

## REPORT TO CITY COUNCIL

**DATE: FEBRUARY 22, 2006**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: GREG RAMIREZ, CITY MANAGER**

**BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT**

**SUBJECT: APPEAL OF THE PLANNING COMMISSION'S DENIAL OF CONDITIONAL USE PERMIT CASE NOS. 03-CUP-010 AND 98-CUP-007, OAK TREE PERMIT CASE NO. 98-OTP-011, WHICH IS A REQUEST TO DEVELOP 27 DETACHED SINGLE-FAMILY RESIDENCES ON TWO RECORDED RESIDENTIAL TRACTS, TO REMOVE 33 OAK TREES AND ENCROACH WITHIN THE PROTECTED ZONE OF 15 OAK TREES FOR THE PROPOSED CONSTRUCTION ON THE SOUTH SIDE OF AGOURA ROAD, EAST OF CALLE MONTECILLO AND WEST OF LIBERTY CANYON ROAD, AND ADOPTION OF A MITIGATED NEGATIVE DECLARATION (RIOPHARM USA, INC., APPLICANT)**

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The request before the City Council is to conduct a public hearing to consider an appeal by the applicant of the Planning Commission's denial of Conditional Use Permit Case Nos. 03-CUP-010 and 98-CUP-007 and Oak Tree Permit Case No. 98-OTP-011. The applicant for these cases, Riopharm USA, Inc., requested approval to develop a total of 27 single-family detached residences on two recorded residential tracts. The vacant hillside property is located on the south side of Agoura Road, east of Calle Montecillo and west of Liberty Canyon Road.

Both tracts have recorded Vested Tract Maps that have an established density of 14 units for each tract, as well as the lot locations, lots sizes and lot dimensions within the tracts. Thus, the Vested Tract Maps are not subject to discretionary review by the Planning Commission or City Council for the purpose of this project proposal. Rather, development entitlement for both tracts has expired and the Planning Commission reviewed the proposed development of detached, single-family homes in both tracts. The Planning Commission and the City Council have discretionary authority on the building footprint, setbacks from property lines, building height, the building architectural design, landscaping, signs, parking, and other design related matters.

The most westerly tract (referred to as Agoura I) is approximately 3 acres in size and is located adjacent to and east of the existing single-family homes located at Via Amistosa. This Agoura I residential subdivision was approved by the City in 1990 for the proposed subdivision of 14 attached townhome units. Entitlement to develop the 14 townhomes was approved in 1989 (Case No. 88-SPR-011). The Final Tract Map (No. 48901) was subsequently recorded and is still valid, but the entitlement for development has expired.

The applicant filed a new Conditional Use Permit application (Case No. 03-CUP-010) to construct 14 detached, single-family residential units instead of 14 attached townhome duplexes within the tract. The approved townhome units ranged in size from 2,804 square feet to 3,067 square feet.

The second tract (Agoura II) is 10.58 acres in size and is located adjacent to and east and north of the Agoura I tract. The Agoura II subdivision was approved in 1993 for the development of 14 single-family homes. The City Council also approved a Zone Change and General Plan Amendment request for the subdivision changing the land use designation of the property from Medium High Residential Density-Cluster Development (RMH-CD) to Single-Family Residential-Cluster Development (RS-CD). The land use designation of the southern portion of the property was also changed from Residential Rural (RR) to Open Space (OS). The Tract Map (No. 48312) was recorded, but development entitlement has expired. The applicant has since filed a new Conditional Use Permit application (Case No. 98-CUP-007) to construct 13 detached and redesigned single-family residential units within the tract.

The Planning Commission was also asked to approve an Oak Tree Permit to remove 33 Oak trees and encroach within the protected zone of 19 other Oak trees for the proposed construction. Since the two tracts are adjacent, are owned by the same entity, and would likely be built at the same time if approved by the City, the applicant requested that the Planning Commission consider their two development proposals together. The applicant also requested approval of a Variance to locate one residential unit in the Agoura II tract 26 feet from the Agoura Road right-of-way, instead of at least 32 feet. This request was later withdrawn by the applicant.

Both tracts are located at the base of the hillside, adjacent to and west of public open space land owned by the Santa Monica Mountains Conservancy. The topography of both tracts is rather steep and both slope downhill to the northeast toward Agoura Road. Although the Tract Maps have been recorded, the proposed 14 unit and 13 unit densities remain consistent with the current Zoning Ordinance and General Plan allowances. Five existing single-family residences that are located to the west within the Camino Real Country Estates tract abut the two tracts proposed for development.

While no step increases in density are requested, the Planning Commission had discretion on the applicable development standards relative to building height, lot coverage, and placement of the buildings from property lines since the properties are located within Cluster Development Overlay Zone.

#### Agoura I Tract

The underlying zoning designation of the Agoura I tract is RM (Medium Density Residential). The 14 attached duplex townhome units previously approved for the tract were consistent with the RM zone, which typically includes multi-family housing units. The applicant is now requesting to change the development within the existing lot configurations to 14 detached single-family homes that are intended to be more compatible with the existing single-family homes immediately to the west.

The 14 residences proposed within the Agoura I tract are dispersed primarily along the perimeter of the property. Four lots are situated on the east and west sides of the property, as well as on the south (rear) portion of the site. Two residential lots are located near the center of the

property. The parcels range in size from 3,900 square feet to 6,500 square feet. Nine of the 14 lots are less than 4,800 square feet in size. The current plans include the following home sizes:

<u>Model No.</u>	<u>No. of Units</u>	<u>Sizes of Residences</u>
Unit A	5	2,768 sq. ft. + 441 sq. ft. garage (3,209 sq. ft.)
Unit B “Short”	3	2,581 sq. ft. + 440 sq. ft. garage (3,021 sq. ft.)
Unit B	5	2,729 sq. ft. + 451 sq. ft. garage (3,180 sq. ft.)
Unit C	1	2,698 sq. ft. + 440 sq. ft. garage (3,138 sq. ft.)

As is shown in the table above, the proposed sizes of the homes, all of which are two stories in height, range from 3,021 square feet to 3,209 square feet, including the garages. This represents a decrease from the home sizes proposed when first considered by the Planning Commission in August of 2005 that ranged in size from 3,389 square feet to 4,124 square feet. The original development entitlement for the tract had included attached townhome units that ranged in size from 2,804 square feet to 3,067 square feet.

#### Agoura II Tract

The most easterly tract (Agoura II) is 10.58 acres size and includes 13 residential lots. The recorded lot sizes range from 7,050 square feet to 18,445 square feet. The project plans that were denied by the Planning Commission and presented to the City Council for consideration include the following proposed home sizes:

<u>Model No.</u>	<u>No. of Units</u>	<u>Sizes of Residences</u>
1-A and 1-B	3	3,465 sq. ft. + 628 sq. ft. garage (4,093 sq. ft.)
2-A and 2-B	4	3,665 sq. ft. + 622 sq. ft. garage (4,287 sq. ft.)
3-A and 3-B	2	4,145 sq. ft. + 720 sq. ft. garage (4,217 sq. ft.)
4-A and 4-B	4	3,484 sq. ft. + 441 sq. ft. garage (3,925 sq. ft.)

The table above indicates that the proposed sizes of the residences range from 3,925 square feet to 4,287 square feet, including the garages. Four of the proposed units (Units 4-A and 4-B) include single-story designs with a below-grade basement on Lot Nos. 6, 7, 10 and 13. Nine (9) of the 13 units include three-car garages in the designs. The previous plans reviewed by the Planning Commission on August 4, 2005 and September 15, 2005 for this tract included home sizes of 4,061 square feet, 4,249 square feet, and 4,865 square feet, including attached garages. The previous Conditional Use Permit approved for the tract included 9 two-story units and 5 single-story units. The size of the previously approved units ranged from 3,224 square feet to 3,718 square feet, including attached garages.

Overall, the tracts, when viewed in their entirety, meet the setback requirements of the zones. In this instance the yard requirements for each of the homes are at the discretion of the City Council since the property is within the Cluster Development Overlay Zone, which allowed for the creation of clustered, smaller lots in return for more common, open space/recreation areas within the tract. The City Council has discretion in determining the appropriate placement of the buildings and whether to

require more variation in the placement of the buildings within each lot.

The Planning Commission held three separate public hearings on August 4, 2005, September 15, 2005 and November 17, 2005 to consider the applicant's project. While the Planning Commission acknowledged the design changes made to the project through the course of the public hearings, including reducing the proposed Oak tree encroachment from 19 trees to 15 trees, the Planning Commission unanimously denied the project. The applicant had requested a final decision from the Planning Commission regarding their Conditional Use Permit applications and Oak Tree Permit application. Copies of the Planning Commission staff reports are attached for the City Council's reference. The Planning Commission noted the following reasons for denying the project:

1. The sizes and massing of the units within the Agoura I tract are incompatible for the sizes of the lots.
2. The Agoura I tract lacks single-story residences within the tract that are typical of existing residential tracts within the neighborhood.
3. The two-story residential units and yard areas, as proposed, will not preserve the light, air, privacy, and open space to the surrounding parcels within the tract and adjacent to the tract.
4. The proposed lot coverages and yard sizes are incompatible with existing neighborhoods.
5. The size of the common area within the Agoura I tract does not maintain an awareness of the City's natural environmental setting, as called for in the General Plan.
6. The project does not preserve and protect the natural features of the property, including landscaping, without requiring significant and detrimental impacts to the on-site Oak trees.
7. The applicant did not adequately demonstrate that the on-site Oak trees prevent development of the properties to such an extent that alternative development plans cannot achieve the same density.

The project applicant filed an appeal of the Planning Commission's decision. The basis of the appeal is included in their attached appeal application. The appellant is requesting that the City Council also adopt the Mitigated Negative Declaration (MND) and Mitigation Monitoring Plan that were prepared for the project in accordance with the California Environmental Quality Act (CEQA). The Planning Commission did not deem the MND adequate for adoption with respect to (1) the description of the Oak tree impacts, (2) the adequacy of mitigation planning for oak tree impacts, and (3) the sufficiency of the applicant's efforts to avoid project layout and building design conflicts with existing tree canopy. The Planning Commission also rejected the Mitigation Monitoring Plan for biological resources generally and for Oak tree impacts specifically. If the City Council denies the Conditional Use Permit for the project, CEQA does not require the City to adopt the MND prepared for the project.

## **RECOMMENDATION**

It is recommended the City Council conduct a public hearing to consider an appeal of the Planning Commission's denial of Conditional Use Permit No. 03-CUP-010 and 98-CUP-011, and Oak Tree Permit Case No. 98-OTP-011. If the City Council votes to uphold the decision of the Planning Commission and denies the project, it is recommended that attached Resolution Nos. 06-1404, 06-1405 and 06-1406 be adopted. The City Council also has the discretion to

include additional conditions. If the City Council votes to overturn the Planning Commission's decision and approves the project and adopts the Mitigated Negative Declaration and Mitigation Monitoring Plan, revised Resolutions will be brought back for adoption at the next earliest possible City Council Meeting.

Attachments: City Council Resolution Nos. 06-1404, 06-1405 and 06-1406

Appeal Application

Planning Commission Meeting Minutes (August 4, 2005; September 15, 2005; November 17, 2005; and December 1, 2005)

Planning Commission Staff Reports (August 4, 2005; September 15, 2005; November 17, 2005; and December 1, 2005)

Vicinity Map

Reduced Copies of Project Plans

Planning Commission Resolution Nos. 836, 837 and 838