

CITY COUNCIL OF THE CITY OF ARCATA

COUNCIL CHAMBER

MARCH 4, 2009

A special meeting of the Arcata City Council was held on the above date at 5:32 p.m. with Mayor Wheatley presiding. Notice of this meeting was posted on February 27, 2009. **PRESENT:** Wheatley, Stillman, Brinton, Ornelas, Winkler. **ABSENT:** None. **STAFF PRESENT:** Acting City Manager Oetker, Finance Director Luzzi.

Presentation of Audited Financial Statements for the City for Fiscal Year 2007/2008. Finance Director Luzzi introduced Derek Rampone from Moss, Levy & Hartzheim, LLP, who was present to give the update information on the audit for 2007/2008.

Derek Rampone, from Moss, Levy & Hartzheim, LLP, appeared before the Council and said his firm gave the City an Unqualified Opinion, which is the best opinion an auditor, can give. He said that as of June 30, 2008, the City had healthy General Fund reserves of 43 percent. He stated his firm issued a Management Report which found no material weaknesses in the City's financial statements.

On inquiry by Mayor Wheatley, Mr. Rampone said some cities have formed audit committees and Arcata could do that if it wants to.

Director Luzzi said that of the 43 percent reserve in the General Fund, some of that will be spent this year due to a new budget and capital improvements in the Finance Department. But, the City will still be left with a reserve of approximately 20 percent.

Mayor Wheatley invited public comment.

Dave Mouton appeared before the Council and said he thinks the state fiscal imbalance can be solved, in part, by modulating gas taxes. He said that tract housing is a has-been paradigm and the best type of building in Arcata would be co-op housing near the university campus.

Mayor Wheatley closed the public comment period.

Acting City Manager Oetker said, speaking on behalf of all City departments, that Mr. Rampone and his associates are very good and very thorough. He said it is due to the work of the City's Finance Department that the City has an excellent audit.

ADJOURN: The special meeting was adjourned at 5:44 p.m.

REGULAR SESSION

A regular meeting of the Arcata City Council was held on the above date at 6:00 p.m. with Mayor Wheatley presiding. Notice of this meeting was posted on February 27, 2009. **PRESENT:** Wheatley, Stillman, Brinton, Ornelas, Winkler. **ABSENT:** None. **STAFF PRESENT:** Acting City Manager Oetker, City Attorney Diamond, Director of Public Works Class, Director of Environmental Services

André, Finance Director Luzzi, Deputy Director of Environmental Services K. Diemer, Senior Planner Mullen, Transportation Superintendent Pardi.

FLAG SALUTE. Members of Girl Scout Troop 70260 Daisies and Brownies led the Pledge of Allegiance.

CEREMONIAL MATTERS—A. Proclamation in Recognition of Girl Scout Week, March 9-15, 2009. Councilmember Ornelas read the proclamation and presented it to the Brownies and Daisies of Troop 70260.

Gwen Shapiro, Troop Leader, appeared before the Council and thanked the girls and their families for the opportunity to be their leader and for all that she is learning along with the girls.

ON MOTION BY STILLMAN, SECONDED BY BRINTON, AND WITH A UNANIMOUS VOICE VOTE THE COUNCIL DECIDED TO HEAR ITEM IV. REPORT BY COMMISSION/COMMITTEE—B. PRESENTATION OF ANNUAL REPORT FROM THE PLANNING COMMISSION, AT THIS TIME. AYES: WHEETLEY, STILLMAN, BRINTON, ORNELAS, WINKLER. NOES: NONE. ABSENT: NONE. ABSTENTIONS: NONE.

REPORT BY COMMISSION/COMMITTEE—B. Presentation of Annual Report from the Planning Commission. Rob Flint, Chairperson of the Arcata Planning Commission, appeared before the Council and referred the members to the Commission's annual report included in their packets. He said that over the last year the Commission, among other items, completed its work on the Land Use Code and helped draft the Medical Marijuana Ordinance.

CEREMONIAL MATTERS—B. Proclamation Recognizing March 2009 as Including of People with Developmental Disabilities Month. Councilmember Winkler read the proclamation and presented it to Shelley Mitchell, representing HCAR, who thanked the Council for the recognition.

C. Proclamation Designating March 2009 Brain Injury Awareness Month. Councilmember Stillman read the proclamation and presented it to Jeff Smoller who thanked the Council and announced this is the 10th Anniversary of Making Headway. He thanked Mayor Wheatley for his work on the Board of Directors of Making Headway.

D. Proclamation in Recognition of Sunshine Week, March 15-21, 2009. Councilmember Brinton read the proclamation and presented it to Beth Matsumoto who thanked the Council on behalf of the Board of Directors of the League of Women Voters. She announced that during Sunshine Week, the League will hold a forum regarding Supportive Housing Options and the Connection Between Mental Illness and Homelessness.

REPORT BY COMMISSION/COMMITTEE—A. Presentation of Annual Report from the Arcata Foundation. Finance Director Luzzi said that currently the Arcata Foundation has six members. In the last calendar year, the Foundation issued \$7,000 in grants, with all the grants being \$1,000 or less. She noted the Foundation's beginning balance was \$196,000, with an ending balance of \$137,677, and an unrealized loss of \$55,000.

CONSENT CALENDAR

- A. Minutes: Regular City Council Meeting of February 18, 2009**
- B. Bi-Weekly Report on General Warrants**
- C. Accept the Audited Financial Statements for the City for Fiscal Year 2007/2008**
- D. Reject Claim for Money or Damages against the City from Alice M. Weburg and Refer to REMIF**
- E. Award of Bid for the Sidewalk Improvements on G Street Based on Bids Received February 27, 2009**
- F. Adopt Resolution No. 089-56—Authorizing the Application for Federal Transportation Administration (FTA) Section 5311 Grant Funds**
- G. Adopt Resolution No. 089-57—Accepting a Drainage Easement From and Conveying Vacated Real Property Located on California Avenue to Mr. James McNelis and Authorizing the City Manager to Execute All Necessary Documents**
- H. Approve the Application for a Vehicle-for-Hire Permit Submitted by V.I.P. Cab, Eureka, California**
- I. Approve the Submittal of a 2008/2009 State Transit Assistance Fund (STAF) Claim Estimated at \$2,958**

ON MOTION BY BRINTON, SECONDED BY STILLMAN, AND WITH A UNANIMOUS VOICE VOTE THE COUNCIL ADOPTED THE CONSENT CALENDAR FOR MARCH 4, 2009, AS PRESENTED. AYES: WHEETLEY, STILLMAN, BRINTON, ORNELAS, WINKLER. NOES: NONE. ABSENT: NONE. ABSTENTIONS: NONE.

Mayor Wheatley announced that the Council will hear item *Old Business—B. Public Hearing to Consider a Planned Development Permit Amendment, a Tentative Subdivision Map, and a Mitigated Negative Declaration of Environmental Impact for the Trillium Creek Development (APNs 503-361-039 and 503-381-033) Located at the End of Ridge Road* before item A. *Follow-up Presentation by Carol Rische, Humboldt Bay Municipal Water District, Regarding the Water Task Force and Industrial Customer Status.*

OLD BUSINESS—B. Public Hearing to Consider a Planned Development Permit Amendment, a Tentative Subdivision Map, and a Mitigated Negative Declaration of Environmental Impact for the Trillium Creek Development (APNs 503-361-039 and 503-381-033) Located at the End of Ridge Road. Senior Planner Mullen said that before the Council for its review and consideration is a modified project to develop a three-acre cluster development on a 7.4-acre subdivision that is part of a 24.4-acre site. He said the site is surrounded by residential development on all four sides. The subdivision would consist of eight lots with eight single-family residential units with up to six secondary units for a total of up to 14 units. The remaining 17-acre portion would be protected as a watershed and forest preserve through a conservation easement. There would also be two smaller sensitive habitat areas within the conservation easement consisting of a wetland and a portion of Trillium Creek, which would be further protected by easements. Planner Mullen said that public access and trails through the sensitive habitat areas would not be inherently granted through the approval of this project. He noted the Planning Commission reviewed this modified project on three separate occasions. As a result, it recommended unanimous approval of the project. He explained that

Planning Commission Resolution 09-01 contains the action of the Planning Commission with a 5-0 vote, the recommended conditions of approval, and the findings for this project. Through that resolution was the recommendation to approve the Mitigated Negative Declaration for this project. Senior Planner Mullen said the information presented to the Planning Commission of this modified project consisted of a lot of detailed mapping, detailed engineering and hydrology and drainage calculations for this project. Regarding the trail issue, the language agreed to by the developer and the Planning Commission was compromise language as spelled out in Condition D-8. Planner Mullen recommended the City Council: 1) Open the public hearing and receive the staff report, the recommendation from the Planning Commission, any presentation from the developers or agents, and all testimony from the public; 2) Review the attached documents, public comments, and the draft Mitigated Negative Declaration to determine if any revisions are appropriate; 3) Adopt the Mitigated Negative Declaration of Environmental Impact (Attachment D); and 4) Approve the Planned Development Permit Amendment and the Major Subdivision of APN's 503-361-039 and 503-381-033 based on the recommended Findings and Conditions of Approval in Attachment C.

Acting City Manager Oetker said the Council received letters from Roger and Peggy Pryor, and John Graves. He said that Condition D-8 currently reads, with the highlighted language amended by the Planning Commission, *The SPA and WPA shall be encumbered by an easement granted to the City of Arcata, to another governmental agency, or to an appropriate non-profit entity for the widths described above. The easement shall allow the City of Arcata to restrict and/or eliminate activities within the SPA in the future if those activities have a measurable negative effect on the Trillium Creek ecosystem and associated riparian habitat. The SPA and WPA do not inherently grant public access.* Acting City Manager Oetker said the applicants are proposing replacement of the first sentence with the language that is in the General Plan: 2020, and staff has no problem with that. The sentence reads, *Such easement may be conveyed to the City of Arcata, another governmental agency, or City-approved non-profit entity which shall manage the easement to protect the SPA and WPA's function.* Additionally, Acting City Manager Oetker said he and the City Attorney reviewed the last sentence in Condition D-8 and recommend striking the word "inherently." He said he and City Attorney Diamond do not concur with and do not recommend the Council adopt the last sentence in the Pryors' letter which states, *If the City wishes to acquire a public access easement, they shall obtain such access from willing sellers.*

In response to the letter from John Graves, Acting City Manager Oetker said this is the first project in the Forest/Hillside Zone under the General Plan: 2020. He said the City won't want to do anything that will set a precedent and is not in agreement with the General Plan. He said staff wants to honor General Plan policy PS-3a dealing with the public safety element regarding hillside development standards. Regarding the trail, Acting City Manager Oetker said staff is not recommending that a trail be incorporated into the project at this time. If there were a trail at some point in time, that would be an independent project. Regarding the French Drains, he said there is currently runoff to the downslope properties. He pointed out the location of the French Drains on the map to the Council. Finally, in response to Mr. Graves' question regarding the secondary units in the Forest/Hillside zone, Acting City Manager Oetker said that in the past in Planned Developments, when a lot is less than 5,000 square feet, the City has restricted the building of secondary units because the lots are not of sufficient size. In the Forest/Hillside zone, these parcels have a 4,000 square foot buildable area and this is where all the development of the housing units would occur. In contrast, in a standard low-

density residential project, a parcel would be 6,000 square feet and 50 percent of that would be required to be open space, leaving only 3,000 square feet of buildable area for a primary and a secondary unit. Therefore, staff believes that the 4,000 square foot buildable area can accommodate both a primary and a secondary unit. Added to this is the fact that the Housing Element encourages the building of secondary units. Since the lots are large enough, then the likely scenario wherein secondary units could be restricted is where the road structure could not accommodate the additional traffic, there is not enough parking, or the water or sewer infrastructure is not adequate.

Councilmember Brinton disclosed that he spoke with the following persons about this project: Elizabeth Connor, Lisa Brown, John Graves, Chris Rall, and Harmony Groves.

Councilmember Ornelas disclosed that she was on the City's Open Space and Agriculture Committee when this project was first reviewed.

Councilmember Winkler said this is a substantially different project than the one he reviewed as a member of the Planning Commission.

Councilmember Brinton said that during the election, he spoke out against a former version of this project regarding a proposal to use the density bonus law.

Senior Planner Mullen said this project has two affordable units. In order to make them affordable, the developer is asking for a reduction in setbacks and open space requirements for these lots. This makes them more affordable because the lots to purchase will be smaller. He said that staff believes the amenities far outweigh the exceptions in this situation. He noted that a major attribute is setting aside 17 acres as a conservation easement to preserve timber, wildlife, and sensitive areas.

On inquiry by Councilmember Winkler, Senior Planner Mullen said that in analyzing the area being reserved for the conservation easement, there is a building area in that site and that buildable area could accommodate a house and secondary unit.

Acting City Manager Oetker said the alternative is that the traditional eight lots would take the entire 24 acres and would include open space for each parcel. The amenity is that the development has been revised to cover one small area and it leaves the conservation easement on the larger remainder parcel.

On inquiry by Councilmember Ornelas, City Attorney Diamond said that enforcement would be against the property owner if the conservation easement were denigrated.

Acting City Manager Oetker specified that the easement would be owned by another governmental entity, but he could not specify who would manage the fee title.

Councilmember Ornelas asked what the road maintenance costs would be and if they would make affordable units not affordable.

Acting City Manager Oetker said the road maintenance costs would be just like any other debt service. The amount would be deducted from the amount the buyer could get in a private loan. The property

would be sold for less because the homeowner wouldn't be able to get a loan on the maintenance amount.

On inquiry by Councilmember Ornelas, Director of Public Works Class said this is the City's first subdivision where roads, streetlights, sewer, etc. are all maintained by the homeowners' association. He said the road is not standard and is a glorified driveway. It should be designed with a 30-40 year life expectancy. He said the costs are up-front costs and include maintenance to keep the road from failing. In terms of utilities, the City will have a working agreement with the homeowners' association. The homeowners' association will also be responsible for maintenance of a water tank. He said the road will not be serving any material purpose or any other benefit for the rest of the City and this is one of the reasons the City doesn't regard this as a regular public street. The road will just serve the homes in the subdivision.

On inquiry by Brinton, Senior Planner Mullen said this project falls under the former Land Use and Development Guide, which does have specific inclusionary zoning requirement, but they don't get into the depth of detail of this proposed project. He said this project provides two affordable units, and under the LUDG it may have only had to provide one affordable unit. He pointed out that in the Forest/Hillside zone, the minimum lot size is 20,000 square feet, which is an exceptionally large lot and may make it cost prohibitive to include affordable units. He said that this development provides for affordable housing within the Forest/Hillside zone as part of a Planned Development process.

Councilmember Brinton asked how staff feels about the possible impact of stormwater runoff on the property below the development.

Senior Planner Mullen said that detailed engineering and mapping was provided to the Planning Commission for its consideration. The project engineer demonstrated that the project has been designed to actually reduce the current overland flow of water from the site and there will be much less impact than there is now under the current conditions. He explained that is due to the housing development being in a clustered development, the redirection of stormwater flows into a holding tank, and the water coming down the hillside being addressed by the French Drains. He noted that the hydrology and drainage calculations have been done for this site, it has been adequately designed and the stormwater will be mitigated with the best engineering possible. There will also be improvements to Ridge Road to include a drop inlet and a drainage basin.

Director of Public Works Class said the plans show an extensive amount of drainage work to be done on this development. He said he doesn't see that there is a sediment issue. He noted the proposal includes allowing natural runoff from roofs, and no downspouts. The water should be relatively clean getting to the holding tank. He advised he feels the costs will be up-front costs because the drainage system is pretty much passive. He explained that the French Drains are a collaboration between the developer and the adjacent homeowners.

Mayor Wheatley asked about the conservation easement and if the day-to-day responsibility for it would fall on the homeowners' association.

City Attorney Diamond said that according to law, the property owner is ultimately responsible. The conservation easement is a restriction that runs with the land.

On inquiry by Brinton, Acting City Manager Oetker said the development will include two units, whether they are low or moderate income. He said it will be more beneficial to the homeowner if they are a low-income household because the amount of money available through the City's home ownership program is \$20,000 for a moderate-income household, and up to \$105,000 for a low-income household.

Councilmember Ornelas said she is concerned about ownership of the road and the utilities. She asked if any municipality has been sued for not owning and maintaining those.

Director of Public Works Class said this is a very typical way things are being done now. All the costs will have to be disclosed up-front. If the City owned the road and utilities, the per capita cost would be disproportionate to anything built on the flat land. Also, the City cannot get taxation for any right-of-way that is less than 40 feet in width, which this has.

Acting City Manager Oetker said that if the City took over the road and utilities, staff would recommend the formation of an assessment district. The cost to the homeowner is the same whether it is the City's assessment district or the homeowners' association.

Roger Pryor, representing himself and his wife as the applicants, appeared before the Council and said they have hashed out this project extensively and to great depth. Regarding the French Drains, he said it involves two property owners and he has spoken to both of them about it and has their agreement. He explained that the runoff will be decreased and the French Drains will improve it even more. The issue about the trail and Condition D-8, he said he appreciates staff's recommendation to strike the word "inherently." Regarding the General Plan language about the conservation easement being granted to the City or another governmental agency, he said he is fine with that language but would want to delete the language, *The easement shall allow the City of Arcata to restrict and/or eliminate activities within the SPA in the future if those activities have a measurable negative effect on the Trillium Creek ecosystem and associated riparian habitat.* Or, failing that, he would want to have the line, "*Such easement may be conveyed to the City of Arcata, another governmental agency, or city-approved non-profit entity which shall manage the easement to protect the SPA and WPA's function,*" added in two places. So, he would either add the one line in two places, or strike both and just use the General Plan language. Mr. Pryor said he wanted the Council to consider General Plan Policy OS-1i which says, *The City shall pursue acquisition of these parcels from willing sellers . . .* He said they would like that wording added to the bottom of Condition D-8. He informed the Council that the conservation easement would not be logged as they are giving up the logging rights to it. Regarding the roads, he said it is really common to have a homeowners' association be responsible for road maintenance. He said they will work with the Department of Real Estate to come up with a schedule for maintenance and costs to the association members. Regarding the density, he said this is not a very dense development; it is seven units on 24 acres, which equals one unit per three acres. A normal Forest/Hillside development would have one unit per one-half acre.

Mr. Pryor said that Michael Furniss, a Hydrologist and Geomorphologist with the Forest Service, who prepared the Initial Study, is present and can answer questions the Council may have.

Mayor Wheatley opened the public hearing.

John Graves, a resident of Arcata, neighboring property owner, and former Chairperson of the Arcata Planning Commission, appeared before the Council and distributed to staff and the Council a one-page list of his recommendations regarding this project. First, he read comments from Aldaron Laird, former Arcata Planning Commissioner, who couldn't be present. He indicated that Mr. Laird has represented clients before the California Coastal Commission on numerous occasions and in each case his arguments have been upheld by the Coastal Commission. He said he was bringing this to the Council's attention because the City's General Plan: 2020 and Land Use Code are pending before the Coastal Commission. He noted that Mr. Laird's comments are specific to the Findings of Approval as follows: 1) Staff's comments regarding General Plan Policy PC-3a clearly undercut the City's General Plan and should be stricken from the record. Specifically, *Section I-G 4-0404(g) The proposed development will carry out the policies and intent of the Arcata General Plan;* the paragraph which begins *Policy PS-31 addresses Slope Stability Development . . .* referring to the 15% slope standard; *Section II-C That the site is physically suitable for the type of development;* and *IV. Environmental Findings*. Mr. Laird's letter recommended that all these findings be deleted in their entirety because they call into question the General Plan policy. If the Council does not delete them, it is setting itself up for a legal fight. These findings throw the validity of the General Plan's Program EIR into question. Mr. Laird's letter declared that the Council must act quickly to change these findings or the Coastal Commission will not be able to approve the City's Land Use Code. He wrote that this reinterpretation of the General Plan and Program EIR was an attempt to slip something by the Council and it just cannot have staff saying the foundation of the City's land use is flawed.

Mr. Graves continued on with his own comments stating that he concurs with Mr. Laird's concerns and that the findings should be removed. He declared the findings are a deliberate attempt to circumvent the direction of the City Council, the City's General Plan, and the will of the citizens of Arcata. He noted that nowhere does it note that at the time the Initial Study was done the preparer was an investor in the project. He declared this is a clear conflict of interest and the Initial Study could be rejected on those grounds alone. Mr. Graves said he does not agree with staff that LUDG is the primary regulatory document for this development. He said that General Plan: 2020 overrules it and the inclusionary zoning language is in General Plan: 2020. He said the previous City Council rejected staff's assertion that this is an affordable housing project. The Planning Commission rejected the findings that this is an infill project and that the project will promote bicycle and foot traffic. He explained that at its core, this is a hillside development project, the first since the adoption of General Plan: 2020. He said that this project will set a precedent for all hillside development to follow. Mr. Graves said the applicants were led to believe the City would easily grant waivers from the Land Use Code and that key sections of the General Plan could be ignored. This is not the case. He said the developers have been poorly served by City staff. Mr. Graves reiterated his and Mr. Laird's recommendation regarding changes that must be made to the Findings and Conditions of Approval. Finally, he said this project has the potential to create jobs and because of that, he strongly recommended the Council grant approval of the Trillium Creek Project.

Lisa Robinson, a resident of Arcata who lives below the proposed project, appeared before the Council and said she doesn't have anything in writing yet regarding the French Drains. She said she knows the road will be 200 feet above her backyard. She said that after the clearcut and the 10-feet of slope is removed, there will remain a 35-50% slope where the road will drain the water on the project's property, which is great. She said she sees that the developer plans on thinning and topping trees the trees in that 200 feet so there will be solar for the development. She questioned how much of the slope will be disturbed after the grading, building, topping, and cutting. She imagines the current silt problem will get worse.

Lisa Brown, a resident of Arcata, appeared before the Council and suggested it require the secondary units be part of the primary unit, over a garage or workshop, in order to prevent the need for many of the exceptions, as well as minimize the impermeable surfaces on the substandard lots. From what she has heard, she said she understands the affordable aspect of the project may be questionable. She asked the Council to flush out the restrictions on the easement within the Conditions of Approval. She agreed with Messrs. Graves and Laird that Environmental Finding No. 4 needs to be struck entirely from the document given that all the buildable sites and units will be on slopes of less than 15 percent. This language is unnecessary and offensive to the General Plan.

Barbara Henderson, a resident of Arcata whose property adjoins this development, appeared before the Council and said she is curious as to why this development has to have a private road.

Mayor Wheatley closed the public hearing.

Director of Public Works Class said the road will not be a private road because the General Plan does not allow gated communities. He said this will be a privately maintained road, but the public will be allowed to use the road. Regarding the drainage issues, he said that will be incorporated into the overall Improvement Plan.

In response to questions from Councilmembers, Director of Environmental Services André said that tree thinning and topping would take place under the standards of the City's Land Use Code and General Plan and would be reviewed by the Forest Management Committee. He said the City does not like to see topping, so staff will be looking to minimize tree topping. He noted that conversion of the property to residential use will require a Timber Harvest Plan and permit from the California Department of Forestry. In regard to the effectiveness of proposed solar installations, Director André said he has not yet seen build-out plans for the solar, but it is possible to not top trees by removing them. He said that topping is not prohibited, but it is not a practice the City considers acceptable mainly because of aesthetics and future hazards. He said that trees in that area grow 2-3 feet in height per year so topping and limbing will have to be adapted over time. He said he is confident staff can work with the landowner to craft an acceptable plan.

On inquiry by Councilmember Brinton, Director André said he is comfortable there will be the possibility of connectivity in the future for this site, but it is always contingent upon willing landowners. He feels the current proposal takes care of everyone's concerns.

In response to a query by Councilmember Stillman regarding Finding No. 4 of the Environmental Findings, City Attorney Diamond said the Council is being asked to adopt a Mitigated Negative Declaration and the Council must have specific findings that indicate how the mitigation measures actually reduce the impacts to "less than significant." She said she feels there has been enough raised in the record about the slopes on the property that the Council cannot adopt the Mitigated Negative Declaration without that finding. She said she understands the controversy of this Finding, but she doesn't believe there is any evidence contrary to the geotechnical studies presented for this development.

Acting City Manager Oetker said the primary issue is spelled out in Environmental Finding No. 3, the sentence that reads: *Expert public testimony from a Geomorphologist also concurred with this analysis.* He said the Council needs to adopt a finding based on General Plan Policy PS-3 and the geologic study that was completed by Busch Geotechnical. He said the concern he hears is that the City might make Findings based upon public testimony. He said it is not necessary to do that because the public record, in the General Plan and Geotechnical Report, is strong enough. If the Council wants to remove that reference in the above Finding, that is where it should remove it.

City Attorney Diamond stated again that the Council needs to adopt the Findings as they are. They are based on the record and that is what the record reflects. There has not been any contradictory evidence that raises the fair argument standard. She said the Council needs to state why it is approving a Mitigated Negative Declaration based on the specific information in the record that deals with those mitigation measures. If the Council wants to look specifically at those mitigation measures and look at the evidence associated with those, that is what it needs to do.

On inquiry by Councilmember Stillman, City Attorney Diamond said she was previously unaware that Mr. Furniss was an initial investor in the property. She said the Council needs to make an independent assessment of the environmental document; that is the Council's role. So, if the Council feels the Initial Study is not an objective analysis, then the Council needs to take a step back and look at the environmental document. If the Council feels there are conflicts, whatever they may be, that compromised the Initial Study, then the Council should go through the environmental document in detail.

Mr. Furniss appeared before the Council and said that when he drafted the Initial Study, he was an investor and intended to be part of the project. However, he said it is his understanding that that is simply a service the proponent provides, and then the Initial Study becomes the City's document. So, any potential conflict of interest should be addressed and solved as it becomes the City's document. He stated that when he testified about his assessment of the suitability, slope stability, and drainage, he was no longer an investor in the project.

Councilmember Stillman said she is satisfied there is no conflict, but she wanted to address it because it was brought up during public testimony.

Mayor Wheatley disclosed that he has only appeared before the Coastal Commission as a staff person for the Coastal Commission or representing public projects before the Coastal Commission. He

questioned the concerns about the Local Coastal Program consistency issues because this site is well outside the Coastal Zone.

Acting City Manager Oetker said that General Plan policy PS-3c deals with hillside development, and to his knowledge there are no hillside development areas in Arcata that are included within the Coastal Zone. So, this policy does not apply to anything that is within the Coastal Zone. He said that if there is one thing in the environmental document that could be challenged, that it may or may not open the door to challenge other things.

Councilmember Brinton said that some people were concerned that the Findings were contrary to the General Plan, and he asked staff to address that issue.

Senior Planner Mullen said that the last paragraph under Finding I-G reaffirms General Plan policy PS-3a by stating that . . . *development on slopes great than 15% could be accommodated if the proper geologic and soils investigations were conducted and professionally analyzed* He said this Finding states that adequate investigations were conducted, soil investigations and geologic studies were conducted for this site and it was the opinion and observations of the consulting soils engineer on this particular project that this development can be accommodated with the proper measures incorporated as identified in the geologic reports which are attached to the Mitigated Negative Declaration.

RECESS: The Council recessed from 8:00 to 8:20 p.m.

Councilmember Ornelas stated, regarding Environmental Finding No. 4, she understands what the public was pointing out. She said she thinks, furthermore, that it is unnecessary and she feels it is eroding the General Plan.

Councilmember Stillman said that this Finding supports Policy PS-31, which addresses slope stability.

On inquiry by Councilmember Winkler, City Attorney Diamond said she does not recommend modifying anything right now. She said the Environmental Findings are what the Council needs in order to adopt the Mitigated Negative Declaration. If the Council wants to change the Findings, that will need to be analyzed. The whole problem is that the General Plan Program EIR has some ambiguities or gaps and this falls right in the middle of one of those gaps. She said that if the Council wants to look take out a reference, staff would have to look at it very carefully.

Councilmember Winkler said that it is being implied that expert testimony is saying that the standards in the General Plan are not necessary. He feels that is a precedent the Council does not want to set.

Councilmember Brinton concurred with Councilmembers Winkler and Ornelas. He said he doesn't know if anything after the word "Furthermore" in Environmental Finding No. 4 is unnecessary. He said he doesn't see why it should be there and asked what its purpose was.

Acting City Manager Oetker said the project, as previously proposed, laid out development on areas on slopes greater than 15%. He said this Finding is saying that there are expert testimony and geological

reports saying these slopes are stable and can be built upon. He said that now, all the buildable area is within a 15% slope so all the argument about expert testimony is not needed because all the buildable areas are in compliance with the General Plan. He said there is a second question dealing with the roads. Some of the road areas are on slopes over 15%. That is where the expert testimony and the Findings come into play. There could be a distinction between buildable area and the roads.

Councilmember Winkler asked to have the buildable area and roadway clearly defined and separated.

Councilmember Stillman questioned as to whether or not that detail is important enough that the Council should go back and review it thereby delaying the project further.

Mayor Wheatley asked if the Planning Commission took up the suggestion of having secondary units restricted to being above or attached to the primary unit.

Senior Planner Mullen said he believes the applicant presented a series of different scenarios of how the secondary units could be situated, whether attached, detached, or above a garage, and that was presented to the Planning Commission.

Councilmember Stillman said this is an opportunity to have non-standard development such as a small cottage located in a forested area; something unique and not just a unit over a garage.

Mayor Wheatley said it could be an issue on two of the parcels, but the rest look like they would be able to accommodate a second unit. He said he understands the argument on Environmental Findings No. 3 and 4, and it is really about the road, and the individual who prepared the Initial Study has a background and expertise in roads. He stated he is comfortable with the language in the Findings as it is.

City Attorney Diamond reminded the Council that as it adopts this project, its concern about precedential value is not based in a legal precedent. The findings the Council makes here have no precedential value for any future project, legally.

Mayor Wheatley said the issues seem to center around the road alignment and slope issues, and the analysis that has been done reflects those site specific issues.

Acting City Manager Oetker said he believes the Council could approve the project tonight because the Policy PS-3a in Finding I-G is dealing with the road. The Council could strike everything in Environmental Finding No. 4 after "Furthermore." In lieu of that portion, the Council could insert a statement, such as, *All parts of buildable area are on natural slopes of less than 15%*, because that is the definitive statement that makes the project in compliance with the General Plan. He sated the Council could approve the project that way.

City Attorney Diamond said she wouldn't do that without analyzing it. She said she thinks it can be approved as presented or possibly with that language taken out. But, she, personally, is not familiar enough with the Program EIR to understand the relationship between that and the Mitigated Negative Declaration. So, she recommended the Council not take out that language without further analysis.

Acting City Manager Oetker said he has the Program EIR with him and has been basing the entire testimony on the level of significance that is in the Program EIR and that is why he is saying he is comfortable with removing that language.

Senior Planner Mullen said that, as a Nationally Certified Planner he has done a lot of work on this project, has looked at the CEQA issues, and has looked at the EIR associated with General Plan: 2020. He said staff is trying to provide the evidence within the Findings, and especially the Environmental Findings, to substantiate this project. He said he believes that with the way the Mitigated Negative Declaration has been crafted, and how it addresses the actual construction on the buildable area, as well as the road, and taking into account some of the lack of detail in the General Plan: 2020 Program EIR, the Council needs to adopt the language in the Findings for the CEQA compliance in order to be consistent with this project.

On inquiry by Councilmember Brinton, Senior Planner Mullen said that the staff reports in Attachment A in the packet state the different policies this development adheres to in General Plan: 2020. It does look to the infill policy of General Plan: 2020. He said that this is one of the situations that developed with the Planning Commission and some of the modifications that took place for the approval of this project in order to achieve a unanimous vote for approval. He said that in Attachment C, Exhibit 2, the Finding that addresses infill development and honoring the policy of the General Plan: 2020 was removed at the request of one Planning Commissioner in order to gain a unanimous vote on this project. Staff feels this project is an infill project as the entire project is surrounded by existing residential development and, in the true sense of the word, is infill.

Councilmember Stillman agreed with Senior Planner Mullen that this is an infill project.

Councilmember Brinton said that this may not technically be an infill project and this concerns him. He said he would be more comfortable if the word "infill" was removed from every one of the documents, if that is possible.

Councilmember Winkler said he doesn't have a problem designating this project as an infill project, and surmised that building this development may take pressure off other areas of the City.

Mayor Wheatley said he agrees this is an infill project and the benefit is that the parcel configuration could have been different with open space on each parcel. The conservation easement is a great benefit.

Councilmember Stillman said the Council's choices are to either have infill development or expansion.

STILLMAN MOVED TO ADOPT THE MITIGATED NEGATIVE DECLARATION OF THE ENVIRONMENTAL IMPACT REPORT, ATTACHMENT D.

THE MOTION DIED FOR LACK OF A SECOND.

City Attorney Diamond said that if the Council wants to adopt the Mitigated Negative Declaration, it must adopt the underlying Findings. The Council could adopt Attachment C, page 9 of 10, in support of the adoption of the Mitigated Negative Declaration.

Councilmember Ornelas said that upon further reading, she sees that the Findings spell out the details that are missing from the General Plan: 2020 Program EIR. She said this means approval of the project doesn't bother her as much as it did before.

Senior Planner Mullen said that is correct. That in order to compensate for inconsistencies or lack of detail in the General Plan: 2020 Program EIR, and in order to compensate for that, the geotechnical studies have been completed and incorporated into the Mitigated Negative Declaration to override those inconsistencies or lack of information in the General Plan EIR. This is what the language is trying to accomplish and to protect the City at the same time.

STILLMAN MOVED TO ADOPT THE MITIGATED NEGATIVE DECLARATION OF THE ENVIRONMENTAL IMPACT REPORT, ATTACHMENT D, INCLUDING THE ENVIRONMENTAL FINDINGS ON PAGES 118 AND 119 OF THE COUNCIL PACKET.

THE MOTION DIED FOR LACK OF A SECOND.

Councilmember Brinton said he would prefer to put this project off to a future Council meeting to give City Attorney Diamond an opportunity to analyze the impact of removing the language after the word "Furthermore" from Environmental Finding No. 4.

City Attorney Diamond said the City has a very competent Planner and Director and she, as an attorney, is being overly cautious.

ON MOTION BY STILLMAN, SECONDED BY ORNELAS, AND WITH A FOUR-TO-ONE VOICE VOTE THE COUNCIL ADOPTED THE MITIGATED NEGATIVE DECLARATION ENVIRONMENTAL IMPACT REPORT, ATTACHMENT D, INCLUDING THE ENVIRONMENTAL FINDINGS ON PAGES 118 AND 119 OF THE COUNCIL PACKET, PAGES 9-OF-10, AND 10-OF-10 OF ATTACHMENT "C" OF THE FINDINGS. AYES: WHEETLEY, STILLMAN, ORNELAS, WINKLER. NOES: BRINTON. ABSENT: NONE. ABSTENTIONS: NONE.

STILLMAN MOVED TO APPROVE THE PLANNED DEVELOPMENT AMENDMENT AND THE MAJOR SUBDIVISION OF ASSESSOR'S PARCEL NUMBERS 503-361-039 AND 503-381-033 BASED ON THE RECOMMENDED FINDINGS AND CONDITIONS OF APPROVAL IN ATTACHMENT C, AND WITH THE CHANGES ON PAGE 11-OF-13 OF THE CONDITIONS, IN CONDITION D-8, THE LAST THREE SENTENCES, TO READ: *THE S.P.A. AND W.P.A. SHALL BE ENCUMBERED BY AN EASEMENT GRANTED TO THE CITY OF ARCATA, TO ANOTHER GOVERNMENTAL AGENCY OR TO AN APPROPRIATE NON-PROFIT ENTITY FOR THE WIDTHS DESCRIBED ABOVE. THE EASEMENT SHALL ALLOW THE CITY OF ARCATA, ANOTHER GOVERNMENTAL AGENCY OR TO AN APPROPRIATE NON-PROFIT ENTITY TO RESTRICT AND/OR ELIMINATE ACTIVITIES*

WITHIN THE S.P.A. IN THE FUTURE IF THOSE ACTIVITIES HAVE A MEASURABLE NEGATIVE IMPACT ON THE TRILLIUM CREEK ECOSYSTEM AND ASSOCIATED RIPARIAN HABITAT. THE S.P.A. AND W.P.A. DO NOT GRANT PUBLIC ACCESS.

WHEETLEY AMENDED THE MOTION TO ADD THE WORDS, “CITY-APPROVED” BEFORE “APPROPRIATE NON-PROFIT ENTITY.”

STILLMAN ACCEPTED THE AMENDMENT TO THE MOTION.

ORNELAS SECONDED THE MOTION, AS AMENDED.

Councilmember Brinton said he probably would have voted to approve this project if his concerns had been addressed, concerns, which are similar to those of Mr. Graves.

*****THE MOTION PASSED ON A FOUR-TO-ZERO VOICE VOTE. AYES: WHEETLEY, STILLMAN, ORNELAS, WINKLER. NOES: BRINTON. ABSENT: NONE. ABSTENTIONS: NONE.**

A. Follow-up Presentation by Carol Rische, Humboldt Bay Municipal Water District, Regarding the Water Task Force and Industrial Customer Status. Carol Risch appeared before the Council and gave it an update on the District’s industrial sales and system, water rights, and water rates. She reminded the Council that the District is forming an Advisory Committee on which there will be two customer representatives. Regarding the mill, she said mills are very, very large water users, and even with only one mill, the water use is still 50 percent more than all the municipal customers combined. She said the Evergreen Mill had a contract for 50 million gallons. That mill has been sold to Freshwater Pulp Corporation. The District is one of the creditors of Evergreen, and it collected 62 percent of what was owed. She announced that Freshwater Pulp told the District it needs a 90-day transition period before operating the mill. She said they did request enough water to keep their ocean outfall pipe open. The District has agreed to the 90-day period at a reduced price. She said she fully expects the mill will be in a position to operate by May 1. She stated that the status of the mill is uncertain, and in the past the mill’s water use paid for 45 percent of the District’s entire cost of service. She said the District’s Board and staff of the municipalities concur that at this point they should assume the mill is no longer operating and the wholesale contract should be transitioned to the seven municipalities. If the mill is able to resume operation, it would be brought back in as a wholesale customer. She said the District feels it is important to work with all seven municipal customers on a transition plan. She said the mill contributes \$1 million to the District’s cost of service. Without the mill in operation, the District has a million dollar shortfall. She said the District feels it can reduce costs by approximately 40 percent, so the remaining 60 percent must be shifted to the seven municipalities. The cost increases to municipal customers may be 20-25 percent.

Councilmember Stillman wondered if there is a way the District could use its extra water by selling it to other communities.

Ms. Rische said that is a great suggestion and is the essence of the District’s water resource planning process.

Councilmember Winkler said he feels an obvious stakeholder group is the residential customers. It is important to have residential customers, especially seniors, represented.

Ms. Rische responded saying the Board was looking for organized groups that were fairly diverse, yet well respected. In terms of representing retail customers, she said they would be represented by the seven municipal customers. She noted that the Committee will have a lot of latitude to define how outreach is done.

NEW BUSINESS—A. Consider Request for City Council Member Participation at the March 25, 2009, Transit Lobby Day to be Held in Sacramento. Transportation Superintendent Pardi said the legislature wants to hear from policy makers regarding transit matters. He said he was hoping to get as many people as he could to participate.

ON MOTION BY STILLMAN, SECONDED BY BRINTON, AND WITH A UNANIMOUS VOICE VOTE THE COUNCIL APPROPRIATED \$200 FROM THE TRANSIT TRAVEL ACCOUNT (663-91-140.00) AND APPROVED SENDING COUNCILMEMBER WINKLER TO THE TRANSIT LOBBY DAY AS THE CITY'S REPRESENTATIVE. AYES: WHEETLEY, STILLMAN, BRINTON, ORNELAS, WINKLER. NOES: NONE. ABSENT: NONE. ABSTENTIONS: NONE.

ORAL COMMUNICATIONS

No one came forward to speak.

COUNCIL AND STAFF REPORTS—A. Update on Stimulus Package Projects by Doby Class, Director of Public Works and Mark André, Director of Environmental Services. Director of Environmental Services André said he put a copy of the city funding book put out by the League of California Cities into the Council's boxes. He said the book outlines how allocations under the American Recovery Reinvestment Act will occur in California. Some of the funding sources will be ones Arcata will be pursuing. He listed the following projects for which Arcata will be applying for stimulus funds. He said that drinking water projects for which staff believes it can obtain funding are the Panorama water tank improvements for pumping at off-peak times, Aldergrove Inter-tie into the Humboldt Bay Municipal Water District, and Aldergrove Pump Station 7.5 kW photovoltaic system.

Director of Public Works Class listed the following projects: Completion of the City-wide steel water line replacement, larger water lines to transmit water from tanks 1A and 1B by Humboldt State University to the Margaret Lane water tank, Klopp Lake water line, Sunny Brae Inflow/Infiltration, lateral sewer lines in Sunny Brae, downtown vitrified clay pipe, First Street lift station, Samoa Boulevard lift station, and low-impact development at Seventh Street parking lot.

Director André said that the Seventh and G Street parking lot project is a demonstration stormwater quality project. Other projects include a 30 kW photovoltaic system at the wastewater treatment plant and a 10 kW system for the Community Center. Regarding natural resources projects, he said staff will request funding for the following projects: Fish habitat and wildlife habitat enhancement projects,

decommissioning of the City's rock quarry in Jacoby Creek Forest which is a potential sediment source, rock forest roads on recently acquired lands, drainage work on the forest roads in upper Jacoby Creek Forest, a pond in the Baylands project, Sunny Brae Forest fuel treatment to reduce forest fire potential fuels, thinning, and small trail projects.

Director of Public Works Class said staff attended a meeting regarding federal highways money that will be coming to California. He said he considers Arcata has two projects that may qualify for funding: Overlay improvements to Alliance Road, and Samoa Boulevard from the CHP office to Buttermilk Lane.

Acting City Manager Oetker said the consistent theme is that staff is not just chasing grant money. It is looking for high-value projects already programmatically designed in the City. He said staff is not trying to build any projects that have not been approved by the Council.

Acting City Manager Oetker said he is looking to partner with Environmental Services to do weatherization and solar installations through the Housing Rehabilitation Program. Also, he said he is looking at a brownfield program for the Little Lake property. He is hoping the City can start dismantling the buildings there in the next 2-3 months.

Councilmember Winkler asked if staff has looked into a heat pump heating system.

Director of Environmental Services André said staff is trying to find a location that makes sense for designing something. He said that Director of Public Works Class and Energy Specialist Menten are working on this.

Councilmember Winkler said the technology is this is a high-efficiency form of electric heating and the net CO₂ emissions are about one-quarter of that of a home furnace. The problem is that it has a high initial cost.

Councilmember Winkler asked about the section of Old Arcata Road that is on septic.

Director of Public Works Class said there is a coastal zone issue for that area and it is not a project ready for stimulus funding.

Mayor Wheatley said staff is also applying for Community-oriented Policing Services to obtain funds for the Park Ranger. He commended staff for having everything ready to apply for funding within a brief turnaround period. This has put the City in a very competitive slot for funding sources such as these.

Acting City Manager Oetker said he understands HCAOG put the methodologies for the regional housing needs allocation on its website. At the next Planning Commission meeting staff will present the list of vacant and underutilized parcels in the City. He said he plans to have the Planning Commission analyze the methodologies so a preferred methodology can be forwarded to the Council for recommendation to HCAOG.

City Attorney Diamond reported she attended a workshop on global climate change issues and CEQA.

Councilmember Brinton reported he attended meetings of the Arcata Endeavor, now named the North Coast Resource Center, and the Redwood Region Economic Development Commission.

Councilmember Stillman announced that on March 9, 2009, Humboldt Waste Management Authority will hold a workshop for all its members. She also announced the Arcata Police Department has invited the Council to its Swearing-in Ceremony on March 10, at noon, in the Chamber. Finally, she suggested to staff that it might want to review how long it takes staff to put out notices in conformance with the new Land Use Code. She doesn't think the new requirements are necessary and should be reviewed by the Council.

City Attorney Diamond announced that staff is actively negotiating with Arcata Garbage Company for a low-volume rate for customers who don't produce much solid waste.

Mayor Wheatley reported that the Work Life Alliance and First 5 sponsored a workshop on strategies on developing childcare facilities. He said he will be traveling to Washington, DC, as the representative from HCAOG, to seek funding for the regional trail system. He reported that he and two councilmembers from Eureka jumped into Humboldt Bay as part of a fundraiser for a skateboard park in Eureka.

Councilmember Winkler reported he attended a meeting of the Arcata House Board of Directors at which former City Councilmember Machi was appointed to the Board.

DATES OF FUTURE MEETINGS—A. Three 2009/2010 Goal Setting Sessions at 5:30 p.m., Thursday, March 19, 2009; Monday, March 23, 2009; and Monday, March 30, 2009, in the Council Chamber. BY GENERAL CONSENSUS THE COUNCIL CONFIRMED ITS THREE GOAL SETTING SESSIONS FOR MARCH 19, 23, AND 30, 2009, AT 5:30 P.M. IN THE COUNCIL CHAMBER.

B. Three 2009/2010 Budget Study Sessions at 5:30 p.m., Monday, May 18, 2009, in the Senior Room at the Arcata Community Center; Thursday, May 21, 2009, in the Council Chamber; and Tuesday, May 26, 2009, in the Senior Room at the Arcata Community Center. BY GENERAL CONSENSUS, THE COUNCIL CONFIRMED IT WILL HOLD THREE BUDGET STUDY SESSIONS AT 5:30 P.M. ON MAY 18 AND 21, 2009, IN THE COUNCIL CHAMBER, AND MAY 26, 2009, IN THE SENIOR ROOM AT THE ARCATA COMMUNITY CENTER.

ADJOURN: The meeting was adjourned at 10:10 p.m.

Respectfully submitted,

Bridget Dory
Deputy City Clerk

***Corrected as of 3-4-2009 to state, "The motion passed on a four-to-one voice vote."