

PLANNING COMMISSION

Staff Report



DATE: January 7, 2014

TO: Planning Commission

FROM: Debbie Chamberlain, Planning Services Manager
By: Cindy Yee, Associate Planner

SUBJECT: Public Hearing No. 3 for the Revised Faria Preserve Project (VTM 9342)
DPA 12-310-003, MJ 12-900-002, AR 200-046 and IS 12-250-004

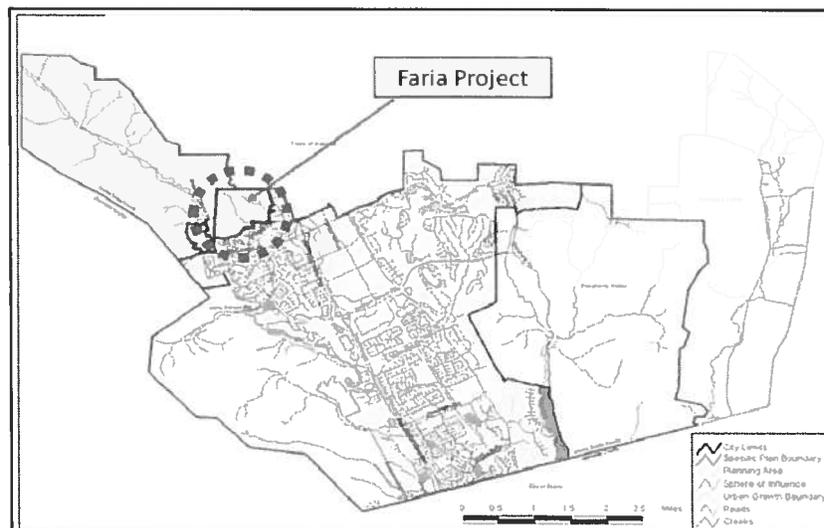
RECOMMENDED ACTION

1. Staff recommends the Planning Commission receive the presentation; open the public hearing; take public testimony; close the public testimony portion of the hearing; provide comments to staff; and
2. That the Planning Commission continue the Public Hearing to date-certain for additional public comment on the proposed applications.

INTRODUCTION

A. Location

The project site is located on approximately 286.5-acres east of Bollinger Canyon Road, north of Deerwood Drive, west of the Crow Canyon Specific Plan area, and south of the city limit lines within the Northwest Specific Plan Area (APNs: 208-240-005, -007, -008, -052 to -054, 208-240-057, 208-240-058, 208-260-046, and 208-250-011).



B. Applicant/Property Owner:

Pat Toohey for
Lafferty Communities
5000 Executive Parkway, No. 530
San Ramon, CA 94583

C. Environmental Review/California Environmental Quality Act (CEQA):

Section 15070 of the State CEQA Guidelines provides that, if all of the Project's impacts can be mitigated to a less-than-significant level, the lead agency may prepare a mitigated negative declaration whereby mitigation measures are incorporated into the project. An Initial Study/Mitigated Negative Declaration (IS 12-250-004) has been prepared for the project. Circulation of the document for a 30-day public review period began on December 6, 2013 and was scheduled to close on January 6, 2014 in accordance with section 15070 and 15073 of the California Environmental Quality Act (CEQA) guidelines. The City of San Ramon has extended the public review period until January 13, 2014 to provide the public additional time to submit comments.

D. Public Notice

On December 17, 2013, the Planning Commission held a duly noticed public hearing. The public hearing was continued to the January 7, 2014 Planning Commission meeting to provide additional time for review of the project and the Initial Study/Mitigated Negative Declaration.

BACKGROUND

In October 2012, a vesting tentative map, development plan amendment, architectural review and environmental review applications were submitted by Lafferty Communities for development of a revised 786-unit subdivision Faria Preserve Project. In October 2012 and January 2013, the City held a public workshop and a study session to discuss the proposal. As part of the development review process, the applicant presented the project to the Architectural Review Board (ARB) at seven meetings between February and August 2013. Comments received from the ARB resulted in project changes including a reduction of residential units.

Due to modification of the park design from the originally approved 2006 plan, the applicant presented the public park component of the project to the Parks and Community Services Commission (PCSC) Facilities Committee at four public hearings and held one public workshop. After review of the applicant's proposal, the PCSC approved the Master Plan for the Faria Preserve Park and Rose Garden. Additionally, on October 24, 2013, the applicant presented the Faria Preserve affordable housing commitment to the Housing Advisory Committee (HAC). The Committee reviewed the applicant's proposal is recommending that the Planning Commission approve the project.

On November 19, 2013, the Planning Commission held its first public hearing on the revised Faria Preserve Project. Three residents spoke in opposition to the project citing concerns over

traffic, school impacts and the grading of the hillside, and one letter was received from the East Bay Regional Park District indicating that they have been working with the City and the developer to implement the objectives of their 2008 settlement agreement. The Commission expressed their interest in reviewing the Project's environmental analysis and continued the public hearing to December 17, 2013 for the opportunity to further review and discuss the Project.

On December 17, 2013, the Planning Commission held its second public hearing on the revised Faria Preserve Project. Ten residents spoke in opposition to the project citing concerns over traffic, school impacts, and grading of the hillside. The Commission expressed their interest in receiving public comments on the environmental analysis and continued the public hearing to January 7, 2014 for the opportunity to further review and discuss the Project.

PROJECT COMPONENT

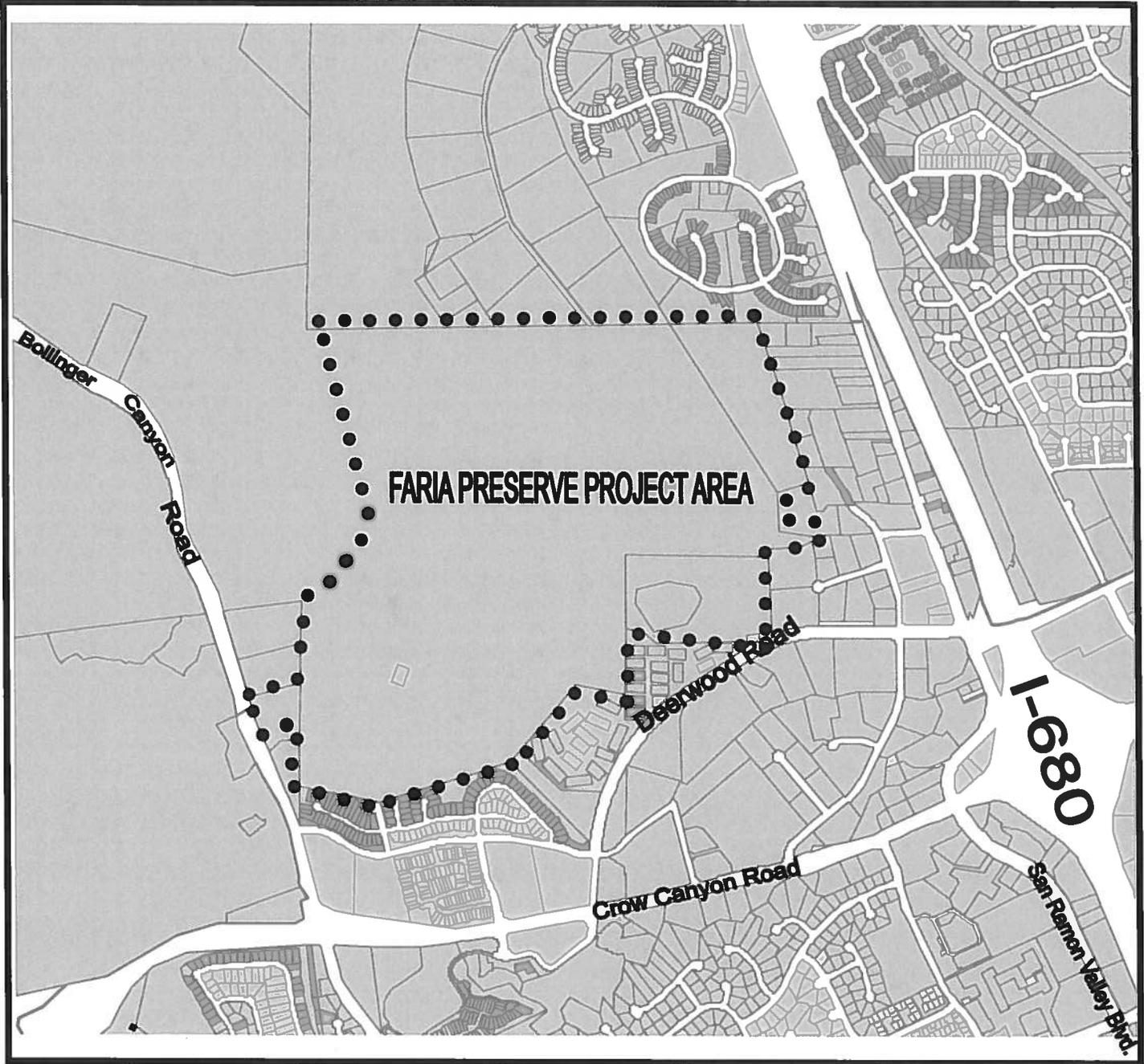
During the December 17, 2013 public hearing, comments were received regarding the application of ridgeline grading exemptions for the proposed Project. Staff has attached to this staff report a memorandum written in 2006 by Byron Athan, the City Attorney at the time, to the Planning Commission clarifying the Ordinance 197 grading exceptions for the original Faria Project.

SUMMARY/NEXT STEPS

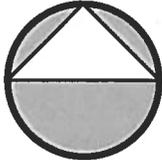
Due to the size and complexity of the project, staff has anticipated that several public hearings will be necessary in order to thoroughly discuss the proposal, the environmental document, and receive and address public comments prior to the Planning Commission's decision. Staff would recommend that the third public hearing focus on the applicant's Project presentation and discussion of topics of interest such as the location of the project entrance, traffic and circulation, and the environmental document. Staff would recommend continuing the public hearing to a date-certain to allow the Commission and public to provide additional comments.

ATTACHMENTS

- A. Vicinity Map
- B. Memorandum related to Ordinance 197, dated October 12, 2006 from Byron D. Athan, City Attorney



CITY OF SAN RAMON PLANNING SERVICES

	<p>REVISED FARIA PRESERVE PROJECT VICINITY MAP DPA 12-310-003, MJ 12-900-002, AR 12-200-046, & IS 12-250-004</p> <p>● ● ● ● ● Faria Preserve Project Area</p>	<p>N</p>  <p>(Not to Scale)</p>
---	--	--



DATE: October 12, 2006
TO: Chairperson Kerger and Planning Commissioners *MA*
FROM: Byron D. Athan, City Attorney
SUBJECT: Ordinance 197 and General Plan 2020

QUESTION

The Planning Commission on October 3, 2006, requested a legal analysis of the relationship between Ordinance 197 and the current General Plan.

ANALYSIS

By way of historical background, during 1990 sufficient signatures were obtained to qualify a measure known as the Save Our Hills Initiative for submittal to the voters. Under the Elections Code, when sufficient signatures are submitted the legislative body must either place the measure before the voters or adopt the measure as an ordinance without any changes. On August 20, 1990, the City Council chose the second alternative and adopted the Save Our Hills Initiative as Ordinance 197. The legal effect is the same whether an initiative measure is approved by the voters or adopted by the legislative body. It can only be modified or repealed by the voters.

On November 2, 1999, the voters approved a City Council sponsored initiative known as Measure G. This measure required preparation of a new general plan and, significantly, excluded both the City Council and Planning Commission from participating in development of the new general plan. Instead the task was to be performed by a Commission consisting of at least 21 San Ramon residents appointed by the City Council. Once the work of the General Plan Commission was completed Measure G mandated the City Council to submit the Commission's general plan to the voters *without any modification*. On March 5, 2002, the voters approved the plan recommended by the Commission. It is known as General Plan 2020 and is the current General Plan of the City.

Ordinance 197 By its own terms, the fundamental purpose of Ordinance 197 is to permit residential development in the hill areas of San Ramon while protecting ridgelines, creeks, habitat and open space areas. The policies and objectives of Ordinance 197 were implemented through the Resource Conservation Overlay Zoning District (RCOD) and by incorporating implementation measures into various elements of what is now the former General Plan. Under Ordinance 197 any proposal not adhering to the requirements of

Ordinance 197-- whether involving an individual development plan, adoption of a specific plan for a certain area or adoption of a new General Plan for the entire City --is required to obtain voter approval of an exemption or exemptions.

General Plan 2020 If the General Plan Commission had chosen to do so and if the voters had concurred, all vestiges of Ordinance 197 could have been eliminated by the current General Plan. However it is clear that the Commission made a conscious decision to preserve Ordinance 197 as a part of the City planning process. (See General Plan sections 1.7, 4.6-I-3, 4.6-I-15, 4.7-I-1, 8.2, 8.4-I-13, 8.4-I-15, 8.4-I-17 and Figures 8.2, 8.3) However it is significant that, unlike the former general plan, General Plan 2020 was approved by the voters. At a minimum, this fact changes the relationship between Ordinance 197 and the General Plan by placing them on parallel tracks--each having been initiated by the voters. Formerly it was probably not possible for a project to be consistent with the General Plan and at odds with Ordinance 197. Under General Plan 2020 the concept that a project may be consistent with the General Plan but in violation of Ordinance 197 (and thereby requiring an exemption), is expressly acknowledged. This is particularly true for the Northwest Specific Plan Area. General Plan 2020 sets ambitious goals and objectives for an area obviously impacted by Ordinance 197 constraints and then requires in Section 4-7-I-1 that the text of the Northwest Specific Plan identify the Ordinance 197 exemptions that will be required--presumably to implement the plan.

Voter Approval of General Plan 2020 Resulting in Ordinance 197 Exemptions
Section 1 (I) of Ordinance 197 provides:

“This initiative does not, and is not intended to, prevent the City from developing General Plan amendments, Specific Plans, or other development plans for specific areas which differ from its terms. However, such General Plan amendments, Specific Plans or other development plans shall only take effect, if approved, by the majority of the voters of San Ramon.” (Emphasis added)

It is clear from section 1(I) that a general plan amendment (or a new general plan) with provisions differing from Ordinance 197 is an appropriate vehicle for exempting the subject matter or area of the proposed amendment from those provisions so long as the amendment is approved by the voters. For example, if the NWSP in its present form were being adopted under the former general plan, it would need to go to the voters because of the inherent conflicts with Ordinance 197. However, under General Plan 2020 no vote is required because the General Plan, put in place by the voters, states that the NWSP need only identify what exemptions from Ordinance 197 will be required. That is a departure from the requirements of Ordinance 197 which resulted when the voters adopted General Plan 2020.

Likewise, Figure 8.3 is a graphic in General Plan 2020 depicting the constraints of Ordinance 197 and the RCOD throughout the General Plan Area. However three major ridgelines, designated as such on Figure 8.3, are then cross-hatched with red marking and a notation added that these major ridgelines may be altered by grading. These are site specific provisions, highlighted on Figure 8.3, and clearly contrary to the major ridgeline

protection requirements of Ordinance 197. Under section 1(I) of Ordinance 197, those three ridgelines became exempt from the contrary provisions in Ordinance 197 when General Plan 2020 was approved by the voters. Also it will be noted that additional areas have been designated as being included in a "Protection Zone."

There is no question that deviation from the provisions of Ordinance 197 requires voter approval but with the adoption of the current General Plan 2020, adopted by the voters in 2002, another element has been added that must be taken into consideration. Section 1(I) of Ordinance 197 expressly provides that a General Plan amendment approved by the voters overrides conflicting provisions in Ordinance 197 and General Plan 2020 was adopted by the voters subsequent to Ordinance 197.

Accordingly, if the Planning Commission determines by the facts presented in support of a project demonstrate the necessity of overriding some provisions of Ordinance 197 in order to accomplish the objectives and policies of General Plan 2020, those conflicting restrictions spelled out by Ordinance 197 may be overridden.

CONCLUSION

If the Planning Commission (or the City Council on appeal) makes a finding that an exception to the restrictions found in Ordinance 197 is necessary to accomplish the objectives and policies of General Plan 2020, it can approve such an exception.

