



This was contrary to the written policy and Parks representatives did not go to the PC to explain the process nor the formula created by the County on this in 1999, nor gives the PC its staff report assessing the credit.

The very basis for a Parks fee is based on the Quimby<sup>1</sup> Act which has prescriptions and limitations (Govt. Code Sec. 66477 et seq).

Park fees have to be based on strict justifications and formulas. The justification for Park fees in the first instance is that “the land, fees, or combination thereof are to be used only for the purpose of developing new or rehabilitating existing neighborhood or community park or recreational facilities to **serve the subdivision** (emphasis added) (Govt. Code 66477 (3)).

If the County does not utilize these fees (which are set aside in trust for that purpose) within five years, the County must return the fees to the then residents of the subdivision (section 66477(6)). Both the County Quimby Act ordinance and the Quimby Act provide that the project shall receive a credit for the value of park improvements built for the residents as a credit against fees.

The only fact for which the Planning Commission could base a determination that the project shall receive no credit on park fees is that the project will not indeed develop the recreational facilities shown on the plan and demonstrated to the Park Commission. There is of course no support for that fact or potential finding.

The original County Parks justification report for Parks Fees was largely based on buying open space in Ellwood Shores in what is now the City of Goleta. This of course is no longer a justification and is not recreational facilities that serve the Tree Farm Subdivision.

I called Mr. Roney recently to ask him what Parks plans to do with the park fees. He did not call back. With a 50% credit the full amount of about \$670,000, paid out incrementally by phase, is a substantial sum and we look forward to hearing what it would be used for to meet the Quimby Act standards of serving a subdivision, as that is the legal nexus, legal justification for such an assessment.

The Planning Commission recommendation was outside the County process as the County ordinance calls for the Parks Commission to make the recommendations to the decision maker, which is the Board of Supervisors.

While the Tree Farm development applications in this project include a Tract Map Development Plan and other applications including a General Plan Change, that does not change the Quimby

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<sup>1</sup> We learned late in the PC process that Commissioner Brown did not know that Park had specifically declined the Cavaletto offer of dedication of land to the Park Department. Parks had declined the offer of additional land because it did not want the maintenance responsibility that came with the additional parkland. Nor apparently did it want it to eliminate the Parks fees as With 134 units the park demand per the County formula is 1.715 acres of active and open space land.

Tree Farm- County Parks  
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Act Standards or county legal standards for Parks Fees in this case.<sup>2</sup> If you (or anyone else at the County) believe otherwise please tell us that is your belief and tell us on what basis you believe that. It is only fair that after 12 years of processing the County honestly and openly communicate with us on important matters prior to the date of the Supervisors hearing.

Very Truly Yours,



Jeffrey C. Nelson

CC: Larry & Jackie Cavaletto  
P&D Alex Tuttle  
Office of CEO- Renee Bahl

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<sup>2</sup> The general plan change cures what we believe to be an impermissible spot zoning creating this one island of agricultural zoning in the midst of surrounding residential zoning as the Cavalettos were forced by the County to give up their residential zoning to be able to sell Christmas Trees from the property. They were the only property owner ever to do so.

# Tree Farm

## Project Benefits

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- Fund and install the long planned but stalled improvements to the Patterson Overpass 101 southbound-double turn-lane improvements, thus improving the functioning of the overpass by 15.7 seconds in the morning (50%) and 11 seconds in the evening (33%).
- Take property with negligible property tax and, on full build out, add approximately \$1 Million of property tax per year to County property tax rolls.
- Provide a new public road link to Patterson (Tree Farm Lane) beyond what Public Works, Roads requires and new Patterson road frontage improvements beyond what is in the GTIP at the expense of the project.
- Pay road fees of approximately \$1.45 million, of which 20%- \$290,000 is to be used for non-automobile transportation issues (Bike Bridge etc).
- Pay approximately \$670,000 in Park Fees that can be used on nearby including the bike bridge (assuming 50% credit).
- The project will pay significant other fees to the County including \$54,336 for Library, \$232,068 for Public Administration, \$62,112 for Sheriff, \$163,652 for Fire, so with \$1,451,669 for Roads fees & \$670,000 to Parks, that will bring the total to \$2,633,837.
- Provide Class II bike paths and bike access through Tree Farm Lane connecting it to Merida Drive
- Provide up to \$30,000 of funding of Merida area road traffic calming improvements as approved per the applicable public process.
- Provide affordable housing- 24 units in all- 8 very low, 16 workforce; the 8 will help the County address State Department of Housing mandates that the local government provide new low and very low income housing.

- Provide the only rezone at effective 20 units per acre within the timeframe required by the State in the Housing Element review context (by July 2012) (1.2 acres next to Patterson).
- Utilize a pure infill site for new housing consistent with planning principles that advocate utilizing infill properties first; particularly properties located near existing jobs & transportation corridors. This advances the State's GHG policy of reducing commutes and resultant air emissions, as there are approx 25,000 commuters to the South Coast are commuting now.
- Provide new homes from which new school age children can come to an area of declining school enrollment (Goleta Union School Dist. schools which have lost nearly half of the students from their peak in 1972), as well as provide substantial school fees (over \$750,000).
- Provide an area-wide drainage benefit by installing a 54" pipe and system that collects water from the north and funnels it to the west to San Jose Creek and Las Perlas. This is all off-site water for which Tree Farm has no legal obligation to fund the drainage.
- Through the land trade with the County, provide a connection between the public open space to the south and the easement over Cavaletto land for the bike bridge facilitating a connection to the new bike bridge & Kellogg Open Space across San Jose Creek.
- Provide sidewalk circulation links connecting public roads and providing a new sidewalk link through the project and to a connection to Patterson Avenue
- Provide the opportunity for new housing, addressing six different housing segments with the most diverse housing segments ever in a South Coast project including affordable by design elements and design elements that address a variety of housing needs while fitting into the existing neighborhood in a complimentary fashion.
- Demonstrate that a current infill project can successfully incorporate *LEED Neighborhood Development* principles *smart growth* and *new urbanism* principles, drawing on the best of those details from around the west coast, in a fashion that is compatible with a neighborhood that was developed in different design eras. Advance the new urbanism principle to get greater community buy in by "doing one great project first".
- Provide walkways for the residents and other neighbors through the property on safe sidewalks to connect neighborhoods that are disconnected.

- Take open land, in the middle of a neighborhood, where drainage into San Jose Creek is either uncontrolled or is in drainage facilities designed decades ago, and incorporate *best management practices and watershed protection measures* to water that drains to this creek (Project Clean Water).

Note: There are no Class I environmental impacts from the project so all the project benefits beyond legal requirements are not necessary to support *overriding considerations*.

**Cavaletto Tree Farm Infill Housing**  
Applicants' request

We respectfully request the Supervisors:

- Make a motion to make the findings and approve the actions identified in the staff report except for the following changes including certifying the EIR and:
- Approve the Parks Commission recommendation that allows the project to receive a 50% credit on **Parks Fees**
  - o Reason: The project meets all County standards for a 50% credit as recognized by the Parks Commission. The project is providing extensive common area improvements to keep recreational uses onsite which is the basis under the Quimby Act and County ordinance for this credit. The owners will pay for maintaining them in their HOA dues The 50% of fees is \$670,000 a vast contribution to local public parks. By law, 1.47 acre of land dedication to Parks would have satisfied the legal requirement for contributing to Parks but Parks turned down extra land from the Cavalettos (Gov. Code Sec. 66477 (2)).
- Have the timing of the Tree Farm Lane new public road connection to Patterson be the 2nd phase, not the first phase, Condition **46**
  - o Reason: This is a very expensive extra public road not required by the Circulation Element. The first phase is small and has heavy common area and infrastructure costs already. The EIR shows only 10 daily trips through Merida prior to Tree Farm Lane connecting with Patterson.
- Strike the condition requiring road fees paid to City of Goleta, condition **41**
  - o Reason: The stated reason for these fees is so that Goleta can widen the overpass to accommodate the two left turn lanes and to allow an extra lane for traffic from the south approaching the southbound onramp. Goleta will not widen the overpass once we receive the permission to do two left turn lanes using existing bridge dimensions. Cal Trans has given a tentative OK on this. There is no connection between Tree Farm and widening the entrance to the southbound onramp for cars coming from the south as Tree Farm has no such trip movements.



## Tree Farm

### Summary of voices in the process and distilled comments

June 22, 2012

<u>Voices</u>	<u>Comments</u>
Planning Commission	Approved 5-0, Excellent project
P & D Staff	Recommend approval & originally recommended full opening of Merida connection & COVA road connection
Cecilia Brown, Planning Commissioner	“This is a going to be a lovely project. This will be a lovely community... if you look at the public we have not had one person opposed to the project we just needed to address the neighborhood traffic and access issues.... I have always supported this project.”
EIR	No class I impacts, Patterson overpass key intersection will operate 16 seconds better even with full project build out. Project will create 5-10 daily car trips through Merida
Fire Department	Must have 2 full roads through when there are 30 homes, Tree Farm Lane to Las Perlas is one, we require one more.
Merida residents to South/West	Support project, do not support open Merida road connection. They fear 400 trips a day. In contrast the EIR says there will be 5-10 daily trips there
Environmental Community	No opposition by anyone in the environmental community.
Project Team	We have had over 40 site plan variations and made over 100 changes over 11 years seeking optimum design; we want to create a balanced, highly desirable authentic place to live with six housing market segments that implements LEED ND design principles, including connecting existing surrounding neighborhoods.
Parks Commission	Parks Commission heard testimony, received staff report & voted to recommend a 50% credit on fees, so fees are \$660,000 not \$1.32 million. (PC did not hear of those standards for credits, but opposed a 50% credit on fees).



**Main Issues of Discussion after 5 Planning Commission Hearings**

Merida Connection	<p>Status: P.C. - Public Street Tree Farm Lane will connect to Merida with two 12 ft. wide public road lanes with a landscaped center median. Opened on Phase 2 on the 30th home being occupied.</p> <p>Separately Project will fund up to \$30K of Merida traffic calming measures as approved by a separate public process that happens later</p>
Parks Fees	<p>Total fees- \$1.34 million.</p> <p>Status: Parks Commission unanimously approved a 50% credit per established standards. P.C. recommended full fees, no credit, but was not told of credit process or details by P &amp; D Staff or Parks Department.</p> <p>Before Supervisors: Applicants seek approval of Parks Commission 50% credit- \$670,000</p>
Timing of new public road to Patterson	<p>Applicant had first proposed it happening in Phase 3 when the affordable are built by Patterson, PC- Said build by end of Phase 1 Applicants propose during Phase 2.</p>



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The County ordinance and Quimby act specifically anticipate that a project will receive a credit for providing onsite recreational activities.

Ehrlich v. Culver City stands for the proposition that the fair share and rough proportionality standards for development fees applies specifically and perhaps with even greater scrutiny in the context of a comprehensive plan change and rezone. (See excerpts attached).

We note for the record that the comprehensive plan change and rezone are only required in this case because the Cavalettos were forced by the County to give up their residential zoning to be able to sell Christmas Trees from their site. They were the only property owners ever to do so as the County allowed subsequent agricultural operators to retain their residential zoning. That last agricultural use died about eight years ago for the Cavalettos as had avocados and lemons before that. I'd be pleased to discuss this further with you prior to the Tree Farm hearing.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Jeff Nelson". The signature is written in a cursive, slightly slanted style.

Jeffrey C. Nelson

Cc: Larry Cavaletto  
Rene Bahl, office of CEO  
P&D- Anne Almy and Alex Tuttle  
County Parks

**Ehrlich v. City of Culver City**  
12 Cal.4th 854, (1996)  
California Supreme Court  
Excerpts

The land use limitation on which the city relies to justify its \$280,000 fee exaction consists of a restriction of plaintiff's use of his property to commercial recreational activities, a restriction that could not be changed without amending both Culver City's general plan and the specific plan applicable to the parcel. It is well settled that such a limitation on use is constitutional unless the restriction "does not substantially advance legitimate state interests ... or denies an owner economically viable use of his land." ([Agins v. Tiburon, supra, 447 U.S. at p. 260, 100 S.Ct. at p. 2141.](#))

....

We must next decide whether there is a "rough proportionality" between the public impact of the land use change and the recreational fee. The *Dolan* court, in an effort to balance the government's legitimate need to impose reasonable exactions against the property owner's right to be free of undue \*883 burdens, formulated an intermediate standard of review and a corresponding evidentiary burden on local government. "[G]eneralized statements as to the necessary connection between the required dedication and the proposed development" are constitutionally insufficient, according to the court. ([512 U.S. at p. —, 114 S.Ct. at p. 2318.](#)) As noted, however, the *Dolan* majority also rejected the claim that the government "demonstrate that its exaction is directly proportional to the specifically created need" as being more than the Fifth Amendment demands. ([Id. at p. —, 114 S.Ct. at p. 2319.](#))

In both *Nollan* and *Dolan*, the court conceded that the development project at issue would have negative effects that the city could mitigate using its police power. It found insufficiently substantial, however, the connection between those effects and the required public dedications. Similarly, the record before us in this case is devoid of any individualized findings to support the required "fit" between the monetary exaction and the loss of a parcel zoned for commercial recreational use.

....

The amount of such a fee, however, must be tied more closely to the actual impact of the land use change the city granted plaintiff. At 884

....

In our view, the intermediate standard of judicial scrutiny formulated by the high court in *Nollan* and *Dolan* is intended to address just such indicators in land use "bargains" between property owners and regulatory bodies—those in which the local government conditions permit approval for a given use on the owner's surrender of benefits which *purportedly* offset the impact of the proposed development. It is in this paradigmatic permit context—where the individual property owner-developer seeks to negotiate approval of a planned development—that the combined *Nollan* and *Dolan* test quintessentially applies. Its

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effect, at least as to those conditions that fail to exhibit the constitutionally required nexus, is to rule out the imposition of a certain species of regulatory conditions: those which are either logically unrelated to legitimate regulatory objectives or fail to exhibit the constitutionally required “fit” between conditional means and legitimate governmental ends. (at 868)

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**Ehrlich** further explained....

“Similarly, in *Ehrlich, supra*, 12 Cal. 4th at pp. 862, 867– 869, 50 Cal.Rptr. 2d 242, 911 P. 2d 429, our high court held that a “ mitigation fee” of \$280,000 imposed by a local government and paid under protest by the property owner, as a condition of development of a property, and as a “replacement” for the recreational facilities formerly operated on the property, should be subjected to heightened scrutiny as a possible taking, because the government may have used its discretionary power over the granting or denying of permits as a means of “leverag[e]” in order to extract a monetary fee from the property owner. As *Ehrlich* reasoned, “such a discretionary context presents an inherent and heightened risk that local government will manipulate the police power to impose conditions *unrelated* to legitimate land use regulatory ends, thereby avoiding what would otherwise be an obligation to pay just compensation.... It is the imposition of land-use conditions in individual cases, authorized by a permit scheme which by its nature allows for both the discretionary deployment of the police power and an enhanced potential for its abuse, that constitutes the sine qua non for application of the intermediate standard of scrutiny formulated by the court in *Nollan* and *Dolan*.” (*Ehrlich, supra*, at p. 869, 50 Cal.Rptr. 2d 242, 911 P. 2d 429, italics in original.) (from SAN REMO HOTEL L.P, v. CITY AND COUNTY OF SAN FRANCISCO 83 Cal.App.4th 239, 251)

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June 22, 2012

Chair Farr & Honorable Board of Supervisors                      via e mail  
123 E. Anapamu St.  
Santa Barbara, CA 93101

**Re: Cavaletto Tree Farm Infill Housing  
Hearing date and agenda item, No. 6, June 26, 2012**

Chair Farr and Supervisors:

On behalf of Larry and Jackie Cavaletto and the whole project team we are pleased to present the Tree Farm project at the hearing of June 26, 2012.

It has been the product of a tremendous amount of planning for 12 years with over 40 different detailed plans and literally hundreds of fine tuning changes through the years, responsive to different voices. It is truly a result of receiving, filtering, and including a myriad of suggestions from neighbors and other interested parties on its many details along the way.

It went from formative neighborhood meeting in 2000 to unanimous Planning Commission approval after five hearings and accolades of it being a “lovely project” with endless steps in between.

The process has been so daunting because the Cavalettos were required by the County to give up their residential zoning to be able to sell Christmas trees from the site. They did give up their residential zoning to continue having income for their family, the only property to be required to do so. Moreover, two of the three parcels of this property were actually previously approved for a development project but were cut off by the 1972 water moratorium.<sup>1</sup>

**Project Benefits**

Please see the myriad of project benefits (attached) many beyond normal legal requirements.

**Environmental**

The main environmental issue has always been the impact of the project on traffic on the Patterson Overpass. The EIR shows that the planned improvement of dual left turn lanes to the southbound onramp substantially improves traffic flows, in fact reducing delays for that turn from 33 seconds

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<sup>1</sup> We incorporate by reference into the administrative record the studies, communications and submittals between the applicant’s team and County representatives concerning this project.

down to 16 seconds. This is with the full development of the project and all of its homes. This improvement will be processed for approval at the beginning and completed during Phase 2.

### **Land Trade with the County**

One component of the project is a land exchange where .5 acres of private land near the creek is transferred to the County and .48 acres of County owned land on the east side of San Jose Creek is transferred to Cavalettos, thus allowing a shallower and more natural appearing detention basin. This property which the County may exchange is not accessible now.

### **Conditions**

Attached are separate discussions on Applicant's proposed fine tuning of conditions. One involves delaying installation of the new public street on the east connecting with Patterson Ave (beyond what is required in the Circulation Element) (Cost \$1.36 million). A second is to accept the Parks Commission recommendation for a 50% credit for parks fees which applies by County ordinance and State law when the project provides onsite recreational facilities that exceed that credit amount (\$670,00 is remaining fee). The third is for road fees (\$300,000) to a separate agency- City of Goleta which are not factually justified.

In our effort to create an economically viable project, the issues of phasing the project from its western creek-side common area and phasing of public improvements have been issues of great importance.

It has been a challenging 12 year process with the housing market having had a 35%+reduction in values and substantially greater difficulty in having new buyers qualify for loans. With that said, Santa Barbara still has a vast shortage of housing compared to jobs and interest rates are at 50 year lows for mortgages, so it is a unique opportunity in time for the next generation of homeowners to get their stake in the community.

Please take the actions suggested by staff as to recommending approval of the project, and adopt our alternatives for conditions, attached.

The mission given to the project team many years ago was to create an optimum design for this property including affordable by design components. The zoning designation and rules would follow rather than drive the design. We have done so using team members with outstanding local and national experience and using LEED ND design principles. We have done our job.

On behalf of the Cavaletto family and the project team, we thank you for your consideration of this project.

Sincerely,



Jeffrey C. Nelson

CC: Larry & Jackie Cavaletto & Project Team

Tree Farm  
 Infill Housing  
 Affordable Housing Alternatives- Graded

The higher the point total, the more affordability is provided

Alternatives	December <u>2006</u>	Points	May <u>2009</u>	Points	State law	Oct. 2011	Points
Very Low	0	0	0	0	25	8	200
Low	0	0	4	50	12.5	0	0
Moderate	11	55	20	100	5	0	0
Workforce	20	20	0		1	16	16
Afford. Points		75		150			216

State Bonus Density Law have affordable values for different levels of affordable. This is used as an objective measure to determine how much affordable an alt  
 To get a 20% bonus density you have to provide 5% *very low* , 10% *low* , or 25% *moderate* this equal scale is used (Each low is equal to 5 moderates)  
 While *Workforce* is not recognized by State Law, it is still given "1" as being incrementally less affordable than *Moderate*  
 The More Points- The More the Affordability- using this objective measurement



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Affordable Housing Alternatives- Graded

ternative has.