water goes into the creek, including what comes off his house. He believes that anytime someone washes their house, everything goes down the creek. He stated that they are going beyond to do a nice job to protect the creek. He knows standards are higher today, but he hopes they approve it. He didn't want to see that kind of density of 39 units if this isn't approved this year and a new application comes in, their hands are tied. He stated that a lot of subdivisions have a way to work this so they don't even need to come forward to them with higher density. He stated that this was a great project the way it is.

Jona Ashcroft, Pacifica, stated that he was the administrator at Linda Mar Rehab, the rehabilitation center that has been mentioned. He stated that he was first made aware of this project two hours ago. He didn't know what the process was. He stated that they were the only other facility or house on the street and he would have thought it would be more of a partnership and work together. He felt it was important to bring up that he was barely let know about the development. He stated that, at the rehab facility, they hoped that the road would again turn into a road because of the safety of their residences. He stated that they do have ambulances and fire trucks come frequently. He stated that they always hoped it would turn back into a road. He thought, from their standpoint, they would prefer the zoning to stay what it was as he thought there would be a better chance of that road being connected again if it was still left as a commercial business. He stated that the agent brings up a lot of benefits to Linda Mar but they were never informed of these benefits. He stated that it seems like the road is not as drivable for fire trucks. He thought what makes Linda Mar Rehab is that it is one of the few 5-star rated facilities in the Bay Area. He stated that a lot of people come to them because they have nature and it is serene and a great place to heal and have the quiet atmosphere away from the city. He thought the wild life would suffer. He stated he works in the evenings and they see deer and raccoons all the time. He stated that it was a pretty environment and if this development comes he felt that the environment would suffer. He stated that their residents enjoy having the nature around them and if those trees were removed, he thought the experiences at Linda Mar Rehab would suffer. He stated that they would not be on board with this development as it is. He thought it would have been nice if they had been given notice of what was happening.

Paul Jones, Pacifica, stated he was with the San Pedro Creek Water Shed Coalition. He stated that they also heard about the project late, but not as late as the previous speaker did. He stated that they submitted some informal comments that were addressed in the staff report. He stated that they would have had a more robust set of comments if they had more time but they didn't have a board meeting in time to get comments to them. He stated that some of their concerns have to do with the number of parcels on the lot. Regarding the 25-foot set back which some have addressed, they agreed with those concerns. He felt it was inadequate to protect riparian habitat functions. He also thought it was minimally protective of water quality functions. He stated that there was ample literature. He stated that he has 27 years of wetland and riparian stream habitat protection work and recently retired. He felt that 25 feet was pretty minimal. After looking at the plans, he thought it was possible to remove a couple of the units. He quoted from a report for the watershed coalition by a steelhead biologist that in the past development policies and interests have resulted in developed areas encroaching closely to the creek without

full recognition of potential amenities of stream corridors in their natural state and the liabilities inherent in placing development too close to their banks. He stated that the condition should be corrected whenever an opportunity presents itself. He thought that was the biggest issue but they could address others if they had adequate time. They encouraged them to take a hard look at the development as this was down low in the watershed and in a section of the stream that was important for wildlife functions. He would be interested in hearing what the National Marine Fisheries Service has to say about the storm water outfall as well.

Celeste Langille, Pacifica, stated she recently found out about the project and was trying to digest some of the impacts. She stated that this was a unique and important site when you look at a number of species impacted directly and indirectly. She understood there were some impacts to the site a while ago but still sustains wildlife. She stated that the creek was important. She felt the steelhead were dying a death of a thousand cuts. She stated that there are a lot of projects and housing is too close to the creek. She stated that the setbacks in Marin where they protect steel head was 75 feet and other recommendations are at least 50 feet. She had a hard time just looking at it on line. When it referred to the biological assessment, it was not on line and they have to go into the Planning Department and she felt it wasn't helpful. She did not see any reason why the biological assessment couldn't have been on line. She stated that, with the small information she could find, it was possible there was potential suitable habitat on the site. She stated there was nothing about mitigating for habitat loss or the amount of habitat. She felt it was a potential incidental take under the endangered species act and they need formal consultation. She felt they skipped a step as it is a site that has potential habitat adjacent to it or it could be on it from reading the description in the mitigated negative declaration and it was hard to tell. She stated that she did not have enough time to look at the information. She stated that the watershed coalition has a number of documents on their website from 2000 where they did a number of studies on this. She wished the city would include those. She thought there was a potential for significant impacts that may or may not be able to be mitigated and a harder look needs to be taken regarding direct and indirect impacts. She was concerned, stating that she knows that a lot of people who live upstream have had a lot of erosion and she questioned the cumulative impacts from the erosion upstream from this site and the city's liability.

Mr. O'Connell stated he could address a couple of the comments. He referred to Mr. Ashcroft's comments about keeping it commercial but preserving the serenity seemed to be a little contradictory. He stated that this was about the least intense development they could have on the site. Regarding the comment about making the trail a road again, he didn't know how many were around in the past but so many people were killed on that road trying to turn onto the highway because of the curve as you come north on Highway 1. They had to close it and it will never be connected to Highway 1 again, adding that it should not. He referred to the road not being drivable for the fire trucks, stating that they reviewed that with the fire marshall and the people who drive the fire trucks and they were satisfied with this. He referred to the comments regarding notification, he stated that it was right on the pole in front of the rehab center and he walks by it every day and he was not sure how no one was not notified. He suspect that it has to do with the address where the property taxes are mailed which was not the rehab center itself but the corporation for whomever owns it. It sounds like it didn't trickle down to the employees at the rehab center. He stated that they had a good meeting on the site with the National Marine Fish and Wildlife Service who wanted to meet with them after they received their reference from the Army Corp. He stated that it was a good meeting and they didn't see any issues they were concerned about. They walked up and down the creek and looked at the location of the outfall.

They were still waiting for their final written confirmation to get back to the Army Corp but all indications from the site meeting was that they were content with the mitigations.

Chair Nibbelin closed the Public Hearing.

Commissioner Campbell stated that one public comment mentioned the new laws that are going to make it more difficult for the city to modify projects where they are not meeting affordable housing targets, Senate Bill 35, and he asked staff for any comment on that.

Planning Director Wehrmeister stated that they are still learning about the contents of the bill and what they mean for cities, but her understanding was that it would be particularly difficult if a development came in that met the zoning and the city wanted to deny it or wanted it to force it to a density that was less than the minimum in the zoning designation. She stated that wasn't the case here. She stated that this is an applicant that was asking for the re-designation.

Commissioner Stegink stated that it was his understanding that SB 35 requires a specified level of affordable housing, and he asked if there was any component of affordable housing in this project.

Planning Director Wehrmeister stated that her understanding of SB 35 is that there was a mechanism by which a developer could trigger non-discretionary approval and certain things the developer would need to do including provide a certain percentage of affordable housing, but that was not the case here.

Commissioner Clifford concluded that there was a difference between the zoning and the General Plan on this property.

Planning Director Wehrmeister responded affirmatively.

Commissioner Clifford asked exactly what the difference was.

Asst. Planner Smith stated that the difference between the General Plan and the zoning is that the General Plan currently has a designation for high density residential. The General Plan also speaks to low density residential within the narrative of the General Plan and makes certain provisions for flood protection that would allow low density residential at the site, while the zoning is for a C3 service commercial and that was the disparity between the two.

Commissioner Clifford concluded that, if we left it commercial, we could wind up with a Recology recycling site there or something similar to that, which was a potential for the site that he would not want to see.

Sr. Planner Murdock thought the likelihood of that was low as such a project would require that they find consistency with the General Plan and would highlight the fact that the city has maintained a zoning designation inconsistent with the General Plan for some time, but a project of that sort would require a General Plan amendment in conjunction with the development improvement.

Commissioner Clifford referred to references to 100-year storms and he was clear that it doesn't mean that every 100 years they get one of them, and he thought they have had a couple of them in



the not too distant past. He asked if anyone had any idea if that term is going to be changed to indicate the new storm patterns we seem to be having, either drought and then very intense rains that go beyond what used to be 100-year storm.

Planning Director Wehrmeister was not aware of any indication that FEMA was looking to change that. She clarified that it doesn't mean that they are not, just that she has not heard of it.

Chair Nibbelin referred to a theme in comments about people not getting notice or the notice being somewhat late. He sees that their standard practice was to indicate public notice in the staff report, and it looks like there was a publication on November 8 and mail was sent out to 233 surrounding property owners and occupants. He asked if they had any thoughts or theories, and not speculate as to what might have caused some of the disconnect which they heard in public comment.

Planning Director Wehrmeister stated that she can speak to the San Pedro Creek Watershed Coalition. Staff were notified early on that they would be an interested group in town and they went to their website and sent them a notification. She stated that the information on their website was old and it was returned to them. They went about trying to find people whom they knew were members. She stated that ultimately they came to Mr. Jones and gave him the notification, but it was because there was outdated information. She stated that the applicant spoke to the rehab centers.

Commissioner Kraske stated that the applicant mentioned the unsavory element gathering along the trail and this project would help eliminate that and increase relative safety. He asked if the applicant planned to enhance the trail at all, such as lighting or signage along the property.

Asst. Planner Smith stated that the conditions of approval include a request for a lighting plan for the subdivision itself. The city is requesting that the applicant submit those details for approval and there was an opportunity for lighting within the subdivision but the alterations to the trail itself are limited to moving the bollards and other furniture at the head of the trail.

Commissioner Cooper stated that this project troubles him in a couple of instances. He was surprised that there is no bank improvement for this development. He would look at how he could protect the surrounding areas prior to development. He thought it would be great for a common driveway at the front. He stated that, if you look at where the rehabilitation center is to actually pull directly into this driveway would be fantastic. He didn't think a fire truck was going to make that very hairpin turn to make a turnaround in the cul-de-sac where you would just do a three-point turn and get in and out. He asked staff if they were aware that any of these other agencies are waiting for us to decide on something before they decide on something. He asked if this was a cat and mouse game or independent.

Planning Director Wehrmeister stated that they do run independent and it was common for the federal permits to run behind the local permits.

Commissioner Cooper asked if there was any expectation of when the federal permits would come in to see what they have to say.

Planning Director Wehrmeister stated that she did not have a timeline. She stated that obviously they need to be completed prior to any construction on the site.

Commissioner Cooper wondered why we were rushing.

Commissioner Clifford referred to the trail they were discussing, and asked if that was on private property.

Planning Director Wehrmeister stated that Asst. Planner Smith can correct her if she is wrong, but she believes that is still within the right of way.

Commissioner Clifford concluded that they don't have any requirement to do any development of the trail.

Commissioner Stegink referred to the federal permits and asked if they have dates on which they requested comment from the feds on those.

Asst. Planner Smith stated not from the federal permits. They received a copy of the letter from Fish and Wildlife dated April 2017 as part of the consultation carried out by the applicant and the fact that the department had not made a comment within a 60-day period and would therefore issue approval on the basis that they have not made a comment.

Commissioner Stegink asked if the default notice was from the federal agency itself.

Asst. Planner Smith stated that it was from California Fish and Wildlife.

Commissioner Stegink referred to the stream bed alteration and asked from where that approval would come.

Asst. Planner Smith stated that the lake and stream bed alteration agreement is administered through California Fish and Wildlife.

Commissioner Kraske assumed the outflow needs to be approved by the National Marine Fish Service and they were still waiting for that approval.

Asst. Planner Smith stated that there were a number of agencies that required notification. He has the details of the agencies that were required and some of the details of the sections specific to those agencies where certification or approval is required but in terms of the approval, he was not familiar with the process and how they were issued.

Chair Nibbelin asked if the Commission would entertain some clarification from the applicant's agents who presumably have information bearing on the specific question.

Mr. O'Connell stated that he will let the biologist speak to the details but the short answer was that the permit for the outfall is required from the Army Corp of Engineers and they refer it to the other agencies. There aren't permits from the other agencies for the outfall itself but goes through the Corp for referral.

Joe Rigney, biologist, stated that part of the confusion comes up with the names of the agencies. California Department of Fish and Game changed its name to California Department of Fish and Wildlife a few years ago, but you also have the U.S. Fish and Wildlife Service, and now you have

two agencies with very similar names. He stated that the lake and stream bed alteration agreement is through Section 1600 of the California code, required by the California Department of Fish and Wildlife and that is the application that they submitted and the staff explained it. It was called a "nopla" as it went past their legally statutory requirement to respond, and the notification was approved and it was able to move forward. They also applied for a permit for the outfall. That was where the issue with NMFS comes in because the Army Corp of Engineers is required to do what one speaker referred to as Section 7 consultation under the endangered species act. Whenever there are potential impacts to endangered species, the biological report did identify potential impacts to steelhead salmon and the National Fishery Service was called in by the Army Corp of Engineers. They have not received a letter yet, but as Mr. O'Connell explained, they did have a meeting with them. He stated that there are other potential species impacts that might occur from this that require a consultation with U.S. Fish and Wildlife Service and that was the agency that has been dragging its feet in terms of the federal permitting getting through and they have not had a chance to meet with Fish and Wildlife Service but they were diligently working on that.

Chair Nibbelin stated he would entertain a motion or, if not, he was interested in what next step they have in mind.

Commissioner Cooper mentioned to fellow commissioners that a lot of people said they didn't have enough time and there were still letters that need to be done. He asked if they would entertain continuing the item.

Commissioner Campbell stated that he could be talked into that. He noted that in 2007 they had a lot of discussion about this parcel and what could be done with it. He stated that, at that time, he was more enthusiastic about keeping it residential and narrowing it down to four homes and pulling a little further from the creek because of the fewer homes. He was more enthusiastic about that plan than he is with six, but it was a lot less than a couple of dozen homes which would be a disaster for that site. He was struggling with that and was curious on the applicant's thoughts on whether they could pull a home off, pull a lot back and move things off the creek just a bit more. He thought they have to consider what could be put in as opposed to what they are proposing

Commissioner Stegink was concerned about the steelhead issue. He thought it was a depleted asset, and one of the few assets Pacifica has when you look historically that 30 years ago people were fishing there and pulling large steelhead out of there and when you walk the creek it is 3-4 fingerlings and more migratory fish. He would like to hear what the feds have to say on that specifically and clear that up. He stated that having met with them on a number of issues and not hearing back was not necessarily unusual on a topic they care deeply about. He would support a continuance as he thinks it is too close to the creek. He would like to leave the trees there, and he would like a definitive statement that the sixth parcel isn't going to end up to be some sort of apartment building or six more lots. He mentioned hearing a statement that there was an acre or 43,000 square feet easement on that corner. He didn't see that particular square footage matching on documents.

Chair Nibbelin thought the staff report was very well laid out and he was generally in support of this project. He thought his concerns and those raised by the Commission were adequately addressed and he would be concerned about a 36000 or 30000 square foot lot being further subdivided but he was content that it was represented that it isn't going to happen given what was

a regulatory possibility. He mentioned that there were tradeoffs involved all the time and he recognizes that 25 feet could be more. He thought six units were not an unreasonable thing in light of the fact that we are trying to encourage development of housing and it was an important factor to bear in mind, although he recognizes there are some tradeoffs. He was content with this matter and was prepared to take action. He didn't see what was gained by continuing it. He thought it was properly noticed and he recognized that not everybody effectively got notice, but the city and staff did what they were supposed to do. He stated that it was not uncommon to have the feds lagging and nothing was going to happen in terms of work on the site until the feds actually weigh in and he would encourage them to move this matter forward. He stated he would make a motion if no one else was willing to.

Commissioner Clifford stated he was not making a motion. He was a little concerned about the 25 feet and he would not be opposed to continuing the item, partly because he needs more time to study it and would like to get with staff and ask questions once he has had more time to study the project.

Commissioner Kraske was not able to make a motion. He would like to hear the results from the agencies regarding the storm outfall unit.

Commissioner Campbell stated that he was in a similar vein and wants to signal that he was not necessarily opposed to it, but would like some more comfort about lot #6 to understand and nail down what can and can't be done on that lot as it is rather big. He stated that, if they can get more legal assurance on what can and cannot be done on that, it was moving him in the direction of approving it. He also remembers the study session from ten years ago and being much more enthusiastic about this when it was four and further back off the creek than he was with six. He knows it is not 25 feet from the creek which he thought was important to note that from the center line of the creek to the barrier is much further. He was less troubled by that but would like to see and understand a little bit more.

Chair Nibbelin asked if someone was willing to make a motion at this point.

Planning Director Wehrmeister stated that, before a motion is made, she wanted to share for consideration that the next meeting that she would recommend would be December 18 since on December 4, they tentatively have Fassler coming back and a fairly substantial project. She was pointing that out as it was one week before Christmas and in the vein of trying to get more public comment and more people noticed, she thought she would mention that. She stated that it was an available date, and assuming the first Monday in January is the 1<sup>st</sup> and the next date would be Martin Luther King date and their regular hearing would be Tuesday, January 16.

Chair Nibbelin wondered if part of the reason for wanting to continue it was to give the feds the opportunity to weigh in and whether it might make sense to push further beyond the December date.

Commissioner Cooper asked what the third week in January was.

Planning Director Wehrmeister stated that it was Martin Luther King Day on January 15 and their regular meeting would be the next day on Tuesday, January 16.

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Commissioner Cooper moved that the Planning Commission continue the item to Tuesday, January 16; Commissioner Clifford seconded the motion.

The motion carried **5-1**.

Ayes: Commissioners Kraske, Stegink, Cooper, Campbell and Clifford

Noes: Chair Nibbelin

**COMMISSION COMMUNICATIONS:**

Commissioner Clifford stated that he attended the most recent Library Advisory Committee meeting and they are moving things forward. He stated that the language going to the City Council is now going to a subcommittee to fine tune it and off to the City Council.

Commissioner Stegink stated that he has had a couple of people comment anecdotally about highway signs, specifically a liquor sale posted at 50% of the highway exits for more than a week by sandwich boards. He was curious as to whether the city control the posting of signs on Highway 1 or CalTrans does.

Planning Director Wehrmeister stated that technically it was a Caltrans matter, but recognizing that they don't have the local staff to get out there, she believes the Public Works department sees them and are able to pick up the signs.

Commissioner Stegink referred to Shelter Cove Beach in Pacifica and the Martins Beach relationship to that, and asked the City Attorney if Shelter Cove was a public beach.

Asst. City Attorney Sharma stated that it was her understanding that it is.

Commissioner Stegink asked how Pacificans who wish to access Shelter Cove Beach do so.

Asst. City Attorney Sharma understood that there was a pathway commonly used. She asked staff if they had any additional comments about how to access the beach.

Planning Director Wehrmeister understood that the site was accessed by a trail or access way from the Pedro Point neighborhood.

Commissioner Stegink referred to mention of signage that it was a private beach, and asked if there was any signage that suggests there is a public easement there.

Chair Nibbelin was concerned as this was not agendized as a specific item. He thought it might be appropriate to agendize as a followup as it sounds like it warrants some more in depth conversation. He asked if they could agendize a brief discussion of this at an upcoming meeting.

Planning Director Wehrmeister stated that she can speak to the City Attorney about that.

Commissioner Cooper stated that there was a person interested in purchasing Shelter Cove and putting some public use area there for children and he thought it was an interesting idea and maybe they will pursue it and present it to them.

**STAFF COMMUNICATIONS:**

Planning Director Wehrmeister mentioned that they have hired a new code enforcement officer, Gwen White. She was not present but she is working for the city. She stated that, since the last meeting, they had an election and the marijuana ballot measure passed and they were working internally to get all the applications processed for the day after the election is certified as they are getting a lot of inquiries already. She wanted the Commission to be aware that they are working on adjusting their publication timelines to be more consistent with City Council which is

publicizing the Wednesday before the meeting and it will take a few cycles to put that in place but they are working towards that goal.

Chair Nibbelin appreciated that.

Commissioner Campbell asked her to provide the timing of things on the marijuana ordinance as they move forward on the city.

Planning Director Wehrmeister stated that the ordinance was effective after election certification which is scheduled for the December 11 meeting and then within the zoning and police license ordinance there were triggers after certification of the election. The first step is to apply with the police chief for a background process and the second step is to go into security plan review with the police department. The third step would be the use permit process with the Planning Commission and before that is a lottery if necessary and the Commission will potentially see applications probably mid-year of 2018.

Commissioner Campbell asked if, during this period of time, the current dispensaries that are illegal will continue to operate as is.

Planning Director Wehrmeister stated that they were also working on their enforcement procedure during this time period and they were working on the timelines and their intent is to hopefully work cooperatively with the businesses and have them come in and meet with them and tell them what they are intending to do so there is a smooth transition out of the situation they are in now. She added that she did not have a time line yet.

Commissioner Stegink stated that, with respect to Chair Nibbelin's suggestion that they not veer into anything that is not agendized, he suggested that generically with any tax they pass, they devise a mechanism to collect that tax.

#### **ADJOURNMENT:**

There being no further business for discussion, Commissioner Cooper moved to adjourn the meeting at 9:19 p.m.; Commissioner Clifford seconded the motion.

The motion carried **6-0**.

Ayes:	Commissioners Kraske, Stegink, Cooper, Campbell, Clifford and Chair Nibbelin
Noes:	None

Respectfully submitted,

Barbara Medina  
Public Meeting Stenographer

APPROVED:

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Planning Director Wehrmeister