



## Planning Commission Staff Report

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May 21, 2008  
Item 4.b.

**SUBJECT:** PUD-99-01-07M

**APPLICANT/  
PROPERTY OWNERS:** Jun Kim

**PURPOSE:** Application for a major modification to an approved Planned Unit Development (PUD) development plan to reduce the rear and side yard setbacks for a water feature.

**GENERAL PLAN:** Low Density Residential

**ZONING:** PUD-RDR/LDR (Planned Unit Development- Rural Density Residential/Low Density Residential) District

**LOCATION:** 8024 Oak Creek Drive

**ATTACHMENTS:**

1. Exhibit B: Draft Conditions of Approval
2. Exhibit A: Site Plan dated "Received April 15, 2008"
3. Location Map
4. Exhibit C: Planning Approved Site Plan Drawing dated "Approved March 30, 2007"
5. Exhibit D: Building and Safety Division Letter dated "October 1, 2007" with Attachment
6. Exhibit E: Lemoine Ranch Homeowner Association Approval E-mail dated "Monday, March 10, 2008"
7. Exhibit E: Photographs
8. Exhibit F: Lemoine Ranch Development Standards (Ordinance No. 1790)

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### BACKGROUND

At the City's request, the applicant, Jun Kim, submitted an application on October 18, 2007 for a minor modification to the approved Lemoine Ranch Planned Unit Development (Ord. 1790), to reduce the rear yard setback of his property from the required 20-feet to 8-feet and to reduce the side yard setback from the required 10-feet to 5-feet for an existing water feature (Koi pond) located in the rear left side of his property.

On March 7, 2008, the City initiated a code enforcement investigation as a result of a neighbor's concern about the construction that was on-going at the Kim's residence and questioned whether they had obtained the appropriate permits. The development consists of 12 homes in the Lemoine Ranch PUD. A homeowners' association was formed and has regularly scheduled meetings to discuss up-coming projects. The Kim's proposal was apparently not reviewed by the HOA prior to construction commencing. The neighbor had described the scope of work to Code Enforcement who engaged the Building and Safety Division into the inspection process in order to determine what, if any, permits may be required.

On March 21, 2007, building inspectors conducted a site inspection at the property. They found that a "pond" was under construction and that the majority of the excavation had been completed. Additionally, the building inspector informed both the contractor and the property owner that the pond would need to be reviewed by the Planning Department. The inspector also informed the Kim's that based on the amount of excavation, a "pool" permit from the Building and Safety Division would be required due to the depth of the excavation of 4 feet and furthermore, that the pond would be considered a pool and not a pond.. The Kim's were advised by the City's inspectors and told the contractor to stop work until the appropriate permits were obtained.

On March 30, 2007, the Planning Department reviewed the plans as shown in Exhibit C and approved the pond as an accessory structure with the side yard setbacks reduced to 5 ft where it should have been 10 ft and allowed a reduction of the rear yard setback from the approximately 8.5 to 9 ft where it should have been 20 ft. The plans were stamped with an advisory note alerting the applicant that if HOA review is required for projects prior to planning review and approval and that it is the property owner's responsibility to receive a determination from the HOA prior to commencement of work.

### **Building and Safety Division**

On April 2, 2007 the applicant applied for and received a building permit for a 4-foot deep body of water located at the rear of their home for a koi pond after receiving plans stamped by the Planning Division. The Building Official stated that the building permit should be treated as a pool and all appropriate barriers are to be installed per the 2001 California Building Code- Appendix 4. After a building permit is issued, applicant's are required to call for an inspection during the various stages of the construction of the project, e.g. excavation, rebar placement, gunnite installation, plumbing, electrical, etc. The applicant's paid a fee based on the valuation of the project as noted on the building application as approximately \$12,000; however, the final cost, not value, of the pond is approximately \$32,000. Between the months of April and June, no calls for inspection were received.

On June 12, 2007, the Building and Safety Division received a phone call from the concerned neighbor wanting to know the status of the project because it appeared that the work had been completed. Les Lyons, Senior Building Inspector, met with the contractor on June 19, 2007 and

found that the work on the pond had been completed without receiving inspections from the Building and Safety Division.

The contractor was provided with a preliminary correction list; pending the outcome of the geological hazardous report. Staff notes that because the subject site is located in the Lemoine Ranch Estates Geologic Hazard Abatement District, all excavations and gunite structures require structural engineering and steel detailing, thus, the requirement for the geological report is required by the Building and Safety Division. After the review of the report was completed by ENGE0 (Exhibit D), an updated correction letter was sent to the property owner on October 1, 2007 (Exhibit D). In an effort to help the applicant, the Building and Safety Division initiated preliminary internal discussions to help determine what the structural and steel detailing may need to be based on the City's knowledge of the area. The City advised the applicant of these construction requirements which, as noted above, required a geotechnical report because of the slide areas located adjacent to and directly west of the subject site. Additionally, the Lemoine Ranch development had been required to construct a geotechnical buttress to act as a barrier from the slide moving into the development at the subject site boundary.

Based on conversations with the HOA, the Building and Safety Division letter, and adjoining property owner at 8012 Oak Creek Drive, the pond has leaked twice and created soil erosion problems since its installation. The letter from the building inspector outlines why the erosion problems occurred; which, in short, is because the applicants did not address the building permit violations or provide the appropriate documentation for structural engineering and steel detailing to ensure the safety of the pond. Moreover, the inspectors found that an under drain had been constructed within the 5 foot setback area which was placed likely at an elevation higher than the depth of the pool resulting also as impacts to the neighbors in that leaking may have occurred from this drainage component as well. Without the proper documentation, inspections, and corrections to the violation, the pond may continue to be a hazard to the neighboring down sloping property.

On March 10, 2008, the Lemoine Ranch HOA president provided staff with its approval of the pond, post installation, and with the stipulation that the applicant adheres to the City's and HOA's conditions. The HOA's conditions of approval can be found in Exhibit E; however, only one of the conditions of the HOA is reflected in staff's conditions of approval since the other is civil issue and cannot be enforced by the City. The HOA has been made aware of this and has agreed to follow-up with that condition through their process.

The request to keep the pond at its current location was initially going to be processed as a minor modification to the Planned Unit Development (PUD); however, since Code Enforcement received a call from a concerned neighbor this application is presented before the Planning Commission as a major modification to the development plan. The City also has concerns that were unknown at the time of the approval, which was incorrectly given to the Kim's, and the intent to process as a minor PUD modification. The Planning Commission is requested to consider and provide a recommendation to the City Council regarding the appropriateness of a

significant rear yard setback reduction from 20-feet to 8-feet and a reduction in the side yard from 10-feet to 5-feet in light of the lack of inspections, geotechnical reporting, structural evaluation and detailing or if it is preferable to have the pond relocated to adhere to the required development standards since adequate room is available on the large lot to accommodate such a distance.

## **DEVELOPMENT AND SITE DESCRIPTION**

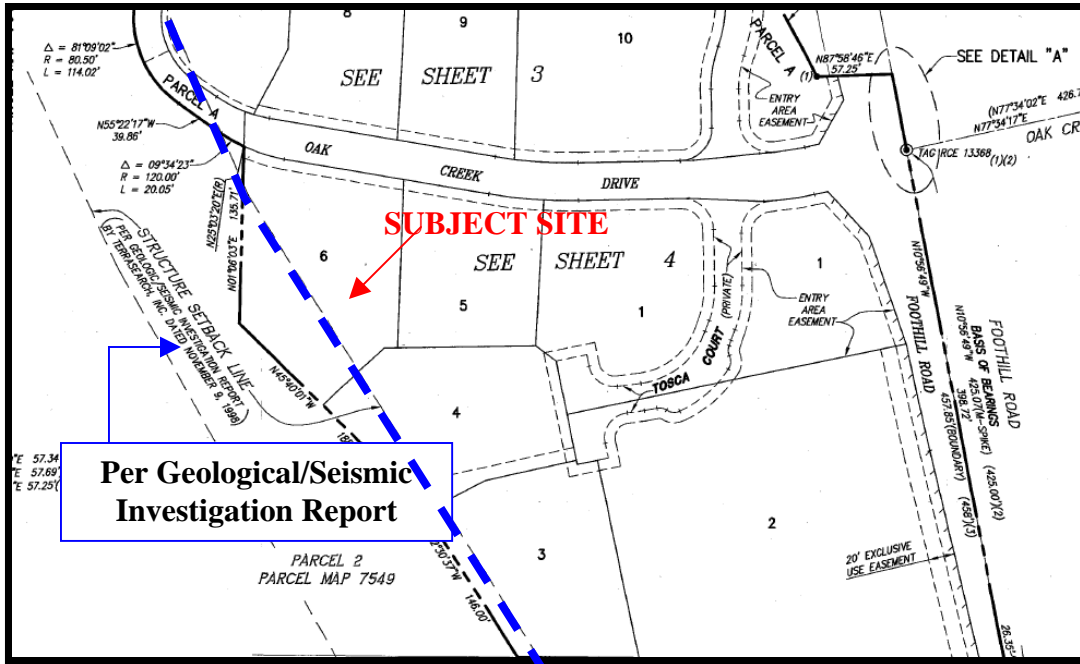
Lemoine Ranch is located on the west side of Foothill Road, northwest of Foothill High School, with 12 homes on the approximately 7-acre parcel. The houses in the development range in lot size from 12,700 square-feet to just over an acre and are terraced down towards Foothill Road. The majority of the development has open fencing on all of the lots; except for those shared rear yard fences of the homes on Oak Creek Drive and River Rock Hill Road.

The subject site slopes up southerly then flatten outs towards the middle with the topography along the west side of the property significantly sloping upward to the west, farthest from Foothill Road. There is also a downward slope towards the adjacent property located at 8012 Oak Creek Drive, thus, the subject site is terraced above those homes located south of Oak Creek Drive. The same terracing topography applies to the northern side of the development with houses located farther from Foothill being higher and adjoining lots being lower.

### **Lemoine Ranch Geologic Hazard Abatement District**

Geologic Hazard Abatement Districts (GHADs) are districts formed specifically to address geologic concerns that may affect private and public improvements in areas that may be susceptible to hillside risks. A GHAD may be formed for the purpose of prevention, mitigation, abatement or control of a geologic hazard; also for mitigation or abatement of structural hazards that are partly or wholly caused by geologic hazards. A "geologic hazard" is broadly defined as an actual or threatened landslide, land subsidence, soil erosion, earthquake fault movement, or any other natural or unnatural movement of land or earth.

As shown in the map below, the Lemoine Ranch development is located in a GHAD. The GHAD boundary is located through the subject property. A portion of the koi pond intrudes into the GHAD setback area. Prior to issuance of a building permit, a review by a GHAD engineer is required in order to ensure the structural stability of the proposed "improvements" prior to the commencement of work. Although a GHAD engineer provided a report, it was done post installation. The review and recommendation from the GHAD engineer can be found in the ENGEO report in Exhibit D. Staff has added a condition of approval that the applicants must fulfill the requirements of the ENGEO report in order to ensure that the pond was constructed appropriately.



**PROJECT DESCRIPTION**

The applicant received over the counter approval for 5-foot setbacks for the side and rear for a koi pond; however, after staff’s site visit to the property it was apparent that the rear yard setback was greater than what was approved. The site plan in Exhibit A portrays the shape and setbacks for the pond; which are measured from the closest point of the property lines to the water line. Therefore the applicant is proposing to modify condition of approval #8, for his property only, of case PUD-99-01, as shown below:

“8. The minimum setback regulations for all main structures, Class I, and Class II accessory structures on lots 1-12 shall be as follows:

	<u>Front Yard</u>	<u>Side Yard</u>	<u>Street Side Yard</u>	<u>Rear Yard</u>
Lots 1,2, & 10	150’ <sup>ab</sup>	25’ <sup>a</sup>	25’ <sup>a</sup>	20’ <sup>a</sup>
Lots 3-9, 11, & 12	23’ <sup>acd</sup>	<del>10’<sup>ad</sup></del> 5’ <sup>ad</sup>	15’ <sup>ad</sup>	<del>20’<sup>ad</sup></del> 8’ <sup>ad</sup>

<sup>a</sup> Structure located outside an approved building envelope shown on the approved tentative map shall follow the natural grade and cut and fill shall be limited to less than three feet in height.

<sup>b</sup> The setback shall be measure from the westerly edge of the Foothill Road edge of pavement as established by the approved interim alignment plan.

<sup>c</sup> 20’ minimum front yard setback for side entry garages.

On lots 3,4, and 6 no structures, including additions, may be placed in the “structure setback” area as designed on Exhibit A

The applicants request for the modification listed above is **site specific only** and would not apply to the entire development. The proposed modification would reduce the rear and side yard setbacks for the existing pond. Although the waterfall feature that leads into the pond was not apart of the application approved by staff or on the permit for the Building and Safety Division, the waterfall follows the topography of the side yard, is not considered a structure and therefore can be located beyond the structure setback line establish in PUD-99-1, and the retaining walls are not more then 3-feet in height, thus, within the development guidelines established for Lemoine Ranch.

The Building and Safety Division indicates that although the feature is not more than 3 feet in height, the connection to the pond would require inspection of plumbing and wiring and the appropriate permits for this additional work.



## ANALYSIS

### Lemoine Ranch Site Visit

On February 11, 2008, staff met with Russ Berry, HOA president at the time, and Kryssa Cooper, Secretary to the HOA, to walk the development and assess the individual lots and the accessory structures that are currently in place. Staff made the following assessment:

- |                           |   |
|---------------------------|---|
| 1. 8001 Oak Creek Drive:  | Waterfall with retaining wall feature and separate gazebo               |
| 2. 8012 Oak Creek Drive:  | N/A   |
| 3. 8015 Oak Creek Drive:  | N/A   |
| 4. *8024 Oak Creek Drive: | <b>Subject application: Water Feature with waterfall retaining wall</b> |
| 5. 8031 Oak Creek Drive:  | Proposed pool (PUD-99-01-05M)   |
| 6. 8045 Oak Creek Drive:  | Pool and arbor  |

- 7. \*4526 River Rock Hill Road: Portable arbor
- 8. 4538 River Rock Hill Road: Waterfall retaining wall feature
- 9. 4471 Tosca Court: Detached arbor
- 10. 4476 Tosca Court: N/A
- 11. 4455 Tosca Court: N/A
- 12. 4462 Tosca Court: N/A

\*Non-compliant accessory structures  
 N/A: no accessory structures

During the site visit, staff was made aware that the scope of the work for the pond had been expanded to include a waterfall feature that cascades down, southwest to northeast, into the pond. Staff was initially concerned with this waterfall feature because it was located beyond the “structure setback line” that was established during the PUD approval of Lemoine Ranch; however, the waterfall is considered a retaining wall, thus, not a structure, and meets the retaining wall requirements for this development.

After assessing the individual lots, in terms of future setbacks and current pools/structures/retaining walls, and receiving feedback from the homeowner during the site visit staff decided to move forward with individual modifications verses global modifications for the entire development.

With the exception of 8045 Oak Creek Drive, none of the other homes in the development have a pool. The one house with the pool is within the development standards for the Lemoine Ranch PUD guidelines. The house located at 8031 Oak Creek Drive (PUD-99-01-05M) has proposed a pool to be setback 5-feet from the property lines; which is currently being considered by the Planning Commission. Staff believes that the applicant has good intentions for the pond; however, has not acknowledged the code violations outlined by the Building and Safety Division. Staff would like to note that the Les Lyons, Senior Building Inspector stated that the Building and Safety Division has concerns that the applicant needs to address the outstanding items and that the applicant should clearly show how the completed project meets the structural requirements.

PUD modifications to reduce the rear yard setback for a pool to 10-feet have been supported by the City in the past. With the exception of the building code compliance, the applicants believe that they pursued the completion of their project by obtaining the planning approval and that they have received the appropriate permits/approvals from the City. They now have communicated to Planning staff that they are intending to address any outstanding code violations pending final approval from the City Council. To date no additional verification or information has been provided to the Building and Safety Division which could clarify the inspections and construction issues.

Staff requests that the Planning Commission consider the following and provide such recommendation to the City Council.

1. Allow the applicant to maintain their original request to reduce the required 20-foot rear yard setback to 8-feet and reduce the required side yard setback from 10-feet to 5-feet; or
2. Disallow a setback reduction requiring the applicant to meet the required 10-foot side yard setback and the required 20-foot rear yard setback.

Staff notes that the Planning Commission may wish to recommend other appropriate options to the City Council should the Commission wish to pursue alternatives that are not outlined above. In light of the leaking that has affected the neighbor, staff has considered, but not conditioned the project to either drain the pond to a level acceptable to the Building and Safety Division or completely drain the pool to mitigate the concern of continued potential leaking to the downhill neighbor prior to the project being heard by the City Council for action.

The attached conditions of approval in Exhibit B would be modified accordingly to reflect the Planning Commissions recommendation to the City Council.

## **PUBLIC NOTICE**

Notice of this application was sent to all property owners living within 1,000 feet of the subject property. As of the date this staff report was drafted, there were no public comments.

## **ENVIRONMENTAL ASSESSMENT**

Existing facilities consisting of the operation, permitting, licensing, or minor alteration of structures involving no expansion of use beyond that existing are categorically exempt (Section 15301, Class 1 (L)(4)) from the requirements of the California Environmental Quality Act (CEQA).

## **CONCLUSION**

The Koi pond is an attractive feature in the rear yard area for the enjoyment of the owners. However, there are construction issues that remain unresolved, the applicants have been unresponsive to requests for additional information, and have not voluntarily tried to correct the deficiencies that have been noted. The neighbor to the east has continued concerns related to noise from the waterfall and has requested that a solid fence be allowed but remains concerned that the leakage from the pool will not be corrected and could continue to damage their property. The applicant's house pad is higher than the house pad located east of the subject property (8012 Oak Creek Drive) and is not highly visible at the proposed location. The neighbor did however, acknowledge that so long as the pond does not leak again and meets the safety requirements and receives all of the appropriate permits, the Koi pond could be supported.

Staff has provided the Planning Commission with options for consideration as noted below in the recommendation. Staff would propose that the Planning Commission consider Option 2, requiring the pond edge be relocated to meet the side and rear yard setbacks. Additionally, the



Planning Commission may wish to consider that the pond should be relocated out of the GHAD setback area as well. As shown on the attached exhibit, there is ample room in the yard area. Staff further believes that the applicant should pay the difference in building permit fees for the previously issued permits for a valuation of \$12,000 to \$32,000.

### **STAFF RECOMMENDATION**

Staff suggests the Planning Commission consider the following options described below and provide a recommendation to the City Council for PUD-99-01-07M for Option 2 based the conditions of approval in Exhibit B; which will be modified per the Planning Commission's recommendation:

- Option 1: Allow the applicant to maintain their original request to reduce the required 20-foot rear yard setback to 8-feet and reduce the required side yard setback from 10-feet to 5-feet; or
- Option 2: Require the applicants to relocate the pond in order to maintain the required 10-foot side yard setback and the required 20-foot rear yard setback.

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