

EXHIBIT 11

MEMORANDUM

To: Del Rey Oaks City Council Members, Acting City Manager and Staff
From: Douglas Mackenzie, 16 Saucito Avenue, Del Rey Oaks, CA
Date: January 18, 2021
Re: Alice Angell Green's Appeal of the November 10, 2020 Planning Commission decision approving a conditional Conditional Use Permit for Del Rey Oaks Garden Center (File Number: ARC 20-03 and to amend CUP 14-08)

This memorandum advances arguments in support of Ms. Green's appeal referenced above and suggests remedies to address and abate certain violations of law and procedure that have occurred and continue to occur in relation to the City's relationship with the Del Rey Oaks Garden Center.

As an initial matter, the issuance of Conditional Use Permit CUP#14-08 by the Planning Commission on November 12, 2014 was fraught with procedural and substantive problems. Among these, the Planning Commission did not make a finding that the negative declaration reflected its independent judgment and analysis as required by Public Resources Code Section 21082.1(c)(3) given that the negative declaration was prepared by a consultant, Denise Duffy & Associates (DD&A), hired by the project applicant, Tope's Tree Service Inc. (Exhibit A)

More significantly, Commissioner Reikes moved to approve ARC#14-02 and CUP#14-08 "with the conditional approval that an easement wide enough to fit a truck be maintained". Commissioner Hayworth further amended the approval "for hours to be set: Monday through Friday 7:30 - 5:00, Saturday 7:30 - noon and limited to 12 Sunday's a year". The amended motion was seconded by Commissioner Hayworth and passed by a vote of 5-0. (Exhibit B) The language of CUP#14-08 as issued however does not accurately reflect the Planning Commission's decision and provides that "1) Tenant must create and maintain a public access easement wide enough to allow access to travel to Wilson Way behind Safeway." Further the permit provides that "3) Hours of operation to be Monday through Friday 7:30am-5:00, Saturday 7:30am-3:00pm and limited to 12 Sunday's a year."

Besides the obvious problems with the inconsistent language of the CUP as issued, by approving the permit that included a public access easement wide enough to allow access to travel between the Garden Center and Safeway, the Planning Commission did not consider the limitations placed on the project by the negative declaration and thereby acted improperly and in violation of law. The negative declaration does not include a study of a public easement across Work Memorial Park. Areas outside the proposed lease boundaries were explicitly excluded from the project so that the following determination and finding could be made by DD&A: "I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared." The lease boundary is shown in Exhibit A of the lease agreement.

As previously noted, CUP#14-08 was issued to Tope's Tree Service Inc. (the proposed name for the garden center was Tope's Sustainable Garden Center). At the December 16, 2014 meeting of the City Council, in discussing Agenda Item 6.C., Resolution 2014-16, City Manager Dawson informed that council that "Topes decided they are not going to move forward with the project. The original team that put the plan together Mark Bordonaro and Frank Lucido have found another person interested in doing this same project. They are now working with Mr. Mori of Seaside Garden Center." Mayor Edelen stated that "[i]f they decide to go ahead with the lease agreement they have to state that they are approving the findings of the Planning Commission and all CEQA requirements. Accepts all the conditions imposed by the Planning Commission." Council Member Ventimiglia asks "[n]othing has really changed just the name of the owner correct" to which Mr. Dawson responds by saying "[c]orrect." The City Council approved the resolution by a vote of 3-0. (Exhibit C)

It appears that Mr. Mori applied for a conditional use permit identical to the one issued to Tope's. The application number is shown as CUP 15-05 indicating that it was submitted in 2015. No application date is shown although the application was received and signed by Karen Minami. No fee was submitted by Mr. Mori. The date issued is shown as 4/18/15. The application was purportedly approved by "Dan Dawson".

A review of the record reveals that neither Mr. Mori or anyone representing Mr. Mori appeared before the Planning Commission to discuss his application and answer questions from the commissioners.

Mr. Dawson's approval of Mr. Mori's application CUP 15-05 without due process and public input was improper and in violation of law.

On May 20, 20 Mr. Mori requested two use permits, one making reference to map #2 and requesting an "extended area we are seeking for permit to use. It also indicates a fence area we installed for security purpose. Since we opened our business, a number of theft and vandalism occurred. We had to erect fence in hurry. The chain link fence seemed to be most reasonable fence around for the security for the appearance. So we proceeded. I did not realize we need a permit" and another requesting "[w]e would like to stay open more Sundays beyond October and Open early in Spring. I would like the option to stay open year around, although we might want to close Sundays in January and February." The Staff Report prepared for the August 12, 2020 Planning Commission meeting that was subsequently cancelled included a copy of Mr. Mori's May application, a letter and two maps, one prepared in 2019 by L&S Engineering and Surveying, Inc. and titled "Old Driving Range Topographical Survey", and the other Mr. Mori's map showing the "extended area". (Exhibit D)

A review of the L&S Engineering map shows the wall Mr. Mori constructed as encroaching to the north of the driving range structure and to the west of the the lease boundary line as a comparison with a map provided in the Staff Report prepared for the November 10, 2020 meeting will show.

A review of Mr. Mori's map shows that there are two areas outside the lease boundary line, areas that Mr. Mori labeled "5199SF over" (the northern "cutout") and "322SF over" (the western area outside the large wall next to the back entrance to the Garden Center. This area has been "graded" and a plurality of potted trees are located there. The amount of land Mr. Mori is "seeking for permit to use" totals 5,531 square feet according to his figures or approximately 0.127 of an acre.

The location of the chain link fence is not shown on Mr. Mori's map. It does show the fenced areas as being "over".

The Staff Report prepared for the November 10, 2020 Planning Commission meeting included a copy of Mr. Mori's application and letter, two maps and a copy of a Google Earth image. One of the maps was Mr.

Mori's map showing the extended areas. A second map was prepared for Marc Bordonaro by Lucido Surveyors in October 2014 and shows Work Memorial Park and the proposed lease area. The western boundary of the leased area is curved. This is the map presented to the Planning Commission in 2014. Compared to the map included in the 2014 Staff Report, it appears that the retaining wall Mr. Mori constructed on the western side of the leased area falls outside the lease boundary.

The Google Earth image is undated yet shows a snapshot of the footprint of the Garden Center including Mr. Mori's encroachment into the area outside the lease boundary on the north side of the leased area, including the so-called cutout. As clearly shown in Exhibit A of the lease agreement, this area includes a steep slope. As with other wetland areas in Work Memorial Park, and as identified by DD&A, this area was explicitly excluded from the project and yet Mr. Mori has built a road up the hill beginning at the southern end of the area and is using the northern part of the former driving range structure excluded from the lease area by placing a large storage container under the structure, building a retaining wall, and storing bins of large rocks. Compare this Google Earth image to the aerial image attached to the negative declaration. (Exhibit E)

It is highly improper for City Staff to provide two versions of Mr. Mori's application as representing his application. The reasons for the City Staff having done so are unknown.

Mr. Mori's request for architectural review was determined by City Staff to be categorically exempt pursuant to CEQA Guidelines 15301 and 15304. CEQA Guideline §15301 relates to Existing Facilities and provides in part:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of use.

As previously noted, Mr. Mori's project, as proposed in his application, involves the City's ratification of substantial alterations to the topography of the steeply sloped "cutout" area including the road up the hill and expansive use of the areas encroached upon such as the northern end of the driving range structure. In addition, areas to the north of the driving range structure are being encroached upon by Mr. Mori.

The Planning Commission did not consider the applicability of exemption 15301 to Mr. Mori's project.

For at least these reasons, exemption 15301 is inapplicable to Mr. Mori's project.

CEQA Guideline §15304 relates to Minor Alterations to Land and provides in part:

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Examples include but are not limited to:

(a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.

Clearly Mr. Mori has made major alterations to the land including grading the "cutout" area that has a slope greater than 10 percent in what has been determined to be a wetland. Whether Mr. Mori removed healthy, mature and/or scenic trees to build the road up the hill is yet to be determined.

The Planning Commission did not consider the applicability of exemption 15304 to Mr. Mori's project.

For at least these reasons, exemption 15304 is inapplicable to Mr. Mori's project.

The City has a duty to comply with CEQA any time a lead agency must make a discretionary decision about whether to approve or carry out a project that is not exempt from CEQA. *Public Resources Code §21002*. While a lead agency may rely on a previous EIR or negative declaration when making a subsequent discretionary decision on a project, the agency is required to review the possible need for a subsequent EIR or negative declaration if case one of the threshold conditions triggers the need for a subsequent EIR or negative declaration. *Public Resources Code §21166*. The threshold conditions are: Substantial changes are proposed in the project; Substantial changes occur in the circumstances under which the project is being undertaken; or New information of substantial importance to the project becomes available.

In Mr. Mori's case, all three of the threshold conditions are present and a subsequent EIR must be prepared and presented to the Planning Commission. Mr. Mori is proposing substantial changes in the project. For example, Mr. Mori is requesting that the City ratify his encroachment of environmentally sensitive lands outside the leased area. Inarguably, substantial changes have occurred in the circumstances under which the project has been undertaken. Mr. Mori has acted with disregard for, and in contravention of, the findings of the negative declaration and the basis for CUP#14-08 that he now seeks to amend. Finally, new information of substantial importance to the project has become available as exemplified by the public comments presented to the Planning Commission on November 10, 2020.

Quoting from the *Practice under the California Environmental Quality Act* published by CEB:

When an agency considers a subsequent discretionary action on a project, it will know whether changes are proposed in the project but may be unaware of changes in circumstances or new information of importance to the project. Nothing in CEQA or the Guidelines requires the agency to conduct an investigation to ferret out changes in circumstances or new information. If the agency becomes aware of such factors, however, it should then consider all the relevant facts and explicitly decide whether conditions exist that necessitate further environmental review. If a project opponent is aware of changed circumstances or new information, bringing that material to the agency's attention might obligate the agency to conduct an

investigation to determine whether further environmental review is required. An unresolved question in the record concerning whether a further EIR might be required could provide a basis for a legal challenge to the agency's decision on the project.

The Planning Commission was made aware of many changes in circumstances and new information of importance to Mr. Mori's project. Despite being presented with changes in circumstances and new information, the Planning Commission did not consider all the relevant facts and explicitly decide whether conditions exist that necessitate further environmental review. Concern was expressed by the public about the lack of information upon which the Planning Commission was basing its decision. The information presented to the Planning Commission in the agenda packet was faulted. The maps were insufficient and confusing. The process by which the haul road was built was brought into question by the public and by some of the commissioners. Mr. Mori was not present to answer questions.

Clearly a subsequent EIR is required.

Mr. Mori's lease violations are numerous and include violations of lease provision 3. Use of Premises (Mr. Mori has created an environmental nuisance next to the creek adjacent the repair shed and has not complied with all applicable federal, state, and local laws, rules and regulations applicable to the leased premises), lease provision 6. Irrigation Well (On information and belief the City does not have Mr. Mori's well production and consumption records relating to the use of the well), lease provision 7. Improvements and lease provision 8. Use of the Leased Premises (Mr. Mori has constructed new buildings and structures on the leased premises including retaining walls, cribs, storage containers and a three story high storage rack, has paved most of the yard and thereby altered the leased premises to create an environmental nuisance, and has not maintained the leased premises in good repair and in an attractive condition), lease provision 9. Compliance with Law (Mr. Mori has not complied with "all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Premises, or the operations conduct thereon, and to faithfully observe and secure compliance with, in the use of the Premises, all applicable federal, state, and local laws, rules, and regulations now in force or which may hereafter be in force. Nothing herein shall be constructed to allow Tenant to use the

Premises without obtaining all permits required by the Del Rey Oaks Municipal Code.”), lease provision 15. Conduct of Business (Mr. Mori does not conduct his business in a “first-class manner” and, to the contrary, uses the leased premises in such manner as to create environmental nuisances and violations) and lease provision 17. Signs (Mr. Mori has a plurality of temporary signs displayed about the leased premises).

Turning to the matter of the Commissioners’ conduct during the November 10, 2020 Planning Commission meeting, reference is made to “A Resolution of the Council of the City of Del Rey Oaks, California, Establishing a Code of Conduct for Council and Planning Commission Members” (Resolution No. 2005-04 approved March 22, 2005). (Exhibit F). Section A. Ethical Considerations 2. Conduct of Council and Commission Members provides that the “professional and personal conduct of members must be above reproach and avoid the appearance of impropriety.” The fact that Mr. Mori did not attend the Planning Commission meeting resulted in Mr. Hoyne and Chair Donaldson managing the meeting and restricting the ability of the Planning Commission to make an independent judgment. Their conduct suggested that they were carrying water for Mr. Mori and perhaps had assured Mr. Mori that his presence at the meeting was not necessary.

Section A. Ethical Considerations 4. Decisions Based on Merit provides that “[c]ouncil and Planning Commission Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.” The record suggests that the majority of the Planning Commission members did not base their decision on the merits and substance of the matter but rather on the unrelated consideration of their personal feelings toward Mr. Mori.

Section A. Ethical Considerations 5. Conflict of Interest provides that “[i]n order to assure their independence and impartiality in the City’s best interest, Council and Planning Commission Members shall not use their official positions to influence decisions in which they have a conflict of interest.” The record suggests that Commissioner Wood had a clear conflict of interest displayed by her impassioned advocacy for Saturday deliveries at the Garden Center. Based on information and belief, Commissioner Wood has a commercial relationship with the Garden Center.

Section B. General Requirements for All Council and Planning Commission Members 6. provides that Council and Planning Commission Members shall “[p]repare in advance of Council and Commission meetings and be familiar with issues of the agenda.” Section D. Procedural Considerations 3. provides “[e]ndeavor to submit questions on Council or Commission agenda items ahead of the meeting so that staff can be prepared to respond at the Council or Commission meeting. Any clarifications or technical questions that can be readily answered should be handled before the meeting.” The record clearly shows that the Planning Commissioners did not prepare in advance of the November 10, 2020 meeting.

Finally, Section E. Enforcement provides that “[c]ouncil and Planning Commission Members have the primary responsibility to assure that this Code of Conduct is followed so that the public can continue to have full confidence in the integrity of government.”

By approving Mr. Mori’s application for a CUP permit conditionally, the Planning Commission improperly assigned its statutory duties and obligations to the City Manager. The Planning Commission is tasked with approving or denying applications, setting additional conditions for approval as appropriate, and directing the City Manager as to the specific conditions that must be included in a renegotiated lease to comply with the conditions of the CUP. On November 10, 2020 the Planning Commission abdicated its duties and apparently hoped that the City Manager would do the right thing and include the public’s comments and concerns.

As the record shows, the relationship between the City and Mr. Mori has been a long one and has been characterized by negligence at best and intentional disregard at worst for the conditions of the lease agreement and the requirements of federal, state and local laws. Mr. Mori must be made to abide by the terms of the lease or vacate the premises as provided for in the lease agreement. The City must be made to conduct a subsequent EIR related to Mr. Mori’s proposed project to determine the environmental impact of his activities. The City must compel Mr. Mori to restore the areas of Work Memorial Park disturbed and encroached upon by the haul road, the north road that runs up the hill through the “cutout”, and the area north of the driving range structure.

To this end, the City Council must grant Alice Angell Green's appeal and set aside the Planning Commission's November 10, 2020 approval of Mr. Mori's application for an amendment to CUP#14-08. Review of the Code of Conduct is also desperately needed as shown by the record in this matter.

EXHIBIT A



Denise Duffy & Associates, Inc.
 PLANNING AND ENVIRONMENTAL CONSULTING

INVOICE

Invoice Number: 5737
 Invoice Date: Jun 10, 2014
 Page: 1

For Services from:
 5/15/14 to 6/15/14

RECEIVED
 JUN 27 2014
 CITY OF DEL REY OAKS
 CITY CLERK

Bill To:
 City of Del Rey Oaks
 650 Canyon Del Rey
 Del Rey Oaks, CA 93940
 USA

Ship to:
 Attention:
 City of Del Rey Oaks
 650 Canyon Del Rey
 Del Rey Oaks, CA 93940
 USA

Customer ID	Customer PO	Payment Terms	
C05	#9614 DRO Tope	Net Due	
Sales Rep ID	Shipping Method	Ship Date	Due Date
001	Courier		6/10/14

Quantity	Item	Description	Unit Price	Amount
7.50		Tope Facility - Meetings and Hearing preparation and attendance, preparation of minutes, authorized via email 5/22/14		
		Denise Duffy, Principal	205.00	1,537.50
9.00		Josh Harwayne, Sr. Env. Scientist	135.00	1,215.00
6.00		Assoc Planner	95.00	570.00
1.25		Administration	55.00	68.75
		EXPENSES (mileage, phone etc)		15.85

DAN informed me on 9/23/14 that this bill is to be sent to TOPEX. I email DD&A to inform them. XM.

ENTERED

Subtotal	3,407.10
Sales Tax	
Total Invoice Amount	3,407.10
Payment/Credit Applied	
TOTAL	3,407.10

Tel: (831) 373-4341
 Fax: (831) 373-1417
 947 Cass Street, Suite 5
 Monterey, CA 93940

EXHIBIT B

DRAFT

**REGULAR MONTHLY MEETING DEL REY OAKS PLANNING
COMMISSION WEDNESDAY, NOVEMBER 12, 2014 AT 6:00 P.M.
CHARLIE BENSON MEMORIAL HALL**

Present: Commissioner Reikes, Goetzelt, Jaksha, Weir, Hayworth, Green and
Chairman Gaglioti

Absent: None

Also Present: City Manager Dawson, City Attorney Trujillo and Deputy City Clerk
Minami

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

The Commission considered **ITEM 3.A.**, Planning Commission Meeting Minutes,
October 8, 2014

Motion by Commissioner Jaksha to approve, seconded by Commissioner Hayworth

No comments

7-0

PUBLIC COMMENT:

None

BUILDING REPORT:

The Commission accepted **ITEM 5.A.**, Building Activity Report, Oct. 2014

NEW BUSINESS:

None

OLD BUSINESS:

Applicant's Name:	Mark Bordonaro/Frank Lucido
Business Owner's Name:	Andy Tope/ Tope's Sustainable Garden Center
File Number:	ARC#14-02&CUP#14-08
Site Location:	899 Rosita Rd, at end of Angelus Way
Planning Area:	APN# 012-551-006
Environmental Status:	Draft Initial Study – Negative Declaration

Project Description: The applicants are requesting an Architectural Review and a Conditional Use Permit to remodel two existing buildings, upgrade and landscape the grounds, and operate Tope's Sustainable Garden Center. The proposed project would take place on a 1.96-acre portion of the former Del Rey Oaks Driving Range Property.

Chairman Gaglioti and Commissioner Jaksha step down, they both own house's 500 feet from proposed project.

Commissioner Weir takes over as Vice Chair for this item.

Frank Lucido, Applicant: Revised application, much smaller than the original plan, it's now less than 2 acres. The Topes Family wants to be a part of the business community and work with all of the concerns that they heard at the last meeting. Response to letter from two DRO residents and one Monterey Resident. Most information is simply not true. There is one zoning map and it's an overlay. (shows map) The property is zoned as C1V, Commercial Visitor Overlay and it's part of park land. The zoning has been the same for over 30 years. The Application shows where project will be and where it's won't be. Less disturbance, the better. Animal's will not be displaced with the new plan.

Josh Harwayne, DDA: Initial Study is available at all locations that it's legally required to be, and a biologist report wasn't necessary for this smaller project.

Commissioner Green: Still needs further information about map.

City Manager Dawson: The area is a subcategory of the zoned park area. Regarding the letter, the project is well within the "other municipal purpose". Explains the map.

Rolf Langland, Resident: *from seat in the back:* Any park in the city is zoned "P"?

City Manager Dawson: Yes.

Vice Chair Weir: Asked for one person at a time to speak and there will be a time for public comment.

City Attorney Trujillo: Government code 25515 states that The Legislature finds that cities and counties are faced with critical revenue shortages and a need for additional revenue sources. The Legislature finds that counties own property can be developed into commercial, industrial, and cultural uses, to provide a means to produce additional revenue sources for the benefit of the City.

Frank Lucido, Applicant: Amount of employees will be the same, again the statement in the letter is simply not true. Employee's may vary and some might be part time, depending on season. The noise that will be generated by this business will be no different than lawn mowers, leaf blowers, trucks, motorcycles in the city every day. Lots of home based commercial business in residential neighborhood throughout the City. Provide landscaping and gardening supplies to the community at affordable rates, and the yards around here need help.

Dan Dawson, City Manager: This company listened to the concerns of the residents, they hired Frank Lucido and sized down the project considerably.

Frank Lucido, Applicant: After last meeting went back to Mr. Tope and informed him of the items of concern and how expensive it would be and he said to do it, he listened to the people. Now he has done everything that the people asked for, some of the people still don't like it. It's hard to hit a moving target.

Commissioner Green: Didn't see boundaries markers, but saw orange markers. Can people still walk along the trail?

Frank Lucido, Applicant: If you can walk now, that won't change. The boundaries this will be part of the lease agreement, they weren't marked. Just the architectural changes were flagged.

City Manager Dawson: A public easement maintained by Topes will be part of the agreement.

Commissioner Hayworth: Were postings done in a timely manner?

City Manager Dawson: Posted everywhere required, in the packet and on line. Applicants have gone above and beyond.

Commissioner Hayworth: Limited access to the rest of the City property.

City Manager Dawson: Mostly wetlands, very expensive to mitigate and has strong indication from City Council to keep it as is.

Commissioner Hayworth: Customers and days of the week?

Frank Lucido, Applicant: The projection is no more than when the driving range was in business. Plenty of room for parking and turn around area. Have to check with C.O.P.

Marc Bordonaro, Applicant: Monday through Thursday are the busy commercial days and Saturday is the busy residential day.

Commissioner Green: Difficult to envision boundaries of lease area.

Frank Lucido, Applicant: Explains where project would be on the map. And rest assured there will be public access.

City Manager Dawson: As a Planning Commission you can make it a condition of the use permit.

Frank Lucido, Applicant: Mr. Topes is willing to do that.

Commissioner Hayworth: Lighting?

Frank Lucido, Applicant: All within the cities lighting requirement and will not be any nuisance to the surrounding area. Will be much better than when it was a golf driving range.

Commissioner Reikes: What is the cut out at the top of drawing next to tennis courts?

Frank Lucido, Applicant: We stayed out of that area because that was what we were asked to do.

Commissioner Reikes: Two generators in the City, what are they for? Are they maintained?

City Manager Dawson: Seaside Sanitation, emergency generators. The City has a City Council person on the Seaside Sanitation Board.

Commissioner Goetzelt: What kind of trees and why remove?

Frank Lucido, Applicant: Eucalyptus. Mostly because of sewer lines, and entrance to business. Trying not to remove, but can't avoid some removal. They are also going to shape and manicure to help the life of the tree and to help to be a sound buffer.

Vice Chair Weir: Mentions the letters that were submitted. One from Monterey Bay Unified Air Pollution Control District regarding pollutants that may be disturbed during construction. One from concerned residents that Frank Lucido referred to at the beginning of the meeting.

Frank Lucido, Applicant: The pollutants from the old buildings will be mitigated during the plan check and building permit phase of the project.

PUBLIC COMMENT:

Rolf Langland, 996 Paloma Rd: Lease item was removed from City Council Agenda with no notice. Were the issues with the wetlands recently “discovered”, because there have been projects brought to the Council and Commission that were bigger than this one and the wetlands were never mentioned? Discovered 1.97 acres? Map of where the wetlands are located?

Frank Lucido, Applicant: The 1.97 acres were “identified”. This project is outside of the wetlands, because it was “identified” not discovered by DDA and they modified the project.

Rolf Langland: Was the other project in the wetlands?

Frank Lucido: Part of it was, yes.

Rolf Langland: Did you know?

Frank Lucido: Yes, we knew and had a plan for migration.

Rolf Langland: What is the difference from this land and surrounding area? Since this was identified as outside the wetlands, what’s outside of the boundary?

Frank Lucido: As long as this project is outside the wetlands, it really doesn’t matter.

Presenting the map from City Hall, and explains it. Would be glad to answer questions, one at a time.

Rolf Langland: The City municipal code doesn’t have a provision for C1V, park land.

Frank Lucido: That was addressed earlier in the meeting.

Vice Chair Weir: It’s getting argumentative.

Rolf Langland: Not receiving answers to questions. (Asks again about the zoning map)

Frank Lucido: This is the reason it’s difficult to meet the needs of the people. All questions are answered.

Rolf Langland: Official zoning map, from general plan? Where’s the C1V parkland on this one, it’s on the other map. Where’s the official map!

Frank Lucido: Right here (pointing to the map) we have answered your questions. The 1.97 acres is not on the zoning map because it hasn’t been developed as of yet. The map is from 1984, at least.

Rolf Langland: Any proposed project on parkland in City will be considered.

Vice Chair Weir: It would come to Planning Commission and handle like any other proposed project in the City. Maybe need to have a better copy of the zoning map.

Frank Lucido: It’s an over lay map, looks different.

Kim Svetich-Will, 57 Melway Circle: Reads her letter into record and appreciates the downsizing of the project. Neg Dec, zoning isn’t clear and seems like there is a zoning change. Spirit of the deed, the golf range went along with the deed and municipal use. Wants clarification about traffic, because it wasn’t addressed. Any business will add to the noise from hwy 218. Hours and days of operation aren’t clear in application.

Concerned for the residents of Rosita Road. Wants the Commission to tour it together and to visit some homes surrounding the project to see it from a different view. Page 18 of the Draft Initial Study, about Storm water requirement and acreage disturbed.

Frank Lucido: Less than one acre will be “disturbed” and under the amount allowed. The project is Topes Sustainable Garden Center, no chain saws or tree service at this location, will be a good partner. The reason that chain saws are mentioned is because of the repair shop. Trying hard to address all of the issues. Years of golf balls and bright lights at night.

George Jaksha, 1130 Rosita: Owns the house that overlooks the property. People don’t want anything built there, the applicants are bending over backwards to be accommodating to everyone. If folks don’t want anything down there, then lease it from the city and leave it alone.

Shelly and Craig, Residents of 29 Ralston Dr. Monterey: Bought home in December of 2013. Their house overlooks the “saw shop” and doesn’t want to hear noise from equipment. Shows picture to Commission of how close it is to their back yard. Clearly hears voices in her house from the canyon now and it will be much louder. No flood lights! Hours of operation? Not enough parking for employees and public. Huge difference between truck delivering materials and residential shoppers and traffic. Application is too vague, no specific days and times and lacks details. What are the terms of the lease?

City Manager Dawson: There will be no project until a lease is approved by the City Council.

Frank Lucido: The days and times weren’t finalized until getting feed back from this meeting and the City. Monday through Saturday and some Sunday’s. Everyone wants different hours and we will follow what the City wants and allows. They want to be a good partner.

Chris Palma, 854 Portola Drive: People of Portola hear more than anyone, wants the Commission and applicant to tour his house to hear the noise. Why no traffic study? Chippers? Industrial application in a residential area? How will the chips get to the bay? Not a good use.

Mark Bordonaro: No chippers on this project, still in discussion with the City Manager about different location for that part of business. Chips will be brought in.

Vice Chair Weir: Explains that studies were performed.

Chris Palma, 854 Portola Drive: By a company hired by the applicant?

Vice Chair Weir: No, by the City.

Frank Lucido: Once the trees are manicured, the noise will be buffered.

Vice Chair Weir: All the necessary studies have been done and are available to review.

Josh Harwayne, Denise Duffy and Assoc: Explains the process of the Negative Declaration and when a full study is necessary and when it’s not. It wasn’t necessary for this application.

Pat Lintell, 860 Rosita Rd.: Why moving business from Monterey?

Mark Bordonaro: Location too small and it’s on a one way street.

Pat Lintell: Wet lands, under 2 acres code restriction?

City Attorney Trujillo: There are no restrictions with this application.

Frank Lucido: Assures everyone there are no shenanigans’ going on, it’s just the way it fell, with the project outline and the wet lands.

Pat Lintell: City needs to control the land. Doesn’t like the wording in the application regarding the hours of operation. When will the large trucks be on the road, what time and the Hwy 218 is going to be much worse. More stop signs are needed. Concerned about the noise. Objects to the large trucks. Wants a traffic study, doesn’t understand how the Commission can

approve without a study and answers to all of these questions. Noise will be unacceptable on both sides of Hwy 218 on a daily basis. There needs to be a corridor that the City has control over, like around the dog park.

Frank Lucido: Have addressed all of the issues with studies prepared by Denise Duffy and will work with city staff regarding hours of operation and put restrictions on the delivery trucks. There is a Church and Pre-school down there which are also commercial use and we will respect them and be good neighbors. When it comes to light and noise, we will use both the Municipal Code and common sense. Apologizes for losing his composer earlier.

John Gaglioti, 864 Portola Drive: CEQA is a double edge sword because the traffic and noise doesn't meet the requirements as shown in the Draft Initial Study. Meet with all concerned and this project drastically reduces noise, lights and traffic. No Wilson Way needed. Thinks the project is good and likes that the applicant listened to the concerns and down side project considerably. Always been commercial use. Has lived for more than 40 years in the house overlooking this land, has a love/hate relationship with this land. Dealt with years of bright lights and broken windows from the golf balls. Land looks horrible now and this project will make it look good. Good use of land. Asks for clarification from Josh.

Josh Harwayne, DDA: According to Cal-Trans data from Hwy 218 and the general plan for the City this project. 15000 cars that use 218 now and this project will have very insignificant increase on the traffic flow. Study didn't meet the thresh holds for CEQA.

Ambient sound next to a highway, must be a very significant noise to make more noise than what is there already. If chain saws are going all day, every day: very different than the proposed repair of equipment. Not significant to require more studies, than what was preformed.

Kim Svetich-Will: There needed to be a traffic study done on Rosita not just Hwy 218. Was the study done for a flat plane or canyon, makes a huge difference.

Commissioner Goetzelt: In favor of the smaller project in general. City needs to keep a strict easement for foot access for public use and keep Wilson Way for City use only. Would like to have a traffic study of intersections of Angelus and Rosita and 218 going uphill turn, it's already dangerous and not sure what will happen once the project is built.

Commissioner Reikes: In favor of the project. Old business had traffic, coming and going. All neighbor hoods have big trucks with back up beepers delivering and driving up and down the street during the day and into the evening. Dog's go crazy barking in the neighborhood because the UPS truck, every day. The decibel levels will not be different in this neighborhood than others. The City has a noise ordinance.

Commissioner Hayworth: Thanks both the applicant and the public. In favor of project once the hours of operation are settled. The "saw shop" name is an issue, and location might be a problem, can it be moved? Truck size? Easement will need to be big enough for a vehicle to have access to property. In favor of the current hours and would like to put into the something in the lease agreement for the easement.

Mark Bordonaro: The hours in Monterey are Monday through Friday 7:30am-5:00pm, Saturday 7:30am-12:00pm and open 6 Sunday's a year.

City Manager Dawson: The Commission can decide on the hours tonight and make it a condition of the decision or leave it up to staff.

Commissioner Green: Main concern is the intersection of 218 and Rosita Rd, not as easy Trucks to get on the highway. Still confused about the zoning because it's zoned as "P", but on the application for "C1V". Basically really likes the project, just wants clarification on the zoning.

Commissioner Hayworth: Can the vendors and bigger Topes trucks make deliveries at specific times and routed to the east, when Safeway was built out the Commission made those conditions on deliveries.

Vice Chair Weir: Dramatic change from the first application and likes it. Going to be beautiful and better than it's ever been. Very clear that the applicant listened to the concerns from the first meeting and made appropriate changes.

Motion by Commissioner Reikes to approve ARC #14-02 & CUP#14-08 with the conditional approval that an easement wide enough to fit a truck be maintained, amended by Commissioner Hayworth for hours to be set: Monday through Friday 7:30 - 5:00, Saturday 7:30 – noon and limited to 12 Sunday's a year, seconded by Commissioner Hayworth.

No public comment was received.

Motion passed 5-0

Chairman Gaglioti and Commissioner Jaksha return to the dais.

ANNOUNCEMENTS/COMMENTS:

Commissioner Hayworth: Good to see all sides of the community.

City Manager Dawson: Important for the Commission to know that the staff hires consultants such as Denise Duffy and Associates that know the CEQA laws and work for us and the residents of the City. Explains the CEQA process and Hwy 218.

Not appropriate to question the study.

Commissioner Jaksha: Wishes that the public wouldn't leave, because they needed to hear about the consultants.

Commissioner Weir leaves, has to go home 8:08pm

Commissioner Goetzelt: Will miss the next two City Council Meetings.

NEXT MEETING: Wednesday, December 10, 2014 at 6:00 p.m.

8:10 p.m. Meeting Adjourned

Approved: