

COUNTY PLANNING COMMISSION
TUESDAY, AUGUST 9, 2011

I. INTRODUCTION

NELDA CHAMPION (Applicant & Owner) The applicant is requesting approval of the following two applications:

- A. County File #RZ073195: A request to rezone a 9.98 acre parcel from General Agricultural, A-2 Zoning District to Single Family Residential, R-40 Zoning District.
- B. County File #SD079167 : A request for Vesting Tentative Map approval to subdivide 9.98 acres into 7 single-family lots with a designated remainder. Lots range in size from 41,210 square feet to 62,782 square feet. The requested subdivision includes a request to remove 22 trees.

The subject site's address is 1125 North Gate Road in the Walnut Creek area. (Zoning: A-2) (General Plan: SV) (APN 138-180-002)

II. RECOMMENDATION

Adopt a motion:

- A. That on the basis of the whole record before it, including the Initial Study/Mitigated Negative Declaration and the comments received, the Planning Commission finds that there is no substantial evidence that the project will have a significant effect on the environment and that the mitigated negative declaration reflects the County's independent judgment and analysis.
- B. Find the Mitigated Negative Declaration is adequate for the project and adopt the Mitigation Monitoring Program.
- C. Adopt the Mitigated Negative Declaration for the project for the purposes of compliance with the California Environmental Quality Act and adopt the Mitigation Monitoring Program.
- D. Recommend that the Board of Supervisors adopt the proposed findings and approve the Rezoning from General Agriculture, A-2 Zoning District to Single Family Residential, R-40 Zoning District.

- E. Adopt the findings and approve the proposed Vesting Tentative Map and requested tree removal, with the attached conditions.

III. GENERAL INFORMATION

- A. General Plan: The General Plan designation is Single Family Residential Very Low-Density. Allowed density is 0.2 to 0.9 dwelling units/net acre.
- B. Zoning: General Agriculture, A-2.
- C. CEQA Status: An Initial Study/Mitigated Negative Declaration was prepared for the project and sent to the State Clearing House (SCH #2011042019) on April 6, 2011 for a 30 day comment period that ended on May 6, 2011. During the public comment period the County received two letters that are addressed in Section VII of this report.
- D. Regulatory Programs:
 - 1. North Gate Specific Plan Area: This project is located in the North Gate Specific Plan area and is subject to those standards.
 - 2. Flood Zone: The site is located within Flood Zone X of minimal flooding.
 - 3. Active Fault Zone: The easterly portion of the site is in the Alquist –Priolo earthquake fault zone.
 - 4. 60dBA Noise Control: The subject property is not located within the 60dBA noise control zone.

IV. SITE AND AREA DESCRIPTION

The 9.98-acre project site is located within the unincorporated Walnut Creek-North Gate area near the entrance to Mount Diablo State Park (See Attachment 2, Exhibit 1, Vicinity Map).

The project site is a relatively large parcel that is gently sloping with open grass land and a wooded canopy along Walker Canyon Creek that is located along the northern edge of the site. Two homes and a landscaped yard currently occupy the site at the southern end. The elevation ranges from 311 feet above sea level along the southeastern border to 224 feet at the northern boundary, which is approximately a 7% slope.

The project site is located in a neighborhood of large-lot residential and equestrian-use properties. The adjacent property to the east and north of the subject parcel is developed with larger residential lots, while the adjacent property to the west and south is the Milton F. Kubicek Detention Basin for Pine Creek that is owned by the County Flood Control District. There is a proposed public trail that is located on the Flood Control land adjacent to the project site as well.

V. PROPOSED PROJECT

The applicant is requesting approval to rezone the project site from General Agricultural District, A-2, to Single Family Residential, R-40 and to subdivide the 9.98 acre project site into 7 single family residential lots with a designated remainder. The proposed rezoning to R-40 would match the existing zoning to the north and south of the project site (See Attachment 2, Exhibit 2,Rezoning Map).

As previously noted the project site is adjacent to land that is owned by the County Flood Control District on the west and south. On the Flood Control land is a proposed public trail that is adjacent to the project site along its western border. To physically and visually buffer the proposed homes from the Flood Control land and trail the project proposes a 60' wide buffer along western and southern boundaries that will be planted with dense landscape screen of oak and cedar trees as recommended by the project arborist. Additionally there is a 50' Creek Structure Setback to buffer the development from the creek that is on the north end of the project site. See Attachment 5, Sheets TM-1 & TM-2. Tentative Map, 60' Structure Setback along western and southern border and Creek Structure Setback along Walker Canyon Creek at the north).

As part of the subdivision approval the applicant is also requesting to remove 22 trees, mostly unhealthy walnut and almond trees.

VI. AGENCY COMMENTS

1. City of Walnut Creek: Letter, dated May 5, 2011 (Attachment 3) was received during the CEQA public comment period.

This letter is addressed in Section VII of this report

2. Save Mount Diablo: Letters dated November 21, 2007 and April 13, 2008 (Attachment 3) were initially received by the County. In addition a letter (also Attachment 3), dated May 5, 2011, was received during the CEQA public comment period. And since most of the issues are reiterated in all the letters these concerns are addressed in Section VII of this report.
3. Office of the Sheriff: Memorandum dated September 12, 2007: No comments
4. California Historical Resources Information System (CHRIS): Memorandum dated September 14, 2007.

According to memorandum a previous study (Study #31543-Pastron 2006) determined that no cultural resources occurred on the project site. And, as a condition of approval if archaeological resources are encountered during the project, work in the immediate vicinity of the finds should be halted until a qualified archaeologist evaluated the situation.

5. Contra Costa County Fire Protection District: Memorandum dated March 4, 2008.

According to the memorandum access roadways and turnaround comply with Fire District standards. The project is required to otherwise comply with all Fire District standards.

6. State Department of Fish and Game (DFG): Memorandum dated September 20, 2007 (Attachment 3) stated that an assessment of the habitats on the project site and adjacent area be made and that a buffer be established for the creek. Also, for any activity that will divert or obstruct the natural flow of the creek the DFG may require a Streambed Alteration Agreement.

A Biological Assessment of the project site and surrounding area was conducted for this project and no adverse impacts are anticipated and a creek buffer is part of the project. Even so, the project has incorporated Mitigation Measures (Mitigation Measures IV-1A through 1D) such as preconstruction surveys, protective fencing worker training and a qualified biologist (or construction foreman trained by the biologist) to check the construction site morning and night for the presence of California red-legged frog. See the Biological Resources Section of the Mitigated Negative Declaration. (Attachment 4)) and Section VII for more information regarding potential biological impacts. In addition, the project will use an existing outfall on the neighboring property for drainage purposes to avoid any new construction impacts to the creek.

7. Public Work Department/Flood Control: Email dated October 11, 2007 and Memorandum dated May 1, 2006 (Attachment 3). The issues include that the location of the project is adjacent to the Milton F. Kubicek Detention Basin for Pine Creek, which is owned by the County Flood Control District and any work on Flood Control District right-of-way will require a Flood Control encroachment permit. In addition, the District recommends that storm water run off for lots adjacent to the its property be conveyed in a concrete ditch rather than an earthen swale so that future property owners would not re-grade their lots and allow storm water to drain on the District's property and into the Milton F. Kubicek Detention Basin.

There is no work proposed on the Flood Control District site and the applicant will be required to comply with all other Flood Control District requirements.

8. Contra Costa Water District (CCWD): Memorandum dated November 27, 2007. CCWD notes under its regulation 5.08.040 (E) that APN: 138-180-002 is subject to the North Gate Special Benefit Connection Charge. This Special Benefit Connection Charge is \$74,959.00. The charge is in addition to CCWD's standard charges for new connections.

9. Central Contra Costa Sanitary District (CCCSD): Memorandum dated October 7, 2010 indicates that the site is within CCCSD boundaries and service is currently available to the site subject to the applicable CCCSD fees and charges.
10. Contra Costa County Geologist, Darwin Myers: The North Gate Specific Plan Area, in which this project is located, contains the Concord Fault Alquist-Priolo Zone along its eastern boundary. The project site is adjacent to this Zone so the applicant submitted two geologic studies to address seismic concerns. In addition, the North Gate Specific Plan requires any proposed development in this Zone to submit a geologic report with the application, and if the report finds that there are geologic hazards on the site a seismic setback area is to be established and no habitable structures are allowed in it.

Darwin Myers, the County Geologist, reviewed two geologic reports that were submitted by the applicant (*Joyce Associates, 2007 Fault Hazard Investigation and Jensen- Van Lienden Associates, Geotechnical Study, 2006*) that addressed concerns about the proximity of the project site to the Alquist-Priolo Zone and other geologic issues. According to the reports the easternmost edge of the site is in the Alquist-Priolo Zone which encompasses recently active and potentially active traces of the Concord Fault.

The Joyce Associates (JA) report concludes that the risk of fault rupture is very low and that a building setback zone is not required. And the JA report goes on to indicate that compliance with building and grading codes is expected to keep damages from earthquake within generally acceptable limits, and the structure setback prescribed by the Ordinance Code from the flow line of the creek will provide protection from the future erosion of sloughing of the ravine banks. Darwin Myers agrees with this assessment and does not believe further evaluation of the hazard posed by the Concord fault is required.

VII. CEQA REVIEW

As previously noted, an Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for this project and it was posted for a 30 day public comment period. The IS/MND is in Attachment 4 of this report. During the public comment period the County received two letters, one from the City of Walnut Creek and the other from Save Mount Diablo.

- A. The letter from the City of Walnut Creek, dated May 5, 2001(Attachment 3) states that they support the four proposed mitigation measures that mitigate visual impacts (Attachment 4, page 3-8 of the IS/MND, mitigation measures for users of the existing and proposed trails that are located adjacent on the west and south of the project site). They recommend that an additional mitigation measure be adopted that incorporates the use of "Open Space" fencing in the rear yards for Lots 3 through 7. County staff concurs with this recommendation.

The County is adding a Mitigation Measure (Mitigation Measure I-1E, Condition of approval No. 9) that the project install "Open Space" fencing for Lots 3 through 7 prior to finalizing the building permits for these lots.

The letters from Save Mount Diablo, dated November 21, 2007, August 13, 2008 and the letter, dated May 5, 2011, received in response to the CEQA public comment period (Attachment 3) are primarily concerned with the project's location in relation to surrounding resources and effect on Aesthetic/Visual Resources, Agricultural Resources, Biological Resources and Land Use Planning. Below are a summary of their comments from the May 5, 2011 letter that was received during the CEQA public comment period followed by staff response:

B. Summary of Save Mount Diablo (SMD) Comment about Aesthetic and Visual Impacts-

Open Space Impacts

The Champion site is bordered to the south and west by public open space and is less than a quarter of a mile from the entrance to Mount Diablo State Park. In addition, the site is highly visible from the surrounding hills, including Shell Ridge Open Space and Diablo Foothills Regional Park. The addition of more homes in the area will be highly visible and distracting to users of public open space as shown in figure 2 of the letter.

Staff Response:

The IS/MND acknowledges the location of the project site in relation to the Shell Ridge Open Space, Diablo Foothills Regional Park and Mt. Diablo State Park. As stated on page 3-7 the proposed development may be seen by users of various trails within Mt. Diablo State Park and Shell Ridge when viewing in a northwesterly/southeasterly direction. The views from these trails would not be impeded by the proposed development, nor would views of Mt. Diablo and foothills be blocked. Given the distance of the development from the trails, and the duration of time that the project site would be visible to trail users, this is considered a less-than-significant impact. The near views from the existing trail and proposed trail along the west and southern edge of the property would be impacted and this was identified in the IS/MND with appropriate mitigation measures.

Opinion noted regarding the impact on a scenic vista. We disagree with the commenter that the proposed project would have an impact on a scenic vista. Mt. Diablo and its foothills rise above the proposed development as discussed on page 3-5. The mountain remains very visible and the proposed development does not impede the view of the mountain, even when viewed from Trails End Drive or the proposed trail as shown in the IS/MND.

The photo reflected in the commenter's letter is deceiving in that it does not show the adjoining development to the right of the existing Champion house. Photo 1

on page 3-4 of the IS/MND reflects the existing views from the open space along the southerly edge of the property. As noted in the document, the proposed development pattern is similar to the adjoining developments south and north of the project site.

C. Summary of SMD Comment about Agricultural Resources:

There is a family owned 2100-acre cattle ranch less than a quarter of a mile from the project site. Farming and ranching activities often appear attractive to suburban residents contemplating moving to rural areas. However the same residents often complain of nuisance smells, slow moving equipment on the road and similar issues. Development of additional homes places added pressure on land values, making on-going agricultural operations difficult to sustain. The Mitigated Negative Declaration does not address these issues in a meaningful way.

Staff Response:

Comments noted regarding the impact on agricultural resources. We concur that there is cattle ranching occurring in the area, as well as equestrian facilities. As noted in the IS/MND the proposed development does not conflict with existing agricultural activities occurring in the area. The report acknowledges that cattle do graze on the adjoining land to the south and west of the site. The project site is not located in an intensely farmed area, such as that which would be considered along the east side of Mt. Diablo. The primary agricultural use is cattle grazing and equestrian facilities. Thus, the land use conflicts are minimized. The following standard condition of approval (COA#27) will be placed on the tentative map and recorded with the deed for each lot.

"This document shall serve as notification that you have purchased land in an agricultural area where you may regularly find farm equipment using local roads; farm equipment causing dust; crop dusting and spraying occurring regularly; burning associated with agricultural activities; noise associated with farm equipment and aerial crop dusting and certain animals and flies may exist on surrounding properties. This statement is, again, notification that this is part of the agricultural way of life in the open space areas of Contra Costa County and you should be fully aware of this at time of purchase."

The sixty-foot buffer along the edge of the west and southerly boundary, coupled with the tree screen will also minimize potential conflicts that could occur with cattle grazing on adjoining lands.

D. Summary of SMD comments about Biological Resources:

California Red-legged Frog CRLF:

The MND does not adequately address the occurrence of CRLF in the area or on the project site but relies on California Natural Diversity Database records, which are

well known to be incomplete and out of date. The biotic consultant should have developed more in-depth information.

The MND goes on to suggest the CRLF could not inhabit the area because of the aquatic resources in the area dry up during the summer months. This is incorrect because the CRLF seed refuge during the dry season only to return when the wet season begins. In addition there are confirmed occurrences of CRLF uphill within the same drainage about 1.5 miles upstream on Walker Canyon Creek as well as sighting nearby. The CRLF may also use the project site as a wildlife corridor during some parts of the year.

The biotic report is flawed and incorrect in its conclusions and fails to look at surrounding areas.

Staff Response:

California Red-legged Frog

The Biological Resources section of the IS/MND provides a detailed discussion of the potential for occurrence of California red-legged frog (CRLF) on the site, based on the results of both a habitat assessment and protocol surveys for this species conducted by the applicant's consulting biologist, and confirmation field inspection by the independent IS/MND biologist. As indicated on page 3-20 of the IS/MND, the habitat assessment and protocol survey reports are available for review at the Contra Costa County Department of Conservation and Development. These reports provide additional detailed discussion on the habitat characteristics, distribution, and likelihood of occurrence of CRLF in the project vicinity, which the commenter does not appear to recognize or acknowledge.

Although the commenter reports that CRLF have been confirmed in Walker Canyon Creek within about 1.5 miles of the site, there are no records of such occurrences reported by the California Natural Diversity Data Base as indicated on page 3-22 of the IS/MND. While there are limitations with the data available from the CNDDDB inventory, it provides the most comprehensive data base available. There may be suitable breeding habitat on Walker Canyon Creek and tributary ponds further upstream of the project site, but no such habitat occurs on the site or immediate surroundings. This was confirmed through the rigorous detailed surveys for CRLF that were conducted according to current protocols defined by the USFWS. This included surveys conducted during the day on 22 March, 23 May, and 15 August, and at night on 3 March, 8 and 23 April, 30 May, and 22 August 2009 of the site, adjacent Walker Canyon Creek and the Pine Creek Detention Basin.

No adverse impacts on CRLF are anticipated, and no mitigation was considered necessary in the IS/MND. However, the exclusionary fencing required under Mitigation Measure IV-1C to prevent the possible dispersal of western pond turtle outside the riparian zone along Walker Canyon Creek would also serve to prevent dispersal of CRFL into the construction zone in the remote instance that an individual were to disperse along the creek corridor in the future and for some reason left the creek corridor. There is no protective cover in the upland areas

proposed for development, or suitable breeding habitat that would trigger this type of CRLF dispersal from the creek corridor making additional protection measures unnecessary.

There does remain a remote possibility that CRLF could disperse along the Walker Canyon Creek corridor at some point in the future, and individual dispersing frogs could be at risk for inadvertent take if adequate avoidance measures are not taken. As noted above, the exclusionary fencing called for in Mitigation Measure IV-1C would prevent dispersal of individual frogs into the construction zone. Conduct of a preconstruction survey and a worker training program by a qualified biologist before exclusionary fencing installation and the limited habitat restoration work within the Walker Canyon Creek corridor would serve to ensure that no inadvertent take of CRLF would occur, in the remote instance that individuals were to disperse along the creek corridor in advance of project implementation. In response to the comment, the IS/MND has been revised to include the following clarification under the discussion of special-status species on page 3-27, and the following new Mitigation Measure IV-1D on page 3-28.

There remains a remote possibility that western pond turtle individuals could disperse along Walker Canyon Creek. However, no in-channel activities are proposed as part of the project, with surface drainage to be accomplished by tying into an existing off-site drainage system. The BRR included two recommendations related to western pond turtle, calling for a preconstruction survey prior to installation of the previously proposed outfall and installation of silt fencing around the top of bank to prevent turtles from moving into the construction zone. Although the likelihood of turtles dispersing into the construction zone is considered remote, these measures would still be necessary to prevent inadvertent take.

Although considered highly unlikely based on the negative findings of the protocol surveys, there is a remote possibility that individual California red-legged frogs could eventually disperse along the Walker Creek corridor before construction is initiated. If present, construction activities could result in take of individual frogs if they were to then disperse into the construction zone or were inadvertently lost or injured during installation of the habitat restoration activities along the creek corridor, including limited plantings and native grassland seeding called for in the CPEP. This is would be a potentially significant impact if frogs are present and inadvertently killed or harassed, and additional measure have been recommended to ensure avoidance of inadvertent take of this species.

The following Impact discussion has been revised to reflect inadvertent take of the California red-legged frog during construction. New language has been underlined.

IMPACT IV-1: The proposed project could have an adverse effect on special-status species.

The following measures were recommended in the BRR by the applicant's consulting biologist, and would serve to mitigate potentially significant impacts on special-status bird species to a level of less-than-significant. Mitigation to prevent possible inadvertent loss of western pond turtles during construction is also recommended below based on two measures the BRR by the applicant's consulting biologist. Mitigation to prevent possible inadvertent take of California red-legged frog during construction is also recommended below, which together with other measures would mitigate potentially significant impacts to a less-than-significant level.

(The following new mitigation measure is added to page 3-28 of the IS/MND)

Mitigation Measure IV-1D. *Measures shall be taken to prevent possible inadvertent loss of California red-legged frog during construction. These shall consist of the following:*

- *Prior to any grading or grubbing of the site, a preconstruction survey for California red-legged frog shall be conducted by a qualified biologist not more than 48 hours prior to the commencement of construction. If California red-legged frogs are detected within the Walker Canyon Creek corridor on the site, the U.S. Fish and Wildlife Service and California Department of Fish and Game shall be notified and consulted regarding the need for any additional avoidance measures to prevent take of this federally-threatened species.*
- *Exclusionary fencing called for in Mitigation Measure IV-1C shall also serve to prevent California red-legged frog from entering the construction zone.*
- *Construction workers shall be trained by the qualified biologist regarding the remote potential for presence of California red-legged frog, that this species is to be avoided, that the foreman must be notified if they are seen, and that construction shall be halted until appropriate measures have been taken until authorization to proceed is obtained from the USFWS. Harassment of California red-legged frog is a violation of federal law.*
- *During the construction phase of the project, a qualified biologist or an on-site monitor (such as the construction foreman trained by the qualified biologist) shall check the site in the morning and in the evening of construction activities for the presence of California red-legged frog. This includes the Walker Creek corridor, exclusionary fencing, holes, under vehicles, and under boards and other materials left on the ground. If any California red-legged frogs are found during on-site monitoring, construction shall be halted, and the monitor shall immediately notify the qualified biologist in charge and the U.S. Fish and Wildlife Service.*

Construction shall not proceed until adequate measures are taken to prevent dispersal of any individuals into the construction zone, as directed by the U.S. Fish and Wildlife Service, and all subsequent recommendations and conditions shall be followed.

- *No one shall handle or otherwise harass any individual California red-legged frogs, if any are encountered during construction, with the exception of a Service-approved biologist. The qualified biologist in charge shall train the on-site monitor in how to identify California red-legged frog. The qualified biologist in charge shall visit the site at least once a week during the first month of construction and confer with the trained on-site monitor.*

E. Summary of SMD comment about Buffer for Walker Canyon Creek:

The project proposes only the minimum 50-foot setback for Walker Canyon Creek along Lots 2 and 3 which border the Creek on the north. Although the MND reports that a Creek Preservation and Enhancement Plan (CPEP) was prepared for the site, the MND still should have described in more detail any potential impacts to the creek and all proposed mitigation to reduce those impacts. The MND fails to provide sufficient detail to review the project's potential impacts to the creek.

Staff Response:

The Creek Preservation and Enhancement Plan (CPEP) is summarized and discussed on pages 3-28 and 3-29 of the IS/MND. As indicated on page 3-20 of the IS/MND, the CPEP is available for review at the Contra Costa County Department of Conservation and Development. Major grading and development would be restricted away from the creek corridor, with a minimum 50-foot setback restriction and over 100 feet setback from the cul-de-sac. The CPEP describes goals for the creek preservation area, planting and seeding program within the creek setback area, irrigation and maintenance requirements, monitoring and performance standards, and prohibitions and limitations. This includes a restriction within the Creek Structure Setback that prohibits the construction of any decks, pools, structures of any kind, grading or other earthwork except as required for emergency repairs associated with flood or other natural disaster.

As acknowledged on page 3-28 of the IS/MND, implementation of the CPEP would result in temporary disturbance along the southern edge of the riparian corridor during installation of plantings and seeding. However, this would be relatively minor with no heavy equipment operation anticipated, and ultimately would serve to expand and enhance the existing habitat along the Walker Canyon Creek corridor. As concluded on page 3-29 of the IS/MND, wetlands and riparian habitat along Walker Canyon Creek would not be adversely affected, and would be enhanced as part of the proposed CPEP.

Contrary to the assertion by the commenter, a detailed discussion of the potential impacts of the project on wildlife habitat is provided on page 3-29 of the IS/MND, including the riparian habitat along Walker Canyon Creek. Due to the extent of

residential development to the north of the site, proposed development would not substantially interfere with the movement of wildlife species or impede use of native wildlife nurseries. The Walker Canyon Creek corridor would be preserved and enhanced as part of the proposed CPEP and undeveloped land to the south and west would remain available for wildlife movement. Some species which utilize the non-native grasslands and ornamental landscaping on the site could be displaced or eliminated from the site. However, suitable habitat remains in the surrounding area and no significant impacts on special-status species or essential habitat for these species is anticipated. Equipment operation, construction-generated noise, and increased human activity on the site, both during construction and after, could result in disturbance to species using the adjacent undeveloped lands. Preconstruction surveys recommended in Mitigation Measure IV-1A and IV-1B of the IS/MND would serve to identify and avoid any sensitive nesting habitat in the immediate vicinity until the young have fledged. Furthermore, implementation of Mitigation Measure IV-1C would ensure no inadvertent take of western pond turtles during construction. Wildlife are used to some level of human activity in the vicinity, given the extent of existing development to the north and east, and eventually wildlife would become acclimated to the developed condition of the site as well. Potential impacts on wildlife habitat and movement opportunities were determined to be less-than-significant, and no mitigation measures were required in the IS/MND.

F. Summary of SMD comment regarding Re-Alignment of Access Road:

SMD recommends that the proposed road that is going to serve the homes be re-aligned and single loaded so that a larger buffer is established between the proposed homes and the surrounding open space to the west and south of the project site. And that the buffer be landscaped and a scenic easement dedicated to the county be established to ensure long-term protection.

Staff Response: A 60' buffer, as required by the North Gate Specific Plan on lands abutting agricultural lands and open space, is proposed along the west and south property boundaries. This 60' buffer area will be landscaped with at least 200 native trees, mostly coast live oak and deodar cedar, to protect the visual qualities of the area and the County is requiring the project deed the development rights to this buffer area (Condition of Approval No. 25) to ensure long-term protection.

G. Summary of SMD comment about Land Use and Planning:

The North Gate Specific Plan which provides the long-term vision for this entire area notes the County's intent is to maintain its semi-rural character ensuring that it provides a transition from suburban residential development to the adjacent

open space. Subdividing the Champion property to create seven additional lots fails to maintain the semi-rural character of the area.

Staff Response:

The proposed project complies with the North Gate Specific Plan as noted below in Section XIII.

XIII. STAFF ANALYSIS/DISCUSSION

PROJECT'S COMPLIANCE WITH THE NORTH GATE SPECIFIC PLAN

The project is located in the North Gate Specific Plan area and is subject to the provisions therein. This Plan provides added detail to existing General Plan policies and establishes certain development review procedures. The intent of the Specific Plan is to maintain the North Gate area as primarily semi-rural which supports lower-density residential, equestrian and recreational activities.

The Specific Plan was prepared as a joint planning effort with the City of Walnut Creek and applications are sent to the City for comment as part of the planning review process. The Vesting Tentative Map for this project was sent to the City for comment when the project was first submitted to the County and they responded in an email dated 12/07/10 that the project's setbacks and frontages are consistent with the applicable standards.

Below is a list of pertinent North Gate Specific Plan policies and regulations followed by a description of how the project is in compliance with those standards.

Goals & Policies for the North Gate Specific Plan (NGSP)

Land Use

- A. NGSP: Goal: Maintain and enhance the existing semi-rural character of the North Gate Specific Plan area as a transition from the suburban residential development to the north and west, to the agricultural and open space lands to the south and east.

Project: The proposed project, if approved, would match the existing land use designation of R-40, Single Family Residential (40,000 sq.ft. minimum lot size) to the adjacent properties at the north, east and southwest of the project site and would therefore maintain the existing development pattern in the North Gate Specific Plan area. See Attachment 2, Exhibit 2, Rezoning Map.

- B. NGSP: Policy #5: Protect environmentally sensitive areas.

Project: Located at the northern edge of the 9.98 acre project site is Walker Creek, an intermittent tributary. The creek corridor is wooded throughout with a riparian

canopy. At the southern end of the site are two homes and a landscaped area. The remainder of the site is dominated by non-native annual grassland with scattered remnant orchard trees. The Pine Creek detention basin and open space land, which is owned by the County Flood Control District, abuts the western and southern boundaries of the project site.

No work is proposed within Walker Creek and there is a 50' creek structure setback to prevent impacts to that resource. There is also a 60' structure setback within the western and southern boundaries of the project site so that the adjoining detention basin and open space lands are buffered from development.

To address the potential impacts to the biological resources on the project site and surrounding area studies were conducted (Biological Resource Report, Mosaic Associates, 2007, revised 2011, Rana Resources, Protocol 2009 California red-legged frog (CRLF).

The studies indicate that it is unlikely that the site provides habitat for special-status species and the project does not anticipate adverse biological impacts on the creek. Even so, the project proposes mitigation measures (Mitigation Measures IV-1A through IV-1D) such as preconstruction surveys, installation of exclusionary fencing and construction worker training to protect the creek area.

There was some concern that the stormwater runoff from the project site would pollute Walker Creek. To mitigate this potential impact the project proposes a series of bio-filtration systems that will filter the runoff water before it discharges into Walker Creek. The discharge into Walker Creek would be through an existing outlet on the adjacent site. In that regard, since this outfall is an existing structure, the proposed project would not result in any new disturbance within the banks of Walker Creek and a Streambed Alteration Agreement with the California Department of Fish and Game would not be required.

- C. NGSP: Policy #7: Require larger minimum lot sizes on land that directly abuts public open space or agricultural preserve areas.

Project: The applicant is requesting to rezone the property to R-40 which requires a minimum of 40,000 square foot lots. The smallest proposed lot that abuts open space is 41,210 square feet, which is larger than minimum lot size allowed in this zoning district.

- D. NGSP: Policy #8: Prohibit development within any required creek or seismic setback areas.

Project: The project has designed a creek structure setback of 50 feet in which there is no proposed development. In addition, the applicant's geologist conducted a series of geologic studies on the site and determined that a seismic setback is not

required on the project site. The County's geologist peer reviewed the report and agrees with this conclusion.

- E. NGSP: Policy #10: Maintain the feeling of "openness" in the area by encouraging large lot development, or the dedication of public or private open space through the planned development process.

Project: As previously indicated the proposed project, if approved, matches the existing land use designation of R-40 that is adjacent to the north, east and southeast. In addition the project proposes a 60-foot buffer along its western and southern boundaries in which no development (except fencing and drainage) would be allowed because the project is required to deed development rights to the County over that portion of the project site.

Open Space and Conservation

- F. NGSP: Goal: Protect natural features such as heritage quality trees, creeks, knolls, ridgelines and rock outcropping.

Project: The project site is a relatively large parcel that is gently sloping with open grass land and a wooded canopy along Walker Canyon Creek that is located along the northern edge of the site. The proposed construction does not impact heritage quality trees, creeks, ridgelines or rock outcroppings.

- G. NGSP: Policy #1: Preserve to the extent feasible, creeks and riparian vegetation in the area. Enhance creeks and riparian corridors by revegetating creeks with native riparian vegetation.

Project: As noted above the project design includes a 50' creek structure setback to help preserve the creek corridor. Also, the applicant has submitted a Creek Preservation and Enhancement Plan for the project site that complies with the NGSP.

- H. NGSP: Policy #2: Ensure that any new parcel created along a creek or a stream is large enough to accommodate an adequate buildable area on the portion of the lot remaining beyond the creek setback boundary.

Project: The two proposed lots along the creek, Lot 2 and Lot 3, are 62,782 sq.ft. and 50,214 sq.ft. respectively. They are designed this larger size so that there is adequate buildable area outside the creek structure setback area. On Lots 2 and 3 there are 30,944 sq.ft. and 34,459 sq.ft. respectively outside the creek structure setback area for a buildable area. See Attachment 5, Sheet TM3 for buildable areas.

- I. NGSP: Policy #3: Preserve healthy trees and maintain significant tree masses consistent with the requirements of the Walnut Creek Tree Preservation Ordinance.

Project: The project shall comply with the Walnut Creek Tree Preservation Ordinance, consistent with the NGSP. The applicant submitted an arborist report (Joseph McNeil, 2008, revised 1/ 2011) indicating that some of the trees on the site are dying or are structurally deficient and others are robust. In general, the project proposes to remove the unhealthy trees while preserving the healthy ones. The unhealthy trees include one coast live oak, almond, walnut stump sprouts and young redwood. The applicant is conditioned (COA#8) to submit a Landscape Plan, consistent with the NGSP, to the City of Walnut Creek for review and comment prior to recording of Final Map.

- J. NGSP: Goal: Protect public open space and agricultural preserve land from encroachment of residential uses and facilities.

Project: The proposed residential uses on the project site do not encroach on the public uses, proposed and existing trails, which are present at the adjoining property to the west.

- K. NGSP: Policy #1: Require larger residential lots and increased rear or side yard setbacks on properties that abut open space or agricultural preserve areas.

Project: As noted above the proposed lots that abut the open space area to the west and south are larger than what would be required by the R-40 zoning. They range in size from 41,210 sq.ft. (lot 4) to 62,459 sq.ft. (lot 3), which are larger than 40,000 sq.ft. which is R-40 minimum lot size. Also, there is a 60 foot setback designed into the project for lots that abut open space. The County is requiring that the project dedicate the development rights to ensure future protection.

Community Design

- L. NGSP: Policy #1: Adopt design standards to regulate new residential development to ensure compatibility with the existing homes in the area.

Project: All residential building plans in this development will be reviewed and approved by both the City of Walnut Creek and the County prior to issuance of building permits for consistency with the NGSP development standards.

- M. NGSP: Policy #6: Require buffers, such as landscaping or increased setbacks, between residential, equestrian or agricultural uses to minimize potential conflict between these uses.

Project: The existing visual character of the site would be altered for users of the existing and proposed trails that are located north and west of the project site but to screen views of the new residences for users of these trails the project is designed to provide a landscape screen planted in the 60-foot setback along the western/southwestern property line.

NGSP Land Use Regulations

- N. NGSP: Land Use: Larger lots should be created where there are streams or creeks on the property. The calculation of net lot area may include the land within the creek setback. However, the minimum area for home and accessory building areas shall be 30,000 square feet.

Project: As previously noted the two lots that are proposed along the creek, lots 2 and 3 are 50,214 sq. ft. and 62,782 sq.ft. respectively and each has an excess of 30,000 sq. ft. outside the creek structure setback to construct a home and accessory structure.

- O. NGSP: Land Use Categories, Single Family Residential, Very Low – This land use designation is assigned to those properties in the Specific Plan area under private ownership with slopes less than 15%. The minimum lot size is 40,000 sq. ft. except with a planned development in which case the minimum lot size can be reduced to 30,000 sq. ft.

Project: The project is not a planned development and the slope is less than 15%. Therefore the minimum lot size would be 40,000 sq.ft. The minimum lot size for the proposed project is 41,210 sq.ft, the maximum lot size is 62,782 sq.ft., with an average lot size of 46,450 sq.ft.

Development Regulations

- P. NGSP: Creek Setbacks: For purposes of this Specific Plan new structures shall provide at least a 50 foot minimum setback. Applications for residential development shall be required to provide a Creek Preservation and Enhancement Plan which outlines the methods of protecting and enhancing this resource.

Project: The project proposes a 50 foot creek structure setback and has submitted a Creek Preservation and Enhancement Plan.

- Q. NGSP: Tree Preservation: Any proposals for the removal of trees will be consistent with the provisions of the City of Walnut Creek's Tree Preservation Ordinance.

Project: The project shall comply with the City of Walnut Creek Tree Preservation Ordinance (Section 3.8 Preservation of Trees on Private Property) consistent with the North Gate Specific Plan.

- R. NGSP: Protection of Agricultural and Open Space Land: To protect the agricultural preserve and open space lands, new lot created adjacent to these areas shall be larger than 40,000 sq. ft. and dwellings shall be set back from the adjoining property boundary at least 60 feet.

Project: As noted above the minimum lot size is for the project is 41, 210 sq. ft and the project proposes a 60 foot buffer adjacent to the open space area / detention basin area to the west and south.

- S. NGSP: Protection of Equestrian / Agricultural Uses and Facilities: Buffers are required between residential, equestrian or agricultural development. The rear or side yard setback adjacent to these facilities should exceed the required distance specified in the R-40 zone.

Project: The rear and side yard setbacks in R-40 zone are 15 feet and 20 feet respectively. The project is designed to have a 60 foot setback from the proposed equestrian trail that abuts the subject property on the west.

- T. NGSP: Grading should be minimized in the Specific Plan area, particularly on hillsides and along natural creeks.

Project: The average slope of the project site is 7% and there are no localized steep slopes on the project site. The proposed grading is minimal and substantially outside of creek structure setback area and the 60' structure setback area.

- U. NGSP: All utilities must be place underground. New residential development shall be connected to public sewers and the public water supply. All new residential development shall also provide on-site storm drainage, and shall pay a fee for off-site drainage improvements, if required.

Project: The project has letters from both the Contra Costa Water District and Central Contra Costa Sanitation District that indicate that water and sewer service are available to the project subject to the requirements of the respective agencies.

Property Owned by the County

- V. Pine Creek Detention Basin: The primary purpose of the detention basin is flood control. Passive recreation activities are permitted in this area, as well as the construction of a new equestrian trail.

The proposed project is adjacent to the Pine Creek Detention Basin, which is owned by the Contra Costa Flood Control District, and it does not conflict with the above policy. The project is designed to drain away from the Detention Basin and provides a 60-foot buffer that is to be heavily landscaped with trees.

IX. TREE REMOVAL

An arborist report was prepared for the project (McNeil, January 2008, amended January 2011) in which 66 trees were considered. Nineteen trees are proposed to be removed because of the subdivision. Of the nineteen trees proposed for removal eight

are remnant black walnut stump sprouts. They are walnut orchard trees with advanced decay. A ninth walnut tree, which is not a large tree, to be removed may have been planted as a shade tree but it is not a suitable species for the development area. Five are almond trees in poor condition. Four are very young redwoods in the way of the proposed lots. The arborist is also recommending the removal of three other trees because they are in very poor health. These three trees are two almonds and a coast live oak. Staff concurs with the arborist report and recommends removal of all twenty trees. The applicant is required to plant trees, mostly oak with and cedar in the 60' structure setback area.

X. TRAFFIC AND DRAINAGE CONSIDERATIONS

The subject parcel currently gains access to North Gate Road, a public road, via a gravel road. North Gate Road appears to have a current right of way width of 50 feet along the project frontage. The planned future right of way width of North Gate Road is 60 feet. Therefore, the applicant shall convey to the County, by offer of dedication, at least five feet of additional right of way along the project frontage for roadway purposes.

This proposed subdivision lies within the boundary of the North Gate Specific Plan, which requires the installation of certain identified improvements with developments in the area. In conformance with the Specific Plan, the applicant shall widen North Gate Road to provide a half-width of 16 feet of pavement, consisting of one 12 foot wide travel lane and a four foot wide shoulder, and a 5 foot wide pedestrian path. A nine foot wide landscaped strip should remain between the back of the path and the right of way. These improvements along the North Gate Road frontage should be aligned to the existing improvements previously constructed with Subdivision 7647 located immediately to the south of the project site.

Access from North Gate Road to the proposed lots will be provided with the construction of a 24-foot wide private roadway, designated as 'A' Court in the Vesting Tentative Map. The on-site roadway will serve the eight parcels that result from this subdivision and terminate at a cul-de-sac bulb at the north end of the property.

Drainage

Division 914 of the County Ordinance Code requires all storm water entering and/or originating on this property to be collected and conveyed without diversion and within an adequate storm drainage system, to an adequate natural watercourse having a definable bed and banks, or to an existing adequate storm drainage system which conveys the storm waters to an adequate natural watercourse.

Storm water generated from the northern portion of the site is to an existing off-site storm drain system that outfalls to Walker Canyon Creek, which traverses the northern boundary of the subject site. A Creek Structure Setback shall be recorded along Walker Canyon Creek, based on the methods described in Section 914-14 of the Ordinance Code.

The remaining portion of the proposed on-site storm drainage facilities will be directed to existing storm drain facilities located on North Gate Road. The applicant shall verify that the existing facilities are adequately sized for the additional storm water discharge

generated from the proposed development, and if determined to be inadequate, the applicant shall improve the facilities to ensure adequate capacity is provided.

XI. CONCLUSION

Staff recommends that the County Planning Commission approve the subdivision for 7 lots and a designated remainder, with tree removal, and recommend to the Board of Supervisors approval of the rezoning of the project site from A-2 to R-40.

COUNTY PLANNING COMMISSION
TUESDAY, SEPTEMBER 13, 2011

Continued Champion Hearing

I. INTRODUCTION

NELDA CHAMPION (Applicant & Owner) The applicant is requesting approval of the following two applications:

- A. County File #RZ073195: A request to rezone a 9.98 acre parcel from General Agricultural, A-2 Zoning District to Single Family Residential, R-40 Zoning District.
- B. County File #SD079167: A request for Vesting Tentative Map approval to subdivide 9.98 acres into 7 single-family lots with a designated remainder. Lots range in size from 41,210 square feet to 62,782 square feet. The requested subdivision includes a request to remove 22 trees.

The subject site's address is 1125 North Gate Road in the Walnut Creek area. (Zoning: A-2) (General Plan: SV) (APN 138-180-002)

II. BACKGROUND

On August 9, 2011 this item, which includes a 7 lot subdivision with Remainder (Plate 1, attached) was heard by the County Planning Commission. At the hearing were two public speakers who expressed concern about the proposed development. The first was an adjacent neighbor, located to the east, who spoke about concern of his view to the open space area and how it would be impacted by the development. The second speaker was a representative from Save Mount Diablo (SMD) who spoke about their concern of the project's impacts to the surrounding area.

Save Mount Diablo's concerns were primarily about lot sizes, visual impacts and impacts on sensitive species and habitats. And, according to SMD, most of the concerns could be addressed by realigning the access road, creating a larger buffer between the project and the open space land to the west and south. At the hearing they submitted a letter, dated August 9, 2011 (Exhibit 1, attached) that outlines those concerns.

At the end of the hearing the Planning Commission continued the item until September 13, 2011 because they wanted the applicant to provide them with an alternative design of the project that may include realignment of the access road.

MEETING WITH SAVE MOUNT DIABLO

On August 25, 2011 the applicant's engineer met with representatives of Save Mount Diablo and County staff, at County offices, to discuss Save Mount Diablo's concerns, which included the realignment of the access road.

As a follow-up to that meeting on September 1, 2011 that same group met at the project site to walk the area and discuss the issues in more detail. The applicant's engineer brought an Alternative Design (Exhibit 2, attached) that showed the realignment of the access road and one less lot than was on the original plan. The concerns expressed by Save Mount Diablo about this Alternative Plan had to do with potential impacts to the visual resources of the area, particularly for users of nearby trails and open spaces areas. Also they would like to see a larger buffer around the creek to protect those resources.

ADDITIONAL CONDITIONS OF APPROVAL

Also at the Planning Commission hearing on August 9, 2011, staff recommended two additional conditions of approval. The first would require the project to form a home owner's association to be responsible for the maintenance of the project road and landscaping. The second condition was submitted by the County Flood Control District and would require the applicant to obtain a Flood Control encroachment permit for the installation of the project's open space fence located on the project site, adjacent to their land.

Subsequent to the hearing staff received a memo, dated August 24, 2011 (Exhibit 3, attached), from Contra Costa Water District that had additional Conditions of Approval that the District would like to add to the project.

EMAIL OF SUPPORT FOR THE ORIGINAL DESIGN

Attached as Exhibit 4 is an email dated September 6, 2011, from an adjacent property owner that is in support of the project as it is originally designed.

G:\Current Planning\curr-plan\Staff Reports\SD079167.stfrpt.jo.cont. doc.doc