

1 CONSERVATION, DEVELOPMENT AND PLANNING COMMISSION

2 NAPA COUNTY

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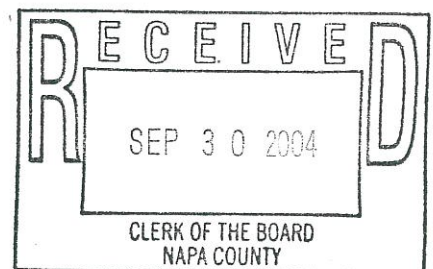
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6 IN RE: ITEM 8 - SILVERADO NAPA CORPORATION

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13 TRANSCRIPT OF PROCEEDINGS

14 MEETING OF SEPTEMBER 15, 2004

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18 PRESENT:

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20 TERRY SCOTT, Chairperson  
21 BOB FIDDAMAN, Vice Chairman  
22 DAVID GRAVES, Commissioner  
23 JOHN DICKSON, Commissioner  
24 JIM KING, Commissioner



ALL BOS RECEIVED  
cc R. Westmeyer (R. Paul)  
S. Lederer  
Applicant Rep.  
Appellant Rep.

Transcribed by: JOHN A. ZANDONELLA, CSR No. C-795

2  
3 CHAIRMAN SCOTT: Item Number 7. I will recuse  
4 myself from this item, and Vice Chairman Fiddaman will  
5 run this particular application.

6 VICE CHAIR FIDDAMAN: Okay. Item Number 7,  
7 Silverado Napa Corporation tentative parcel map  
8 request, Number 04147-PM.

9 CEQA status, mitigated negative declaration  
10 prepared. According to the mitigated negative  
11 declaration, the proposed project would have, if  
12 mitigation measures are not included, potentially  
13 significant environmental impacts in the following  
14 areas: aesthetics, air quality, biological resources,  
15 geology and soils, hydrology and water quality and  
16 noise.

17 This is a request for approval to divide a 455,  
18 plus or minus, acre site into two parcels consisting of  
19 215 acres, Parcel 1, and 240 acres, Parcel 2.

20 The site is generally located to the east of the  
21 Silverado subdivision, south of Atlas Peak Road and  
22 north of Monticello Road, within the AW, agricultural  
23 watershed zoning district.

24 The Napa County Planning Commission had approved  
25 this project on July 7th, 2004. However, due to

1 incomplete noticing the Planning Commission rescinded  
2 the project approval and a new hearing has been  
3 scheduled. No changes to the project have occurred  
4 since the previous hearing.

5 Can we have a staff report.

6 MR. TRIPPI: Yes. Thank you, Vice Chair Fiddaman,  
7 Commissioners.

8 Sean Trippi, project planner.

9 As you noted, this project was originally approved  
10 in July, and due to improper noticing was rescinded and  
11 rescheduled for today. So as of this hearing, all  
12 property owners within 300 feet have been notified.

13 The request is to split a 455-acre property into  
14 two parcels. This project site is located to the east  
15 of the Silverado communities. And right now it  
16 currently is comprised of two parcels that were split  
17 for assessment purposes but it's one legal lot.

18 The proposed parcels would be of 215 acres and 240  
19 acres, Parcel 1 and Parcel 2 respectively. The  
20 tentative map shows potential homesites as well as an  
21 access road to those homesites.

22 The terrain of the property preclude approximately  
23 200 -- or allow development on approximately 20 acres  
24 of Lot 1 and 146 acres of Lot 2. As noted on this  
25 diagram, the hatched area would be those areas that



1 would not include potential for development.

2 Proposed homesites and access road are shown on  
3 this diagram. Access would be from an existing road  
4 stubbed out at Alta Mesa Place that provides access to  
5 an existing City of Napa water tank. The two homesites  
6 are off to the right of the screen. Parcel 1 is to the  
7 north and Parcel 2 is to the south.

8 As noted, there's a dispute regarding accessing  
9 this property though to Silverado community. And we  
10 have received a letter from the attorneys representing  
11 the homeowners association regarding that issue.

12 An initial study was prepared and identified  
13 potential impacts associated with subsequent  
14 development of the lots in the areas of aesthetics, air  
15 quality, biological resources, geology and soils,  
16 hydrology and water quality and noise. Mitigation  
17 measures have been incorporated into the project to  
18 reduce these potential impacts to a level of less than  
19 significant.

20 With the conditions of approval and the mitigation  
21 measures that are proposed, staff is recommending  
22 approval of the parcel map. Subsequent development  
23 would be subject to these mitigation measures.

24 If there are any questions, I'd be happy to answer  
25 those now.

1 VICE CHAIR FIDDAMAN: Any questions for staff?  
2 Commissioner Graves.

3 COMMISSIONER GRAVES: For my own edification, what  
4 was the error in the noticing?

5 MR. TRIPPI: The original notice only included  
6 properties immediately adjacent to the project site  
7 instead of within 300 feet of the project site.

8 COMMISSIONER GRAVES: Thank you.

9 VICE CHAIR FIDDAMAN: Commissioner Dickson.

10 COMMISSIONER DICKSON: Yes. Mr. Trippi, as you're  
11 aware, I made a call to your office yesterday afternoon  
12 discussing some of my concerns with the project. And  
13 subsequent to that, I've also talked with legal counsel  
14 regarding a thought that I had with the project. And I  
15 would be happy to hear from the applicant concerning  
16 his thoughts about this matter.

17 I walked this creek many years ago, and Parcel  
18 Number 1 which consists of the 215 acres. As you know,  
19 Milliken Creek flows through that property.

20 And as a mitigation measure, I would entertain the  
21 idea of trying to ask the applicant if he would agree  
22 to putting an additional mitigation measure on that  
23 piece of property, that parcel in particular, because  
24 this is a very important watershed. And it's also --  
25 in my opinion, I think it's a Class 1 stream.



1       And my particular bias here is that I would like  
2 to see that stream protected. And what happens  
3 sometimes with these parcels is we, when they become  
4 private property, when they're sold off, there's a  
5 tendency to create a water diversion and use the water  
6 from the creek for irrigation purposes and so forth.

7       And my concern here is that we have a pretty well  
8 wild watershed now. I'd like to see it remain that  
9 way. So my thoughts here were to add an additional  
10 measure that the property would be sold or could be  
11 sold, but not that no potential buyer would be able to  
12 draw water from the stream, either riparian or by means  
13 of acquiring some water right.

14       That way, you know, we're taking care of what I  
15 consider a really important public trust item here, and  
16 that is an endangered species, steelhead being the  
17 particular specie that I'm talking about.

18       So I'd like to hear from the applicant if he would  
19 entertain an idea of doing that with that particular  
20 stream.

21       VICE CHAIR FIDDAMAN: Before we do that, I just  
22 want to ask counsel -- this is a little déjà vu. I know  
23 we had this issue come up about the request for the  
24 continuance the last time around, as I recall, and we  
25 have one again.

1           Are the circumstances any different? I mean we  
2 should go ahead with our public hearing and --

3           MS. ANDERSON: The circumstances are somewhat  
4 different. You have a letter from the attorney  
5 indicating that there is a hearing scheduled for the  
6 end of November. They're asking to have the Planning  
7 Commission hold off until after the court case  
8 decision. You've had that request for continuance in  
9 the past, so in that sense it's the same.

10           You probably want to decide first whether or not  
11 you want to entertain the continuance. And if not,  
12 then to proceed with the hearing today.

13           But as far as, as a practical matter, nothing has  
14 changed in terms of the Commission's involvement with  
15 the easement issue. That still remains a private  
16 matter between the applicant and the homeowners  
17 association. And it's not something that you weigh in  
18 on.

19           COMMISSIONER KING: I thought that the request  
20 last time was to wait until after the court hearing as  
21 well. So I guess what's the difference between waiting  
22 for that court hearing and this court hearing?

23           MS. ANDERSON: You probably want to talk to the  
24 homeowners association attorney about that. I don't  
25 know specifically what's been going on with the court



1 proceedings, but apparently there's a hearing set for  
2 November 19th. I'm sure they can address it in more  
3 detail.

4 COMMISSIONER KING: Okay.

5 VICE CHAIR FIDDAMAN: So the discretion is ours  
6 whether to proceed or continue the matter in its  
7 entirety. A compromise would be to open the public  
8 hearing and then continue it as well, without making a  
9 decision?

10 MS. ANDERSON: Right. You can open the public  
11 hearing, take testimony today, and then decide if you  
12 want to continue it or if you want to make a decision  
13 on the item today.

14 VICE CHAIR FIDDAMAN: Okay. So it's scheduled to  
15 be heard today. Do we need a motion or anything in  
16 order to proceed?

17 MS. ANDERSON: If the Commission wants to continue  
18 it without listening to any additional comments today,  
19 then you would want to take that up first.

20 VICE CHAIR FIDDAMAN: Right.

21 MS. ANDERSON: But since there are people here  
22 that have shown up, you might want to just open the  
23 public hearing, take public testimony, then decide  
24 again if you want to continue it.

25 VICE CHAIR FIDDAMAN: All right. Well, unless the



1 other Commissioners have a problem, that would be my  
2 election, to open the public hearing. Then we can  
3 decide along the way whether we want to continue it or  
4 not.

5 MS. ANDERSON: Right.

6 VICE CHAIR FIDDAMAN: Okay. So we'll open the  
7 public hearing and hear from the applicant.

8 MR. KOLKHORST: John Kolchorst, 1600 Atlas Peak  
9 Road, Napa. Good afternoon.

10 I'd first like to apologize to the Commissioners  
11 for the unfortunate procedural (inaudible) in the  
12 notification process. I appreciate the time that you  
13 have put into this to date and appreciate your time  
14 today.

15 To address Mr. Dickson's question or request that  
16 we consider the additional mitigation, we would be open  
17 to considering that.

18 COMMISSIONER DICKSON: You would be open to doing  
19 that?

20 MR. KOLKHORST: Yes.

21 COMMISSIONER DICKSON: Okay. That means that  
22 you're willing to put contingencies on this piece of  
23 property that would say --

24 MR. KOLKHORST: As far as the stream, the stream  
25 on it, yes.

1 COMMISSIONER DICKSON: Thank you.

2 MR. KOLKHORST: As you outlined it. And I haven't  
3 seen anything in writing, but as you outlined for the  
4 Commission, that would be acceptable.

5 COMMISSIONER DICKSON: Thank you.

6 MR. KOLKHORST: Any other questions?

7 VICE CHAIR FIDDAMAN: Any other questions of the  
8 applicant?

9 You don't have any other statement, I presume --

10 MR. KOLKHORST: Well --

11 VICE CHAIR FIDDAMAN: -- from the last time  
12 around.

13 MR. KOLKHORST: -- I may be back, so maybe I  
14 should address the continuance --

15 VICE CHAIR FIDDAMAN: We're familiar with it.

16 MR. KOLKHORST: -- issue now. We do not want to  
17 have the item continued again for the same reasons that  
18 we outlined last time.

19 Just to give the Commission some background, both  
20 parties have agreed to mediate the easement issues. I  
21 think we've made substantial progress towards an  
22 agreement there.

23 The court hearing has been continued twice by  
24 mutual agreement of both parties. And I don't see that  
25 that really affects the Commission's decision or review

1 anymore than it did the last time.

2 That's all I have unless you have any questions.

3 VICE CHAIR FIDDAMAN: Thank you.

4 Okay. Would anyone else like to speak regarding  
5 this application?

6 MR. WISBEY: Thank you, sir. I'm Ron Wisbey. I  
7 serve as chairman and president of the homeowners  
8 association, Silverado Highlands. I live at 170 Stone  
9 Mountain Circle in Napa.

10 And likewise, we appreciate the time and energy  
11 and effort that each of you have spent on behalf of  
12 this issue.

13 We do not concur however with the previous  
14 testimony. We do believe it should be continued if at  
15 all possible.

16 Because the issue today that's before you cannot  
17 be looked at in a vacuum of indifference of the fact  
18 that in May of 2000 an invalid easement was granted  
19 through our property, a community that is a private  
20 gated community.

21 At no time in any verbal communication or any  
22 written communication was the fact that there was an  
23 easement out there that ultimately would allow traffic  
24 of many natures to come through our property at any  
25 time, no one knew about this. It was only discovered



1 in the process of some issues that were ongoing and we  
2 found it in the records. But it was never in any of  
3 the documents that were provided to our homeowners.

4 We are simply asking today that you delay any  
5 decision in regard to granting the request of the  
6 Silverado Napa Corporation to subdivide their upper  
7 property. The court in its most recent order has  
8 agreed to hear this request in November and has  
9 stipulated that nothing should happen on that property  
10 till 15 days following whatever happens at that point  
11 in time at the very earliest.

12 And so our request for a delay on the Planning  
13 commission today allows plenty of time for this  
14 Commission to do what is necessary following the court  
15 hearing in November.

16 A decision today we believe that would grant the  
17 subdivision request appears to legitimize the easement  
18 by the County. While your decision would certainly not  
19 be binding on the court, it would have strong overtones  
20 of support, we believe in the eyes of the court.

21 And it's with that concept and that thought that  
22 we would respectfully ask that this issue be continued  
23 until after the November 19th hearing.

24 Thank you, sir.

25 VICE CHAIR FIDDAMAN: Thank you, Mr. Wisbey.

1       Anyone else?

2       MR. CHAPMAN: Good afternoon, Commissioners. My  
3 name is John Chapman. I am counsel for the Highlands  
4 Silverado Homeowners Association. My address is 2236  
5 Mariner Square Drive, Alameda, California.

6       And I am not going to repeat the arguments that  
7 have already been articulated in our letter briefs that  
8 were submitted on June 8th, June 14th, July 16th and  
9 the accompanying homeowner declarations. I just want  
10 to emphasize three points.

11       Number one, the easement itself was in  
12 contravention to the governing documents of the  
13 association at the time that it was granted. There has  
14 been no disclosure to any of the homeowners up there.

15       And we've also submitted the declaration again on  
16 behalf of the real estate agent who was responsible for  
17 the bulk of these sales. And he himself has indicated  
18 under penalty of perjury that there was no easement.

19       Our position is also that there is an alternative  
20 access point on Hillcrest Drive and the map was  
21 available. Clearly SNC is not landlocked. And we  
22 believe there is another appropriate access point.

23       And again, our request is that you would continue  
24 this until after the hearing, the order to show cause  
25 hearing, which is presently scheduled for November



1 19th. Thank you.

2 VICE CHAIR FIDDAMAN: Thank you.

3 Anyone else like to address the Commission?

4 There being no further speakers, then we'll close  
5 the public hearing and ask for Commissioner comments  
6 and discussion.

7 Commissioner Dickson.

8 COMMISSIONER DICKSON: Well, I can understand the  
9 position of the homeowners in this matter. On previous  
10 projects such as this one, where there's been an  
11 easement dispute, it seems that legal counsel at least  
12 has advised us that we can go ahead with the matter and  
13 not necessarily be driven by any easement disputes that  
14 are gonna be decided ultimately in the courts.

15 So it appears to me that in fairness to the  
16 applicant here, we should hear this matter today and  
17 make a decision on this matter today. That's my  
18 personal opinion.

19 VICE CHAIR FIDDAMAN: Any other Commissioners?  
20 Outside of the --

21 COMMISSIONER KING: Go ahead.

22 VICE CHAIR FIDDAMAN: Well, I was just gonna say  
23 outside of the fact that there is a Court hearing  
24 actually set at this point but it's been delayed -- and  
25 those things have a tendency to move along, they're in



1 the process of mediation -- it doesn't seem to me like  
2 the legal status of this property is particularly  
3 different than it was when we addressed this in July.

4 And at the time, we decided that it wasn't  
5 prejudicial necessarily for this Commission to  
6 disregard what's really a private dispute between two  
7 parties and go ahead and approve the parcel map.

8 I personally would think that a judge in this  
9 matter is not going to consider that this Commission  
10 does relative to parcel mapping to have a particular  
11 effect on his decision as to whether this easement is  
12 legitimate or not. So I would be inclined for us to go  
13 ahead the same as we did the last time.

14 COMMISSIONER KING: I concur. And we talked last  
15 time that making a decision to uphold their request --  
16 if approving is prejudicial, upholding their request  
17 for continuance would be as prejudicial. So I think we  
18 need to look at this on the base of land use and let  
19 them work out -- like we said, if they end up losing  
20 the right of this easement, then it's up to them to  
21 find access. It's not our decision.

22 VICE CHAIR FIDDAMAN: This commission is not  
23 opining on the legitimacy of the easement one way or  
24 the other.

25 I guess with those comments, I would entertain a

1 motion to approve this.

2 COMMISSIONER DICKSON: I'll move that the Planning  
3 commission adopt the mitigated negative declaration and  
4 approve the parcel map, 04147, subject to the attached  
5 conditions of approval, with the addition that the  
6 parcels as divided here, especially Parcel 1 which is  
7 bisected by Milliken Creek, have the stipulation that  
8 there be no riparian right or water right granted to  
9 any potential buyer of this property in future.

10 VICE CHAIR FIDDAMAN: That would be subject to  
11 findings, based on Findings 9 through 14.

12 COMMISSIONER DICKSON: And based on Findings 9  
13 through 14.

14 VICE CHAIR FIDDAMAN: Is there a second?

15 COMMISSIONER KING: I'll second it.

16 VICE CHAIR FIDDAMAN: All in favor?

17 (Ayes.)

18 VICE CHAIR FIDDAMAN: Any opposed?

19 (No response.)

20 Okay. Thank you.

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STATE OF CALIFORNIA       )  
                                          ) ss.  
COUNTY OF CONTRA COSTA )

I, JOHN A. ZANDONELLA, do hereby certify:

That I am a Certified Shorthand Reporter of the  
State of California, License No. C-795;

That the foregoing pages are a true and correct  
transcript of the proceedings before the Napa County  
Board of Supervisors, County Building, Board Chambers,  
Napa, California, except as noted "unintelligible" or  
"inaudible."

I further certify that I am not interested in the  
outcome of said matter nor connected with or related to  
any of the parties of said matter or to their  
respective counsel.

Dated this 29th day of September, 2004, at  
Concord, California.

  
JOHN A. ZANDONELLA, CSR License C-795