



## Planning Commission Staff Report

June 27, 2007  
Item 6.a.

- SUBJECT:** PUD-33, Oak Grove Planned Unit Development
- APPLICANT:** James Tong, Charter Properties
- PROPERTY OWNERS:** Jennifer Lin, Frederic Lin, and Kevin Lin
- PURPOSE:** Consider the following and provide a recommendation to the City Council to:
- Certify the Final Environmental Impact Report (EIR) for the Oak Grove Planned Unit Development;
  - Approve the PUD Development Plan to allow the development of an approximately 562-acre property into 51 custom home sites and designate the remaining 496 acres for permanent open space; and,
  - Approve the Development Agreement to vest the entitlements covered by this application.
- GENERAL PLAN:** Rural Density Residential (1 du/5 ac) – 489 acres, Public Health and Safety – 73 acres, and Urban Growth Boundary Line
- ZONING:** PUD-RDR/OS (Planned Unit Development – Rural Density Residential/Open Space) District
- LOCATION:** 1400 Hearst Drive, near the present terminus of Hearst Drive, to the south of Vintage Hills and Grey Eagle Estates, and to the east of Kottinger Ranch
- ATTACHMENTS:**
1. Oak Grove PUD Application Written Narrative, Update of May 24, 2006
  2. Draft EIR Visual Analysis Significance Criteria
  3. Excerpt from Appendix K, Visual Master Response 1, 2, and 3
  4. Floor Area Ratio (FAR) Comparison; Use of Visual Simulation

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## I. BACKGROUND

On June 13, 2007 the Planning Commission heard presentations for the Oak Grove Planned Unit Development from staff, the applicant's representative, the applicant's consultants who defined the various elements of the proposed residential development project, and members of the public.

The responsibility of the Planning Commission is to provide a recommendation to the City Council with regard to certification of the Environmental Impact Report (EIR); the proposed PUD development plan, which is the environmentally preferred 51-unit plan; and the Development Agreement. All the agreements, text, and existing visuals were provided to the Commissioners.

As to the Final EIR, the Planning Commission's charge is to recommend to the City Council whether the Final EIR complies with the standards in CEQA for legal adequacy: whether the EIR has reasonably and fairly evaluated and disclosed environmental impacts, has identified mitigation measures, and has adequately addressed comments made on the Draft EIR; and whether the proposed findings and determinations are supported by substantial evidence in the record.

The PUD development plan primarily addresses the design, functionality, and guidelines, both site and architectural, associated with the Planned Unit Development showing how the reduced number of units from the originally proposed 98 units to 51 units has: (1) provided an enhanced site layout plan that reduced environmental impacts as previously identified in the Draft EIR, (2) provided an improved lotting pattern, and (3) created, overall, an environmentally preferred plan that staff supports. The Commission's charge here is to recommend to the Council whether the PUD findings can and should be made and whether the project, as proposed, should be approved.

The Development Agreement is a contract that allows the developer and the City to establish the rules and procedures that will govern the property's development. Normally, in exchange for the rights that are established in the Development Agreement, the developer agrees to construct certain improvements or provide certain amenities, such as the 497 acres of open space, that the local agency could not otherwise require the developer to provide. Exhibit A, which contains the elements of the project, is referred to and contained within the document ensuring that it is constructed as reviewed and approved by the decision-making bodies. As with the PUD plan, the Commission's charge is to recommend to the Council whether the Development Agreement should be approved.

As a result of the June 13, 2007 Planning Commission hearing, there were various issues that were discussed about which the Planning Commission requested clarification and/or additional information. These issues were primarily as follows:

- The EIR Process and the Adequacy of the Studies conducted by the City's environmental consultant;
- Visual Analysis: Ridgetop Development and Graphic Representation;
- Fire Response and Protection Issues related to what the existing and future codes require as standards; Adequacy of the Site Ingress and Egress related to emergency services response;
- Home Size and FAR;
- Open Space – Park and Trails;
- Development Agreement/Conditions of Approval Issues; and
- Liability and Indemnification.

Staff's responses are below.

- ***The EIR Process and the Adequacy of the Studies conducted by the City's environmental consultant***

### EIR Process

The project has undergone an extensive evaluation process. The application was submitted to the City in 2003 and, since that time, has undergone an exhaustive and complete environmental review process described on pages 11 to 14 of the June 13, 2007 staff report.

On June 30, 2006 the Draft Environmental Impact Report was reviewed by the Planning Commission providing a forum for both the Planning Commissioners and the residents in the City of Pleasanton to provide comments on the Draft EIR. The public review process was extended to August 23, 2006 to allow additional time for comments. Out of that comprehensive review process, numerous concerns related to the work on the project that had been done and comments on the proposed project were received and responded to. Those responses, along with the Draft EIR, comprise the Final Environmental Impact Report. These documents have been made available in print form, in compact disc from the Planning Department, on the City website ([www.ci.pleasanton.ca.us](http://www.ci.pleasanton.ca.us)), and at the City of Pleasanton Library stored under reference materials.

There has been comment that the project has proceeded without adequate time for the public to fully understand the impacts this project will have on the community, that the analysis is inadequate, that City staff has not evaluated the EIR documents, that the process has not been an open one, and that all members of the public have not been a part of the process in the consideration of the project.

The process has entailed four years of a transparent review process. During that time, anyone interested in the project has been able to contact the City and has been provided any materials that had been submitted in relation to the status of the project at the time. As projects move through the review process, plans are ever-changing as staff works with the applicant to develop plans that can ultimately be supported. The public is made aware that plans may not reflect what will ultimately be considered by the Planning Commission and finally the City Council.

The purpose of the environmental review process is to create a document that provides a thorough analysis of what environmental impacts may be as a result of a project. As a result of the reduction of the development from 98 to 51 home sites, the project, as first proposed, has evolved into a project that significantly reduces the environmental impacts identified for the initial project. These reduced environmental impacts are shown in Attachment 1, Preferred Alternative 4 Narrative. The reduction of the number of homes significantly reduces environmental impacts, differing from the original plan by:

- Reducing the actual graded acreage from 87.07 to 77.13 acres;
- Reducing the amount of developed acreage from 79.94 to 66.03 acres;
- Reducing the custom lot acreage from 58.65 to 56.73 acres;
- Eliminating the need for one detention basin;
- Eliminates Court 5 and associated road construction;
- Reducing grading spoils from 700,000 cubic yards to 620,000 cubic yards of material;
- Significantly reducing biologic impacts:
  - reduces filling of ephemeral streams from 2,708 linear feet to 145 linear feet;
  - reduces the filling of seep areas from 2,004 square feet to 1,171 square feet;
  - negates impacts to wetlands area at Court 5 (which has been eliminated);
  - reduces from 135 to 58 with a reduction also of the number of the number of trees to be removed;
  - reduces from 90 to 32 the number of heritage trees to be removed; and
  - maintains the number of trees to be planted at 400 trees as the mitigation measure for the original project proposal; through the design guidelines, it is estimated a total of approximately 600 trees will be planted throughout the site.
- Reducing the number of home sites visible from the Grey Eagle Estates and Vintage Hills developments to the north; and
- Adding a road connection from Lot 51 from the construction fill area to the Kottinger Ranch water tank road, providing a secondary fire road for emergency services.

With the exception of two impacts (for which a Statement of Overriding Consideration is being recommended), the mitigation measures that have been outlined in the Draft EIR and in the Errata of the Final EIR mitigate any impacts described to less than significant.

These impact reductions result in a project that staff views favorably. Accordingly, staff has recommended the Planning Commission likewise recommend approval of the project to the City Council.

### EIR Adequacy

Staff believes that the Planning Commission may have concerns that the EIR may not be adequate in light of some of the testimony that the Commission heard. State law and the CEQA Guidelines set forth how a decision-making body should evaluate an EIR as to adequacy in order to be able to determine if that document is legally adequate:

#### ***15021. Duty to Minimize Environmental Damage and Balance Competing Public Objectives***

- (a) *CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.*
  - (1) *In regulating public or private activities, agencies are required to give major consideration to preventing environmental damage.*
  - (2) *A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.*
- (b) *In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors.*
- (c) *The duty to prevent or minimize environmental damage is implemented through the findings required by Section 15091.*
- (d) *CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian. An agency shall prepare a statement of overriding considerations as described in Section 15093 to reflect the ultimate balancing of competing public objectives when the agency decides to approve a project that will cause one or more significant effects on the environment.*

Note: Authority cited: Section 21083, Public Resources Code; Reference: Public Resources Code Sections 21000, 21001, 21002, 21002.1, and 21081; San Francisco

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*Ecology Center v. City and County of San Francisco, (1975) 48 Cal. App. 3d 584; Laurel Hills Homeowners Association v. City Council, (1978) 83 Cal. App. 3d 515.*

Discussion: *Section 15021 brings together the many separate elements that apply to the duty to minimize environmental damage. These duties appear in the policy sections of CEQA, in the findings requirement in Section 21081, and in a number of court decisions that have built up a body of case law that is not immediately reflected in the statutory language. This section is also necessary to provide one place to explain how the ultimate balancing of the merits of the project relates to the search for feasible alternatives or mitigation measures to avoid or reduce the environmental damage.*

*The placement of this section early in the article on general responsibilities helps highlight this duty to prevent environmental damage. This section is an effort to provide a careful statement of the duty with its limitations and its relationship to other essential public goals.*

#### **15151. Standards for Adequacy of an EIR**

*An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.*

Note: *Authority cited: Section 21083, Public Resources Code; Reference: Sections 21061 and 21100, Public Resources Code; San Francisco Ecology Center v. City and County of San Francisco, (1975) 48 Cal. App. 3d 584.*

Discussion: *This section is a codification of case law dealing with the standards for adequacy of an EIR.*

*In Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Assoc. (1986) 42 Cal. 3d 929, the court held that "the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." In Browning-Ferris Industries of California, Inc. v. San Jose (1986) 181 Cal. App. 3d 852, the court reasserted that an EIR is a disclosure document and as such an agency may choose among differing expert opinions when those arguments are correctly identified in a responsive manner. Further, the state Supreme Court in its 1988 Laurel Heights decision held that the purpose of CEQA is to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations, nor does it require absolute perfection in an EIR.*

Staff believes when the project is evaluated in its entirety,

- the benefits of the reductions of environmental impacts due to the development of the preferred environmental alternative (reducing the number of lots from 98 to 51),
- the dedication to the City of nearly 500 acres of open space with an easement overlaid on those lands administered by an independent third party, such as the Tri-Valley Conservancy,
- the proposed development will be of benefit because the project itself creates an amenity not only for those residing in Southeast Pleasanton but also for residents Citywide.

Staff further notes that the studies that have been provided by the environmental consultant do meet the criteria for adequacy and that the project is supportable and worthy of a positive recommendation from the Planning Commission to the City Council.

<ul style="list-style-type: none"><li>• <b><i>Visual Analysis: Ridgetop Development and Graphic Representation</i></b></li></ul>
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There has been considerable testimony related to the adequacy of the visual analysis in the EIR. These issues relate to:

- whether the photographs on which the visual simulations are based utilized an appropriate lens,
- whether the choice of viewpoints was appropriately chosen, and
- whether the size of the buildings presented in the visual simulations adequately represents what is likely to be viewed when the project is developed.

The visual analysis is a part of the analysis of aesthetics and visual resources per CEQA and is found in the Draft EIR which outlines significance criteria for analysis of the proposed project. The aesthetic criteria are provided below:

*Significance criteria for aesthetic impacts are drawn from CEQA Guidelines Appendix G (Items XII (a), (b), (c), and (d)). Impacts on aesthetics and visual resources would be significant:*

- (1) *[If the project would] have a substantial adverse effect on a scenic vista.*

- (2) *[If the project would] substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway corridor.*
- (3) *[If the project would] substantially degrade the existing visual character or quality of the site and its surroundings.*
- (4) *[If the project would] create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.*

*The significance determination is based on several evaluation criteria including the extent of project visibility from sensitive viewing areas such as designated scenic routes, public open space, or locations within residential areas from which views by the public are available; the degree to which the various project elements would contrast with or be integrated into the existing landscape; the extent of change in the landscape's composition and character; and the number and sensitivity of viewers.*

Additionally, project consistency with public policies regarding visual quality, as described in the Pleasanton General Plan, was also taken into account.

The Pleasanton General Plan contains a number of policies that address visual resources directly or indirectly. Visual resources are addressed indirectly in the Land Use Element, in its policies relating to open space; in the Circulation Element, in its policy relating to street standards; in the Housing Element, in its policy relating to environmental quality; and in the Conservation and Open Space Element, in its policies relating to natural resources. Direct General Plan guidance relating to visual resources is provided in the Community Character Element and the Subregional Planning Element.

Because these directions have been articulated, the consideration of aesthetics and visual resources for a project in a hillside setting needs to recognize hillsides and ridgelines as resources of public importance. In the analysis of Oak Grove's aesthetic impact, the approach has been (1) to identify visual resources of public concern, and (2) to evaluate impacts under CEQA criteria.

Because Pleasanton's General Plan contains a Subregional Planning Element, reference was also made to the Alameda County General Plan. The County's East County Area Plan (adopted May, 1994) includes a goal to "protect regionally significant open space from development." One use of such open space called for in the Plan is to provide "buffers between communities." This direction aligns with Pleasanton's policy cited in the Subregional Planning Element to protect community separators.

Alameda County also calls for protection of sensitive viewsheds from adverse effects of grading or tree loss: "The County shall require that where grading is necessary, the offsite visibility of cut and fill slopes and drainage improvement is minimized. Graded slopes shall be designed to simulate natural contours and support vegetation to blend with surrounding undisturbed slopes" (Policy 114).



The principal vehicle for evaluating the impacts of the project on aesthetics and visual resources is the representation of future visual conditions provided by the computer simulations that have been provided. These simulations represent what would be seen from within the site as well as from outside the site. These simulations represent views that can be created as realistically as possible.

A 28-mm lens was used because such lens enabled a larger area to be photographed at one time, similar to what the human eye would experience. The issue of the use of a 28-mm lens versus a 50-mm lens has had significant discussion related to how realistic the representation is. From the testimony, it appears the overarching criticism is that the visual representations provide a simulation that makes the homes appear smaller at the viewpoint locations than they will actually be. The purpose of the simulations is to provide the decision-makers a tool that defines whether or not the homes may be seen, to what degree, and how the visual impacts can be mitigated if the developed sites are visible.

The proposed homesites would be located primarily at the uppermost interface of the ridges that extend the development from the existing Kottinger Ranch development easterly into the Oak Grove site. These fingers and extensions of the Kottinger Ranch development will echo the same visual character and impacts as that project did. Staff notes that many developments that have taken place within the City are initially visible, but, over time, as vegetation takes hold and matures, those visual impacts are significantly or sometimes wholly mitigated. The Grey Eagle Estates development is but one example of homes sites located closer to the tops of ridges. These areas have been identified as the most stable areas for construction and reducing potentially significant impact to wetlands and valleys associated with homesites located on downslopes.

Accordingly, the use of a 50-mm lens would have produced the same images; however, the end product would have been a patchwork of photographs breaking the view rather than the seamless photographs provided in the EIR in order to perceive the scale and appearance of the project within the panorama of the largest landscape setting.

The questions to be answered by the visual analysis is:

- Will home sites be visible? The answer is yes. The next question to be asked is,
- Is there a reduction in the number of home sites that are now visible due to a reduction in the number of homes proposed from 98 to 51? The answer also is yes.
- Can the visibility of the home sites be reduced with the use of landscaping materials? The answer again is yes, and, to that end, the visual simulations provided views of the site at construction, at five years and at ten years.

The intent of the visual analysis is to answer the fundamental questions posed by CEQA and to address impacts to existing visual resources. The City is sensitive to visual impacts from neighboring developments. However, in evaluating the project, staff also takes into consideration whether there are view easements protecting those vistas, the existing zoning of a site, and the consistency of analysis with those that staff has made in the past. The subject site has no pre-existing view shed easements in favor of adjacent property owners, the site had previously been rezoned to allow development as a PUD awaiting a development plan that would be sensitive to the area, and the development is generally consistent with other surrounding developments.

The project has reduced the number of units from 98 to 51, has site design guidelines to set in place landscaping requirements for screening and mitigating visual impacts, and is designed with less density than its neighboring developments, yet echoes the integrity of those adjacent developments.

As to the discussions and concerns relayed to the Planning Commission regarding the placement of homes for the development on or close to the ridges as described by the Grey Eagle Estates residents, this critique is inconsistent with recent approvals the Grey Eagle Estates Homeowners Association (HOA) granted to locate the proposed Allen Roberts residence at the top of the ridge visible from not only the Grey Eagle Estates residences but also from the City's valley floor and from I-580. The location of that proposed home has not been approved by City staff to date due to issues surrounding the proposed location of the City's access easement, not due to the location of the proposed house on the ridge.

Staff believes that the CEQA criteria as defined above have been met, that the analyses have considered not only existing and proposed conditions but also the proposed environmentally preferred alternative with respect to consistency with the City's and the County's General Plan.

- ***Fire Response and Protection Issues related to what the existing and future codes require as standards; Adequacy of the Site Ingress and Egress related to emergency services response***

At the June 13 meeting, Ed Janas, a resident of the Grey Eagle Estates development, raised issues concerning existing and future Fire Code requirements. The Fire Chief and Fire Marshall responded as follows.

**Response to Oak Grove public testimony**

*21 June 2007*

*In context of this development, the Fire Department has considered how it would access the proposed development in the event of a fire or other emergency.*

*When the Fire Department first reviewed the 98-home development, the plan showed a connection to Hearst Drive (which would serve as the primary access for emergency vehicles) and a secondary emergency vehicle access (EVA) by way of a connection to Benedict Drive, using a City-owned utility service road from the City's water storage tank. An additional EVA connection from the Grey Eagle Estates subdivision was also noted on the project plan. This EVA generally followed a route that incorporated the City easement that provides access to the City water tank at the end of Grey Eagle Court.*

*Recently, the Fire Marshall had a conversation with Bob Grove, a Grey Eagle Estates property owner. Following that conversation, there was a field visit to the existing EVA gate located near the end of Grey Eagle Court. Present were Donna Decker, Marion Pavan, Fire Marshall Carson, and Fire Chief Cody. The purpose of the visit was to determine the width of the existing paved access road between Mr. Grove's property and property formerly owned by Allen Roberts. Each of the properties adjacent to this access road has installed fencing and landscaping improvements adjacent to the paved road.*

*Mr. Grove's fencing and landscaping have encroached into the City easement for approximately 130 lineal feet from the end of Grey Eagle Court. The presence of this fencing and landscaping effectively narrows the 20-foot width of the City's easement to 17 feet-6 inches at the gate and 18 feet in the roadway. The Fire Department's evaluation of the reduced width along this section of the access easement is that it may be acceptable (meaning that the fencing and landscaping may remain where they are) if the remainder of the access easement, once improved, meets the City and Fire Code requirements. (The City easement extends [on the final tract map for the Grey Eagle Estates subdivision] from the end of the improved access road to the Oak Grove property line on Allen Roberts' property.)*

*When the Oak Grove project was revised to 51 residential custom home sites, the Benedict Drive EVA connection, originally shown in the 98-custom home project, was deleted, and the roadway was terminated at Lot 51. The greatest reduction in lots in the 51-custom home plan was in the western most area of the project that would have derived the most benefit from the Benedict Drive EVA connection. As a result, the 51 custom home sites have a significant number of lots located to the easterly side of the site which is better served via access from Grey Eagle Court.*

*The purpose of an EVA is to provide emergency vehicles, including fire trucks, access to the site. It also serves as a secondary access point should the primary entrance become obstructed for some reason. Realistically, an EVA also provides a way out, as well as a way in, should a primary entrance become obstructed.*

*In context of the Oak Grove project, Hearst Drive remains the primary access point for emergency vehicles, as well as the way out for residents. The Grey Eagle access to the site will be only a secondary access point. Moreover, given the width of*

*Hearst Drive, it seems remote that residents would need to use (or even think to use) the Grey Eagle access.*

*One additional requirement that has been added to the Oak Grove project is for the developer to construct a “fire road” from the Benedict Drive water utility road/tank to Lot 51. This will be a narrow road designed for an all-wheel-drive fire truck to access the westerly part of the site primarily for wildland fire fighting. In that it will connect to the existing utility service road that connects Benedict Court to the City’s water tank (which does not meet the City’s requirements for width and grade as to an EVA), the fire road will likewise not be designed or constructed to City EVA standards related to width and weight capacity*

*During the public hearing, Mr. Janas stated that the 2006 California Fire Code (which has not been adopted on a State-wide basis nor by the City) defines the minimum standards for the construction of what is now called “Fire Apparatus Access Roads” (FAAR). (The term “Emergency Vehicle Access” (EVA) is no longer in the proposed Fire Code.) The specifications for a FAAR are essentially the same as the present code requirements for an EVA as adopted by City of Pleasanton. When the fire code official requires a FAAR, it has to meet the minimum width, height, and surfacing requirements.*

*When it comes time to construct the remainder of the access easement, the Fire Department will apply whatever standards are then in effect. If the access can be constructed within the existing easement and meet applicable codes, it will be. If it cannot, then additional right-of-way will need to be acquired. This has been made a condition of approval for this project.*

*Finally, additional fire and life safety mitigation measures are imposed on the Oak Grove project in the form of the Urban-Wildland Interface (UWI) requirements and an increase in fire flow. This specifies that the development address the areas around each home to provide defensible space and ensure that the vegetation does not contribute to the spread of fire. The present code specifies that combustible vegetation be cleared 100 feet from the structure. The Fire Department has modified this requirement and has specified that the 100-foot clearance be measured from the property line, not the structure. In some cases, based on the siting of the residence this distance may be up to 180 feet from the residence. In addition, fire-resistive construction, non-combustible roofing and other protective measures will also be required to ensure resistance to fire. The UWI plan will contain provisions for the management of open space to ensure that best practices are employed in the open space to restrict the spread of fire to this development as well as the surrounding neighborhoods. Fire flow has been increased to 1.5 times the City minimum for residential development; so adequate water is available for wildland firefighting and structure protection. Each residence is also required to have automatic fire sprinkler protection.*

*Finally, the result of these measures, taken individually and in the aggregate, is that the best engineering and sound fire prevention practices have been employed to ensure an appropriate level of safety and fire protection to the community.*

• **Home Size and FAR**

Home Size/Visuals

During the public hearing, members of the public asked if the visual simulations adequately represented the size of the homes to be built, given the proposed FAR's.

The intent of the simulations, however, was to show whether or not a structure would be visible, not to represent precisely the size of the house on the lot. The text of the Draft EIR and Draft EIR Errata provided in the Final EIR that there will be a visual impact, that it can be mitigated by landscaping, and that additional lots should be added to the list of "visible lots" such that these lots would be required to follow the site design landscaping criteria rather than the less onerous criteria for those lots not considered highly visible.

The purpose of the visual simulations was to graphically represent a large home on the site and its location within a building envelope. For that purpose, staff does not believe that any difference between a 7500-square foot home and a 10,000-square foot home would be significant. Accordingly, staff believes that the questions related to visibility of the homes have been addressed, including additional conditions of approval requiring a property owner to provide visual simulations at the time a particular house design comes forward. That is the appropriate time to evaluate those visual impacts which will be buttressed by true engineering analysis and fine lot grading necessary to optimize the building set into the site by landscaping, by ensuring that only two stories would be visible at any grade and by assuring acceptable scale and placement of any accessory structures proposed as part of the primary home development.

Staff believes the simulations accurately depict what will be seen, and that has translated into understanding that structures will be visible. Staff believes the process proposed requiring a first evaluation by the development's architectural review board, then City review, will be successful as it has been in other recent developments in the City, notably Mariposa Ranch.

A similar approach has been taken on a smaller scale for other developments the City has recently reviewed and approved. The Planning Commission did not have concerns related to visual impacts from the Austin development because the simulations effectively showed, as Oak Grove has done, views from adjacent neighbors without landscaping, with five years' growth, and finally with 15 years' growth. The visual analysis of the Austin development was very similar in that it demonstrated clearly that the homes would be seen while showing that over time, the visual effects would be mitigated by the extensive landscaping provided.

These developments are examples of benefits development projects bring to the City in the form of substantial amenities of open space, ensuring that the City will be wrapped with natural areas that the residents will enjoy that otherwise would neither be available for the enjoyment of residents nor able to be maintained in perpetuity.

Attachment 4 provides additional clarification. Notwithstanding the use of a smaller template, staff believes the simulations provide the tools for the decision-makers to evaluate the visual impacts. Staff believes this is one component among many and that it needs to be evaluated in the context of the entire project.

## FAR

The issue of FAR has been substantially answered; however, staff believes that the Planning Commission may appreciate some clarification.

Originally, the project did not propose a FAR limit for the development but rather intended to utilize the development guidelines which provide such site constraint restrictions that the size of a proposed home would be limited just based on topography or other factors. Staff was not confident that at the design level these discussions would be able to successfully be implemented.

The applicant evaluated what they believed to be an appropriate-sized home understanding that the lots and homes will be at a premium and anyone investing at this location would wish to have the opportunity to have estate-sized homes. The lots have been substantially increased in size. Therefore, the applicant proposed a 25-percent FAR with a cap of the largest-sized home as 12,500 square feet including accessory structures.

The staff report that was circulated in March 2007, had a recommendation from staff to limit the home sizes to 8,000 square feet with 2,000 square feet allowed for accessory structures along with an 800-square-foot garage exemption. The applicant discussed this alternative with staff and was willing initially to agree. The applicant then considered further how this square footage compared with the 25-percent FAR. Staff notified the Planning Commission at that time that this portion of the staff report would likely change significantly and that when the project would come forward, the staff report would provide different recommendations at that time.

Staff re-evaluated the question of FAR and believes an equitable solution is for an across-the-board 20 percent FAR. This results in only about ten lots that could have houses proportionately larger than what the applicant had originally proposed.

Staff also evaluated the FAR based on the tables generated within the June 13, 2007 staff report. These FAR's clearly show that the majority of the homes will be 10,000 square feet or less. Those homes that may be larger based on a 20-percent FAR would be proportionate to the lot as noted above. Having a consistent FAR is also more customer-friendly in that when an applicant comes to the public counter, the

process is streamlined in terms of readily knowing that the FAR is consistent throughout the development.

Staff continues to recommend a 20-percent overall FAR as described within the June 13, 2007 staff report. Additionally, staff agrees with the applicant to restrict the sizes of homes on the 11 estate lots to a maximum building footprint of 12,500 square feet. This recommendation would provide designs proportionate to the proposed lot sizes.

• ***Open Space – Park and Trails***

Staff notes that the testimony at the public hearing supported the proposed project open space proposal, including the dedication of nearly 500 acres of land for open space, trails, and staging area. That acreage would also be encumbered with a permanent open space/conservation easement to be held by a third party, such as the Tri-Valley Conservancy, for oversight and management. A grazing plan would also be implemented which would be sensitive to the existing flora and be attentive to the protection of those sensitive habitat areas defined within the EIR.

However, none of the benefits of the open space will be available to the City if the project is not approved.

Staff believes the EIR is adequate, thoroughly identifies the impacts, and provides mitigation to reduce all impacts (other than two) to less than significant. As to those two impacts, the benefits of the project warrant the adoption of the proposed Statement of Overriding Considerations. Staff believes that the applicant has designed the project sensitive to the site's constraints and provides significant amenities to compensate for the development of 51 homes.

• ***Development Agreement/Conditions of Approval Issues***

Members of the Commission and of the public questioned staff about potentially conflicting provisions in the Development Agreement and/or Conditions of Approval. For example, the developer is required to construct within the open space parcel a regional trail, local trails, and staging area before the sale of the fifth lot. In order to do so, the extension of Hearst Drive will need to be completed. On the other hand, if the project were phased such only Lots 1 through 7 were developed (suggesting that they had been sold), the proposed Condition No. 76 indicates that the extension of Hearst Drive would not have been built (in that it requires a sign to be posted stating the road will be extended). Staff will revise this condition to say, "Prior to the sale of the fifth lot, to the extent the extension of Hearst Drive has not been construction beyond Lot 7, a sign shall be placed at the terminus of the extension notifying property owners that the

street will be extended. The developer shall submit details of the signage for review and approval prior to installation.”

The Development Agreement provides that if there are conflicts between the terms of the Development Agreement and the PUD conditions, the Development Agreement terms take precedence. Section 12.10 of the Development Agreement provides that the Agreement and the exhibits constitute the full understanding and agreement of the parties. Staff will add the PUD conditions as an exhibit to the Agreement so that it is clear that the PUD conditions are intended to be part of that full understanding and agreement.

• ***Liability and Indemnification***

During the public hearing, Grey Eagle Estates residents expressed their concern that because Grey Eagle Court is a private street and because the property lines of the lots extend to the center of the street, if Grey Eagle Court is used for public safety and emergency purposes, they could be liable if someone were injured. Part of that concern stems from the width of the street (28 feet) and the fact that vehicles park along the street, making access by fire and other emergency vehicles difficult.

In relevant part, the CC&R’s for the Grey Eagle Estates subdivision provides that “Vehicles shall not be parked anywhere in the Project except wholly within Lots; provided however that parking of vehicles by Invitees is permitted on the Private Street for not more than one (1) night.” The CC&R’s also prohibit the parking of boats, trailers, commercial vehicles, RV’s, etc. within the Project. The CC&R’s also provide that no private street shall be obstructed and that no owner shall permit anything to be kept on the private street that would be in violation of any governmental statute, ordinance, rule, or regulation.

Because the Lots do extend to the center of the private street, there is an argument that property owners can park their own vehicles along the street consistent with the CC&R’s. By so doing, however, the parking of these vehicles cannot interfere with the public safety easement that has been granted to the City. Regardless of this project, if, in the future, the Fire Department determines that the parking of vehicles on the private streets unreasonably interferes with its ability to respond to emergencies, the City could take steps (such as posting no parking signs) to ensure the safe passage of emergency vehicles.

In the discussions that staff has had with the Grey Eagle Estates representatives, staff has indicated it would be willing to recommend to the City Council that the City provide indemnification to the Grey Eagle Estates property owners in the remote possibility that someone actually was injured on their property during an emergency. If someone were injured during such an emergency and filed a claim/brought a lawsuit against the property owner, the owner would tender defense/indemnification to the City. The City,



in turn, would tender defense/indemnification of this matter to the Oak Grove Homeowners Association. Under the Development Agreement (and later in the CC&R's), the Oak Grove HOA would be contractually obligated to provide this defense/indemnification, and the City would require that the HOA provide a certificate of insurance to the City showing this coverage.

It is not without precedent that that the City provides such indemnification. For example, when the linear park was put through that portion of Hacienda Business Park that was going to be residential, the developer was concerned that persons using the park would stray from the park, use the playground equipment that was on private property, get injured, and then sue the HOA. To alleviate that concern, the City agreed to indemnify the HOA in that (again remote) event. In the ensuing 15 years that linear park has been used, the City has never received a claim for indemnification.

For the reasons expressed in this supplemental staff report concerning the Fire Department's responses, staff continues to believe that the possibility of persons needing to use Grey Eagle Court to flee an emergency within the Oak Grove site is remote; even more remote would be the likelihood of someone being injured while leaving. Nevertheless, the project applicant and the City (if the Council concurs) will agree to provide indemnification to the Grey Eagle Estates property owners.

## **CONCLUSION**

Staff believes the EIR is adequate, thoroughly identifies the impacts, examines the cumulative impacts of the project, and provides mitigation to reduce all project impacts (other than two) to less than significant. As to those impacts, the benefits of the project warrant the adoption of the proposed Statement of Overriding Consideration. Staff believes that the applicant has designed the project sensitive to the site's constraints and provides significant amenities to compensate for the development of 51 homes.