

November 7, 2012, 7:00 p.m.

City Council Chambers, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

Mayor Ives called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

The invocation was offered by Pastor Jim Bush of Market Place Chaplains USA.

Roll call found Council Members Abercrombie, Elliott, Rickman, Mayor Pro Tem Maciel and Mayor Ives present.

Leon Churchill, Jr., City Manager, presented the Employee of the Month award for November 2012, to Margie Goulart of Public Works.

Mayor Ives presented a proclamation to Kathleen Serna-Halliday, Comprehensive Youth Outreach Coordinator, Women's Center – Youth & Family Services, recognizing November as "Homeless Youth Awareness and Runaway Prevention Month".

Mayor Ives and Council Member Abercrombie recognized D.A.R.E. Graduates from Banta, Bohn, Central, Jacobson, McKinley, North and Villalovoz Elementary Schools.

1. CONSENT CALENDAR - Following the removal of items 1-F and 1-G by a member of the audience, it was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Minutes Approval – Regular meeting minutes of July 17, 2012, August 7, 2012, September 4, 2012, and closed session minutes of October 16, 2012, were approved.
 - B. Award a Construction Contract in the Amount of \$149,964 for the MacArthur Drive and Schulte Road Sidewalk Improvement Project – CIP 73132, to Breneman Inc., of Walnut Creek, California, and Authorize the Mayor to Execute the Construction Contract – Resolution 2012-215 awarded the contract.
 - C. Approval of the Subdivision Improvement Agreement for Yosemite Vista Unit 2 Phase 2, Tract 3495, and Authorization for the Mayor to Execute the Agreement – Resolution 2012-216 approved the agreement.
 - D. Acceptance of the Tracy Wastewater Treatment Plant Solids Handling Facilities Improvement Project – CIPs 74072, 74079, and 74087, Completed by GSE Construction Co., Inc., of Livermore, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2012-217 accepted the project.

- E. Acceptance of the Water & Wastewater Improvements (West Twelfth Street, Roosevelt Avenue, Golden Springs Drive, and Grant Line Road/Chrisman Road) Project - CIPs 74088 And 75111, Completed by Knife River Construction of Stockton, California, and Authorization for the City Clerk to File the Notice of Completion – Resolution 2012-218 accepted the project.
- H. Approve a 164-Foot Wide Vehicular, Pedestrian, and Utility Access Easement over the Existing Storm Drainage Channel Fronting an Undeveloped Parcel at 1380 MacArthur Drive (APN 250-260-24) Located at the Northeast Corner of Eleventh Street and Macarthur Drive. Authorize the Mayor to Execute the Grant of Easement, and Further Authorize the City Clerk to File the Easement Document for Recordation With the San Joaquin County Recorder – Resolution 2012-219 approved the easement.
- I. Authorize the Appointment of Two Youth Commissioners to the Youth Advisory Commission – Resolution 2012-220 authorized the appointment.
- J. Repeal Outdated City Council Policies – Resolution 2012-221 repealed the outdated policies.
- K. Approve Task Order No. 5 to the Master Professional Services Agreement No. HA17 With Harris and Associates for Design of the Grant Line Widening Project East of MacArthur Drive to the Eastern City Limit – CIP 73048, and Authorize the City Manager to Execute the Agreement – Resolution 2012-222 approved the task order.
- F. Authorize the City Engineer to Submit Grant Applications to The State of California CalRecycle on Behalf of the City of Tracy for All Eligible Grants for a Time Period of Up to Five (5) Years, Retroactive from the Beginning of Fiscal Year 2012-2013 Through Fiscal Year 2016-2017 – Kul Sharma, City Engineer, presented the staff report. The State of California CalRecycle offers funding opportunities authorized by California legislation to assist public and private entities in the safe use and effective management of the waste stream including recycling of tires.

Several different grant programs are available to divert tires from landfill disposal by promoting markets of recycled-content products including rubberized asphalt. The use of tires in rubberized asphalt concrete (RAC) for roadway construction in conjunction with grant funding is a competitive and cost effective trend for street improvements in municipalities and county jurisdictions. Rubberized asphalt provides more flexible sealing of the pavement structure resulting in an enhanced life span for streets. The City will benefit from such opportunities for upcoming roadway projects, and will apply for grant funds as established under the provisions set forth in the Public Resources Code section 400000 et seq.

In order to expedite the application process, Mr. Sharma requested authorization to submit applications on behalf of the City, retroactive from the beginning of Fiscal Year (FY) 2012-13 through the next five years. The retroactive authorization is essential to qualify for one of the pending applications. Staff has already coordinated with CalRecycle for this grant funding and if approved, it would generate

approximately \$70,000 in funds from the State of California to the City in reimbursement for the use of RAC for FY 2013-14 projects.

Staff recommended that Council authorize the City Engineer of the City of Tracy to submit grant applications to the State of California CalRecycle over the next five years, retroactive to the beginning of FY 2012-13 through FY 2016-17.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-223 authorizing the City Engineer to submit grant applications to the State of California CalRecycle on behalf of the City for all eligible grants for a time period of up to five years, retroactive from the beginning of FY 2012-13 through FY 2016-17. Voice vote found all in favor; passed and so ordered.

- G. Acceptance of Office of Traffic Safety of the State of California Grant for \$14,625 and Appropriation of Funds for the Purpose of Expanding the Distracted Driving High-Visibility Enforcement Demonstration Project – Captain Jeremy Watney presented the staff report. Captain Watney stated the grant program was non-competitive and requires no local matching funds. The goals of this program are to reduce total traffic fatalities and injuries, to reduce fatal collisions and injuries involving drivers using hand-held cell phones, and to decrease observed cell phone/texting use among Sacramento Valley Region drivers.

The grant is funded by California Office of Traffic Safety through the National Highway Traffic Safety Administration (NHTSA). Agencies are required to conduct nine mobilization campaigns from November of 2012 through June of 2013 on overtime basis. Media campaigns promoting the NHTSA's tag line, "Phone in One Hand - Ticket in the Other" will also be visible.

The City will receive \$14,625 from OTS. There is no negative impact to the current fiscal budget. Accepting this grant funding requires that \$14,625 be added to the Police Department's Operating Budget.

Staff recommended that the Council authorize the acceptance of the grant and the appropriation of \$14,625 from the OTS grant to the Police Department's Operating Budget to cover the planned mobilization projects.

Mayor Pro Tem Maciel asked how long the enforcement would last. Lieutenant Watney explained the first enforcement would last eight hours, and would involve three officers and one sergeant.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-224 accepting the Office of Traffic Safety of the State of California Grant for \$14,625, and appropriating funds for the purpose of Expanding the Distracted Driving High-Visibility Enforcement Demonstration Project. Voice vote found all in favor; passed and so ordered.

2. ITEMS FROM THE AUDIENCE – Craig Saalwaechter asked Council to re-examine term limits related to the Mayor's position. Mr. Saalwaechter suggested Council support the third place candidate in the recent election, Mr. Ray Morales, for the position soon to be vacated by Council Member Elliott.

3. CONDUCT A PUBLIC HEARING TO HEAR OBJECTIONS TO AND APPROVE THE FINAL COSTS OF WEED ABATEMENT AND AUTHORIZE A LIEN ON THE LISTED PROPERTIES IN THE COSTS OF ABATEMENT AMOUNT PLUS 25 PERCENT - Division Fire Chief Steve Hanlon, presented the staff report. Pursuant to Tracy Municipal Code Section 4.12.260, the Fire Department has identified property requiring weed abatement. The property owners were given notice to abate and a public hearing was conducted on July 17, 2012. The Tracy Municipal Code provides that upon failure of the owner, or authorized agent, to abate within 20 days from the date of notice, the City will perform the necessary work by private contractor and the cost of such work will be made a personal obligation of the owner, or become a tax lien against the property. The City Council authorized the abatement.

The Fire Department designated five parcels that required abatement by Baylor Services, the City's contractor. The abatement was completed at a cost to the City of \$1,228.75.

Fire Department staff notified the affected property owners of this public hearing where Council will consider the report of costs for abatement and any objections of the property owners liable for the cost of abatement. The cost of abatement assessed to the property owner is the actual cost of the City contractor plus a 25% administrative charge, per Resolution 2003-059.

The Fire Department budgeted \$12,100 for weed abatement services in FY 2012-13. The department has expended \$1,228.75 for the work performed by Baylor Services. Expended funds were within the identified budget for FY 2012-13.

Staff recommended that the Council conduct a public hearing to hear objections to the costs of abatement and authorize, by resolution, approval of the final abatement costs, and authorize a lien on the listed properties for the cost of abatement plus 25 percent.

Council Member Elliott the asked if any of the property owners indicated they would pay before a lien was placed on their property. Division Chief Hanlon indicated the property owner would be notified and given an opportunity to pay the expenses before a lien was placed on their property.

Mayor Ives opened the public hearing. As there was no one wishing to address Council on the item, the public hearing was closed.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-225 approving the final costs of weed abatement. Voice vote found all in favor; passed and so ordered.

4. THAT COUNCIL CONDUCT A PUBLIC HEARING DECLARING THE EXISTENCE OF WEEDS, RUBBISH, REFUSE AND FLAMMABLE MATERIAL ON EACH OF THE PARCELS LISTED IN EXHIBIT "A" TO THIS AGENDA ITEM A NUISANCE; CONSIDER OBJECTIONS TO ABATEMENT OF SAID NUISANCE, AND ADOPT A RESOLUTION AUTHORIZING FIRE DEPARTMENT STAFF TO ORDER CONTRACTOR TO ABATE SAID NUISANCES - Division Chief Steve Hanlon presented the staff report. Pursuant to Tracy Municipal Code, a Public Hearing is required prior to the abatement of any parcels. Sections 4.12.250 through 4.12.340 of the Tracy Municipal Code set forth the

procedure for the City to abate weeds, rubbish, refuse and flammable material on private property.

On October 8, 2012, the Fire Department sent a notice to property owners requiring the owner to abate weeds, rubbish, refuse and flammable material on his/her parcel within 20 days, and informed the property owner(s) that a Public Hearing would be conducted on November 7, 2012, where any protests regarding the notice to abate would be heard. The Tracy Municipal Code provides that upon failure of the owner, or authorized agent, to abate within 20 days from the date of notice, the City will perform the necessary work by private contractor and the cost of such work will be made a personal obligation of the owner, or become a tax lien against the property.

Under the provisions of Tracy Municipal Code, Section 4.12.290, the Fire Department will proceed at Council's direction with instructing the City's contractor to perform weed, rubbish, refuse and flammable material abatement on the parcels. Per the Tracy Municipal Code, property owners are liable for the cost of abatement and will be billed for the actual cost of the City contractor's services, plus a 25 percent administrative charge. All unpaid assessments will be filed with the San Joaquin County Auditor Controller's office to establish a lien on the property.

There is \$12,100 budgeted for Fiscal Year 2012-13, Grounds and Maintenance account 211-52150-252-00000, that is used for contracting the abatement of weeds, rubbish, refuse and flammable material. There are sufficient funds at this time to accomplish abatement services.

Staff recommended that the Council conduct a Public Hearing to consider any and all objections to the proposed abatement, and by resolution, declare the weeds, rubbish, refuse, and flammable material on the parcels listed to be a nuisance, and authorize the Fire Department to direct the City's contractor to abate such nuisance.

Council Member Elliott asked if there had been any responses from the property owners. Chief Hanlon indicated many of the properties had been abated. Those remaining were non-responsive.

Council Member Rickman thanked the Division Chief and Fire Department for keeping up on this important item.

Mayor Ives opened the public hearing. As there was no one wishing to address Council on the item, the public hearing was closed.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-225 declaring the existence of weeds, rubbish, refuse and flammable material on the parcels listed in Exhibit "A", to the staff report a nuisance and authorizing Fire Department staff to order contractor to abate. Voice vote found all in favor; passed and so ordered.

5. APPROVAL OF APPROPRIATION OF \$50,000 FROM THE RESIDENTIAL AREAS SPECIFIC PLAN (RSP) FUND TO BE USED FOR A DEPOSIT TO THE GENERAL SERVICES ADMINISTRATION FOR THE 150-ACRE SCHULTE ROAD PARCEL AND AUTHORIZE THE MAYOR TO EXECUTE ANY NECESSARY DOCUMENTS TO COMPLETE THE DEPOSIT; AND APPROVAL OF APPROPRIATION OF \$40,000

FROM THE RSP FUND FOR CONSULTANT SERVICES - Rod Buchanan, Parks and Community Services Director, presented the staff report. The Schulte Road property is approximately 200-acres in total and is located on the south side of Schulte Road, west of Lammers Road. On September 18, 2012, the City Council considered appropriating \$1,115,250 from the RSP Fund for costs associated with the removal of use restrictions and Federal reversionary rights on 150-acres of the Schulte Road parcel. Council did not approve the appropriation and instead directed staff to request that GSA grant an extension while the City performs due diligence on the viability of a renewable energy project on the site. GSA has agreed to grant the six month extension on the following conditions:

1. The City agrees to pay a \$50,000 deposit by November 14, 2012, which would be applied to the purchase price; and
2. Complete the purchase by April 1, 2013.

If the City cannot complete the purchase by April 1, 2013, and the property voluntarily reverts, the \$50,000 will be refunded.

Consultant services will be necessary to assess the viability and best options for a renewable energy project on the site including evaluation of necessary project development information, development of a Request for Proposals and evaluation of submitted proposals. \$40,000 was requested from the RSP Funds for this purpose.

Staff recommended that Council by resolution approve

- 1) an appropriation of \$50,000 from the RSP Fund to be used as a refundable deposit to the General Services Administration for the 150-acre Schulte Road parcel and authorize the Mayor to execute any necessary documents to complete the deposit; and
- 2) an appropriation of \$40,000 from the RSP Fund for renewable energy consulting services.

Mayor Ives asked if the six month timeline would provide the Council with enough time for clarity. Mr. Buchanan stated yes.

Robert Tanner, 1371 Rusher Street, asked why, if GWF indicated this was not a viable project, was the City pursuing this and why does the City have to buy the land. Mr. Buchanan stated the GWF project was a 50 mega watt project that encompassed more of the property that the City owns. The project the City is pursuing is more viable.

Paul Miles, 1397 Mansfield Street, asked why the City wanted to be in the renewable energy business and would the City make a profit. Leon Churchill, City Manager, added that GWF could not pursue the project due to its scale which would trigger significant costs to the transmission lines in the area. Mr. Churchill stated the City has received interest in a smaller project, and has spent time working on a public/private partnership with GWF with the intention that it would be an alternative project. Mr. Churchill added that it would be disingenuous to change course when the City has made a commitment to the Federal Government that the land would be used for an alternative energy project. Mr. Churchill further stated that the City has an opportunity to procure energy at a lower cost than is currently available from PG&E. There is also an opportunity for land lease revenue that could provide some financial benefit to the City. If it does not meet our cost

benefit threshold we can pursue highest and best use at that time. However, the costs of \$1.1 million to remove the land restrictions will still have to be paid.

Mr. Miles indicated the Council was being asked to approve a project blindly and without a cost benefit analysis. Mr. Churchill stated at this particular point staff was asking to move forward on the process to see which vendors were interested and then the cost benefit analysis would be performed.

Council Member Rickman asked if the City could use the land for something else if the City was not able to find a suitable alternative energy project. Mr. Churchill stated that was correct.

Council Member Elliott asked if the City was in discussions with anyone contemplating buying the land for alternative energy. Mr. Buchanan indicated staff has had discussions with development companies that were interested in buying the property.

It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adopt Resolution 2012-227 approving an appropriation of \$50,000 from Residential Areas Specific Plan Funds for a refundable deposit to the General Services Administration for the 150-acre Schulte Road parcel and authorizing the Mayor to execute any necessary documents to complete the deposit, and approve an appropriation of \$40,000 from the RSP Funds for consultant services. Voice vote found all in favor; passed and so ordered.

6. **DISCUSSION AND DIRECTION RELATED TO LAND USES, SIGNAGE, AND PROPOSED DEVELOPMENT AGREEMENT TERMS FOR THE CORDES RANCH PROJECT** - Bill Dean, Assistant Director Development Services, presented the staff report. On September 6, 2011, the Council directed staff to begin negotiations on a development agreement (DA) for the Cordes Ranch project. At that meeting, Council requested a presentation and an opportunity to discuss the project in more detail. On October 18, 2011, Council discussed the project in more detail after receiving a presentation by staff and the project owners group. On August 7, 2012, Council discussed the proposed land uses and directed staff to return after working with the project owners group to refine land uses along the I-205 corridor, specifically addressing concerns related to the unwanted image that large, distribution and warehouse facilities could present along the freeway. Council directed staff to ensure that future permitting that may occur under the Specific Plan includes Council approvals (similar to existing processes in the City) for areas abutting the freeway.

The owners group has developed a signage concept for the Cordes Ranch project along the freeway that exceeds current City freeway sign standards, and staff requested direction on this potential change.

Additionally, significant work has been completed on development agreement terms since the initial direction to negotiate. Much of this work stems from progress made on completing the citywide technical infrastructure master plans.

Since initial application to the City, staff has continuously emphasized the importance of the I-205 corridor to the owners group. Staff has pursued a high-identity image for Tracy, and special attention has been placed on planning the I-205 frontage. How that frontage is developed will create a powerful and lasting image of Tracy. On August 7, 2012, City

Council re-affirmed that with direction to staff to further refine proposed land uses along the freeway.

Continued discussions with the owners group on proposed land uses and design standards along I-205 have been focused on a high-identity image. Staff believes that design standards can be successful in ensuring high-quality development. However, design standards are also limited. If the zoning permits warehouse and distribution uses, which typically require very large buildings, the design standards result in larger setbacks, increased landscaping, and higher quality materials and design. The outcome is a nice looking warehouse where truck docs are screened behind walls and landscaping and buildings are designed to look less like typical distribution and warehousing facilities. Up until the meeting in August with the Council, the owners group had been firm in approaching the look of I-205 from the perspective of a design exercise as opposed to pursuing land use limitations in the form of more restrictive zoning. The Council's feedback assisted in communicating to the owners that zoning and development standards along I-205 would have to be more restrictive than previously presented.

Currently, the land use mix in the areas fronting I-205 has been addressed by creating an I-205 Overlay District. An overlay district is a common zoning tool that allows additional land use restrictions to be added to a given area but also maintains portions of the underlying zoning (this is common around airports, for example). In the Cordes Ranch project, the overlay would be along I-205, at a width of 500 feet, and would achieve the following:

- 1) The entire frontage of I-205 that has Business Park Industrial zoning would have limitations on land use, making the zoning similar to the General Office zoning on other portions of the Specific Plan, with several exceptions, discussed below; and
- 2) The Design Standards (architectural, landscaping, site planning) would be at a higher level than other areas of the Plan; and
- 3) The review process for individual projects within the overlay area would require Planning Commission review and City Council approval. This review encompasses site planning, architecture and landscaping; actual permitted land uses are established in the zoning, not as part of the individual permit process.

Mr. Dean discussed the permitted land use table indicating redlines were the changes the owners desire to make in response to Council direction. Most changes bring the permitted land uses into alignment with the General Office zoning, yet the owners wish to maintain flexibility to market and develop these sites. The most important revision relates to removing warehouse and distribution land uses from the freeway; these land uses are no longer permitted within the I-205 overlay zone, except as accessory land uses, meaning that the principal function of the business is not distribution or warehousing. Additional flexibility was added to the I-205 overlay area by allowing "business and industrial flex" uses to locate in this zone, subject to a building size maximum of 75,000 square feet. This land use category is wide-ranging to encompass existing and emerging demand where users desire office/display space, assembly space and storage space under one roof, often accompanied by parking for business/ installation and delivery vehicles. Pursuant to Council direction, development approval within the I-205 overlay zone will require Planning Commission review and Council approval to ensure a high quality I-205 frontage. Planning Commission would retain approval over Conditional Use Permits.

The City's freeway sign standards are contained within the Tracy Municipal Code and the I-205 Corridor Specific Plan, which allow a freeway sign to be 15 feet above the crown of the freeway, or 45 feet tall, whichever is lower. Both the Tracy Outlet Center and the West Valley Mall received site-specific approvals as a part of their Preliminary and Final Development Plans for freeway signs that are approximately 70 and 55 feet tall, respectively. The owners requested that the two freeway signs within the project be permitted to be 70 feet in height and that the two project identification signs (not identifying tenants, rather the project) be permitted at 40 feet in height.

Additionally, the owners have requested 19 "project entry signs" ranging in height from 13 to 20 feet to be located at major and minor intersections. These "project entry signs" are intended to identify the project, not individual tenants.

If the Council permits freeway signs at 70 feet in height, the City may be faced with similar requests from other properties that currently do not have signs at that height. Such requests would require amendments to both the Tracy Municipal Code and the I-205 Corridor Specific Plan.

The Council authorized staff to negotiate a DA with the project owners on September 6, 2011. Since then concepts for inclusion in a DA have focused on methods to initiate development of the project in the short term. Since the project has a significant investment requirement in infrastructure, maximizing existing infrastructure and minimizing upfront new infrastructure costs is crucial, and has been the focus of the DA negotiations.

Mr. Dean outlined the proposed terms that, with the Council's direction, would be further refined and drafted into a Draft DA for the purposes of review under the California Environmental Quality Act (CEQA), Planning Commission review and Council review and approval.

Proposed Terms:

- 1) Parties: the DA would only encompass the property controlled by Crossroads Business Center, which is approximately 1,200 acres of the 1,700 acre project
- 2) Term: 20 years, plus possible extensions if necessary to obtain financing
- 3) Vested rights: rights to develop the project under the City laws/regulations at the time of project approval
- 4) Payment at time of first Final Subdivision Map by the owners of \$4 million to the City for funding city-identified amenities such as parks, aquatics, etc. at the discretion of City Council
- 5) Phasing/Fee Reductions: creation of a first Phase (approximately 600 acres) where development would pay reduced development impact fees (which fund citywide roads, wastewater, storm drainage, water improvements, for example), balanced by increased fees for the remaining DA properties
- 6) Development Impact Fees escalation limits: limits to the rate of increase in the City's Development Impact Fees and allows reconciliation of fees
- 7) Owners ability to construct certain required infrastructure subject to fee credits
- 8) Initial wastewater treatment capacity guarantee: City would provide 0.145 million gallons per day (mgd) of existing wastewater treatment capacity
- 9) Use of existing infrastructure/water supply: City to provide use of existing Hansen Sewer line and use of Patterson Pass water line, City to provide water supply

Following Council direction, the Specific Plan and DA will be finalized for public review. The Environmental Impact Report (EIR) will also be completed and published for public review. The Plan and DA would then be brought to the Planning Commission for review prior to Council for final consideration. The timing of such hearings is anticipated to begin in the second quarter of 2013 before progressing to the Local Agency Formation Commission (LAFCo) for final annexation approval.

The City entered into a Cost Recovery Agreement with the Cordes Ranch owners group in March 2011, providing the mechanism for the City to recover all staff and consultant costs associated with the project applications, including the Specific Plan, EIR, and DA.

Staff recommended that the City Council discuss the Cordes Ranch project and provide direction to City staff.

Mayor Pro Tem Maciel asked if Council would have design review for the signs. Mr. Dean stated yes. Mayor Pro Tem Maciel asked for a timetable on ground breaking. Mr. Dean stated the applicant might be better poised to answer that question. Mr. Dean stated this represented an aggressive schedule and that many items would have to be reviewed concurrently.

Council Member Rickman asked staff to elaborate on the business industrial flex concept further. Mr. Dean stated this designation was intended to capture land uses that were hard to put into one category and included multiple functions under one roof. Mr. Dean added it was intended to provide flexibility.

Council Member Rickman asked if that type would be an overlay. Mr. Dean stated it was not intended to be a distribution and warehouse facility and would be less than 75,000 square feet.

Council Member Rickman referred to retail and consumer services asking why they were not permitted in the General Office and BPI area. Mr. Dean stated staff believes it is important in a business type setting to allow for the occasional sandwich shop, and/or dry cleaner to allow for a small mix of retail and consumer services to locate within the business complex.

Council Member Rickman asked why it was taken out. Mr. Dean stated the intent was to keep it as close to office uses as possible in one space.

Council Member Rickman asked staff to clarify C2 truck stops. Mr. Dean stated the plan contemplates several design districts and truck stops would not be permitted in that district. Mr. Dean indicated staff, with Council's direction, were working to retain a high identity corridor.

Council Member Rickman referred to agricultural processing and asked if it would have to go through City Council or Planning Commission. Mr. Dean stated anything that is located within the overlay area would require Planning Commission and City Council approval. Land uses which require a conditional use permit would also require Planning Commission approval.

Council Member Elliott asked for clarification regarding the proposed terms for a DA indicating it only encompasses 1,200 acres owned by Crossroad Development, and asked how the remaining 500 acres were contemplated. Mr. Dean stated the City was planning for the entire site, annexing the entire site, while the DA focuses on the 1,200 acres that are not fronting I-205. Mr. Dean indicated the applicants asked for this item. Mr. Malik added that a different market could exist along the freeway in the future and that as the market happens, it allows for flexibility.

Council Member Abercrombie asked if the City was actually receiving \$4 million or was the amount offset by the reduced impact fees. Mr. Dean stated that by creating a phase within the project the DA provides a nexus where the fees are reduced to create energy in the beginning, and the remaining project will pay regular fees which will balance out the project. Mr. Malik indicated utilizing existing infrastructure was a big value to the developer.

Mayor Ives opened the public hearing.

David Babcock offered a presentation regarding the project.

Council Member Rickman asked if the applicant had a visual of the proposed signs. Mr. Babcock stated yes, and added they were looking for direction on the height.

Mayor Ives noted that a sign in Dublin includes the name of the city and asked if it would be a problem to add the name of the City of Tracy to the sign. Mr. Babcock stated no, and that the name was on an earlier design.

Robert Tanner, 1371 Rusher Street, asked if the property had to be annexed before the City receives the \$4 million. Mr. Dean stated the property has to be annexed before a final map can be approved.

Paul Miles, 1397 Mansfield Street, referred to the applicant having access to water and wastewater and the capital costs associated with that access in return for \$4 million. Mr. Malik indicated the City would allow access to water and wastewater to get the project started. Mr. Malik stated a series of bonds or CFD's would be sought for expansion of the wastewater treatment plan.

Council Member Rickman asked staff to clarify extensions regarding obtaining financing. Mr. Dean stated staff did not want the development term un-ended and may require the City to look at a longer term for the DA.

Council Member Rickman asked why gas and service stations were not considered conditional uses in the overlay zone. Mr. Dean stated Council could certainly have the Planning Commission be the authority to grant that land use.

Council Member Rickman asked how the City would go from making it conditional to allowed. Mr. Dean stated typically there is a highway service zone which includes restaurants and gas stations.

Council Member Rickman stated he wants to make sure everything looks nice and creates a town we are proud of.

Council Member Rickman asked the applicant what he thought of having gas stations conditionally permitted. Mr. Babcock stated they would like it permitted.

Council Member Rickman stated he would rather have gas services go through the Planning Commission to allow public input to make sure it fits.

Mr. Dean stated if the Council elevates a project to a conditional use, it requires Planning Commission review; if it does not, the project receives approval at staff level. Mr. Dean added any project that comes within 500 feet of the freeway in the BPI overlay would require Planning Commission and City Council review as it relates to landscaping, design and architecture.

Council Member Rickman indicated he would like gas stations conditionally permitted to allow public input and review.

Mayor Pro Tem Maciel stated he recognized that the Council has extraordinary oversight on the overlay and was concerned that extra steps would require more time and more money.

Council Member Abercrombie stated he was going to trust the applicant that there won't be 15 gas stations. Council Member Elliott indicated permitted was appropriate.

Mayor Ives stated he believes that staff and the applicant know what Council was looking for and will leave it to staff and the applicant to not bring Council a gas station in the overlay and leave it as permitted.

Mr. Dean asked for clarification regarding crop and tree farming. Council Member Rickman stated it should be conditionally permitted in the overlay.

7. COUNCIL DETERMINATION THAT TERMS OF THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY'S CALIFORNIA BLAST LLC HAVE NOT BEEN MET BY TRACY'S CALIFORNIA BLAST LLC, DIRECTION TO TERMINATE THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH TRACY'S CALIFORNIA BLAST, DISCUSS AND PROVIDE DIRECTION TO STAFF REGARDING POSSIBLE USES OF THE HOLLY SUGAR PROPERTY - Andrew Malik, Development Services Director, presented the staff report. Mr. Malik stated that on March 3, and July 7, 2009, the Council approved two separate ENRA's with Jeff Macey to develop a motorsports park on approximately 300 acres of the City-owned Holly Sugar property north of the Sports Complex. The first ENRA was for 120 days and the second ENRA was for 180 days. The second ENRA was extended twice and expired on December 31, 2010. The purpose of these ENRAs was to allow Mr. Macey to form a development team and legal entity capable of developing the project, and the opportunity to further refine his development proposal. However, during that time frame Mr. Macey formed a new legal entity, Tracy's California Blast, LLC (TCB). In response to this, the Council approved a third ENRA on April 19, 2011, with TCB.

TCB proposed to expand on the original motorsports park concept by approximately 300 additional acres. Development ideas included expanding commercial and other recreational uses on a total of 628 acres, with a continued focus on a motorsports park. The location of the 628 acres under consideration within this ENRA is located in the vicinity of Corral Hollow Road and Holly Drive.

After the formation of TCB, City staff was informed that the president of TCB was no longer Jeff Macey, and that Jim Rogers would be the project proponent. Over the last couple of years, during the time frames of all three ENRAs, City staff has participated in dozens of internal meetings as well as meeting with Jeff Macey and Jim Rogers in an effort to render the project feasible.

The current ENRA with TCB has a term of three years (to April 29, 2014) subject to completion of certain actions or milestones agreed to by the City and TCB. TCB is in default on Sections 4 and 6 of the ENRA relative to submitting complete development applications and providing financial information to verify their ability to fund the entitlement process and to fund construction of the first phase of the 628 acre project, which included the motorsports component on approximately 400-acres of the site.

On February 17, 2012, Jim Rogers, on behalf of TCB submitted a letter requesting that the City grant a six month extension to satisfy the sections of the ENRA that were in default. On March 20, 2012, the Council approved Amendment 1 to the ENRA with TCB to allow an extension of 6 months (to September 20, 2012) to cure the default Sections 4 and 6. Additionally, staff made clarifying amendments to the ENRA to address changes to the authorized representative signatory and noticing parties. More specifically, the original TCB ENRA listed Jeff Macey as president and authorized signatory. As mentioned earlier, Jim Rogers is now listed as the CEO of TCB and the ENRA was amended to reflect these changes. Although the City has granted two extensions of time, TCB remains in default under Sections 4 and 6 of the ENRA.

While Jim Rogers did submit some financial statements to the City's financial consultant for review prior to the September 20, 2012 deadline, Section 6 of the current ENRA with TCB remains in default. All financial documents submitted to the City's consultant reference the new entity Spirit of California and not TCB. Jim Rogers has indicated to staff that he would not pursue the proposed project under the TCB LLC, but rather a newly formed entity called Spirit of California. In order to address this issue, the existing ENRA with TCB would need to be terminated and a new ENRA with Spirit of California would be required.

Notwithstanding the ENRA default relative to which entity submitted statements, the requirement was to verify financial capability to complete the project entitlements and construction of the first phase to include the motorsports track. The City's consultant was able to verify financial expressions of interest for \$1.5 million; however, the financial statements submitted had no apparent legally binding commitments to fund the new entity. Furthermore, while construction estimates for off-site infrastructure and the first phase of development have not been identified, staff does not believe that \$1.5 million is sufficient to entitle the 628 acre project and construct the first phase of development as required under the existing ENRA.

The financial verification also required that each principal of TCB submit personal financial statements and federal tax returns. According to the City's financial consultant, no financial information was submitted relative to the principals of either TCB (or Spirit of California).

Jim Rogers also submitted some preliminary applications for the above referenced actions by the September 20, 2012 deadline. The applications are a good starting point, however, they are not complete applications at this time. Jim Rogers did indicate to staff

that the project has grown in size and scope from the original concept and that he would like to present the expanded project to Council as well as request a new ENRA in the name of Spirit of California.

On September 19, 2012, the City received a letter from Jim Rogers' attorney stating that Jim Rogers and Tracy's California Blast, LLC, will not continue with the ENRA project.

On September 19, 2012, the City received a letter from Jim Rogers' attorney requesting that the Council consider entering into a new ENRA with the Spirit of California (SOC) for a sports and entertainment theme park on the same acreage as the existing ENRA with TCB (the City-owned former Holly Sugar property). It also includes lands currently under an ENRA with Combined Solar Technologies (CST), as well as lands outside of the City's adopted Sphere of Influence.

According to Jim Rogers, the size and scope of the newly proposed project has been expanded from previous concepts focused around just motor sports. The expanded project includes amenities such as Motocross Dirt Track, Drag Strip, Community Center, RV Park, Film Studio, Golf Course, Vintner Center, Hotels, Marina, Casino, Amusement Park, Convention Center, Arena, and various retail and dining establishments.

Given the history of this project over the years and the new and expanded scope of the proposed project, staff has identified several options for Council consideration.

1. Regarding the failure to comply with the ENRA. Regardless of the Council's decision on options (below), staff strongly recommends that the Council find the former applicant in default and terminate the existing ENRA. Given the defaults, the change in the proposed project, the change in the proposed acreage, and the change in the entity proposing the project, there is no basis to continue with the existing ENRA.
2. Regarding the request to enter into a new ENRA, now with Spirit of California, the Council may wish to consider three options:

OPTION 1: Do Not Proceed with new ENRA

Given the magnitude of the new expanded project and the lack of complete financial information related to the SOC and its Principal, James Rogers, Council should not proceed with the new ENRA. Since the land is located in the flood plain, it should remain undeveloped and/or used for expanded recreational facilities (ball fields etc.) in the future.

OPTION 2: Do Not Proceed with ENRA with Spirit of California; send out Request for Proposals (RFP) to develop property

Under this option the SOC would have an opportunity to submit a proposal along with any other developers that might be interested in developing the site. There is no guarantee that the City would receive any other proposals. The location does have development challenges regarding high ground water, being in the flood plain, etc.

There may also be additional staff resources required to pursue this option given other Council priorities. Staff is currently working on a number of Council priorities (Infrastructure Master Plans, Cordes Ranch Specific Plan/DA, Ellis

Specific Plan/DA, Tracy Hills Specific Plan/DA, and major industrial development in the NEI area, etc.) that may be impacted if this project were to fully proceed at this time.

OPTION 3: Direct Staff to Negotiate a New ENRA with Spirit of California

If Council directs staff to negotiate a new ENRA with the SOC, staff would bring back details and potential milestones as part of the new ENRA.

There would be no impact to the General Fund if Council selects Option 1. With regard to Options 2 and 3, a new cost recovery agreement with SOC or a new developer would need to be executed to move forward. All staff and consultant costs would be recovered through this new agreement.

Staff recommended that the City Council:

- (1) direct staff to proceed with terminating the ENRA with Tracy's California Blast LLC; and
- (2) provide direction to staff to pursue Option 2 to see if other developers would be interested in the property. SOC can re-submit a proposal under this option.

Mayor Pro Tem Maciel indicated he recognized there would be staff time to process the project and a cost recovery agreement to recoup those costs but asked if the City could contract out the project. Mr. Malik stated some of the tasks may require contract staff.

Mayor Ives asked if it would require additional staff to negotiate a new ENRA. Mr. Malik stated there were a few things that would have to be worked out in the ENRA and staff would require additional resources.

Council Member Elliott stated that the City has been dealing with this for three years and still certain elements of the agreement were in default. If the City proceeds with a new ENRA, what was staff's assessment that future timelines would be met and the City would not be in the same position three years from now. Mr. Malik indicated he could not make any predictions for the future.

Council Member Elliott indicated he was concerned that staff devotes equal time to projects that have a high priority for economic development and did not want to detract from a project that has a spotty track record.

Mr. James Rogers provided signed petitions from residents in favor of the project and provided an overview of the proposed project.

Mr. Rogers asked Council to direct staff to work with him and the residents of Tracy to enter into a new ENRA and develop a project.

Council Member Abercrombie asked Mr. Rogers if he wanted the City to terminate the Tracy Blast ENRA or negotiate a new one for Spirit of California. Mr. Rogers stated he has two years remaining on the Tracy California Blast ENRA, but qualified as Spirit of California. Mr. Rogers asked Council to direct staff to enter into a new ENRA with Spirit of California and at their next meeting cancel the ENRA with Tracy's California Blast.

Mayor Ives asked if any one of the venues in the project was dependent on another venue for its fiscal viability. Mr. Rogers stated any project could stand on its own, but together the synergy does build on each other and makes the others successful.

Carrier Burnell, 1455 Cornucopia Place, stated that originally she supported the project but she had changed her mind.

Robert Tanner asked what would happen to the ENRA with CST if Spirit of California took some of its land. Mr. Malik stated there is an existing ENRA with CST that would need to be honored for that particular property. Mr. Tanner indicated he was not in favor of having an Indian gambling place so close to Tracy.

Willie Brown stated he has been involved with Jim Rogers and that he has checked out just fine. Mr. Brown indicated he sees potential in this project.

Scott Ballard stated he was in support of the project because of the new jobs it would bring to Tracy, along with things for residents to do.

Ms. Rodriguez spoke in support of the project.

Jean Tibone stated this project was bigger than Tracy and spoke of the potential benefits including entertainment, jobs, and economic development.

Dale Cose, 17 E. Sixth Street, asked Council to direct staff to work with the developer.

Dorinda Henderson indicated she would be happy to write a grant to get this project underway and recommended that Council support it.

Craig Saalwaechter, 4083 Peyton Lane, stated it appeared to be a great project but added he was concerned about potential litigation.

Council Member Abercrombie asked the attorney to speak on the process regarding the existing ENRA and a potential new ENRA. Dan Sodergren, City Attorney, indicated the current agreement is in default and staff is recommending it be terminated which is an administrative measure. Mr. Sodergren stated it is possible to do that as long as the first ENRA is terminated before a new one is entered into.

Council Member Abercrombie asked if counsel was recommending terminating the agreement tonight and if Council desires, direct staff to enter into a new ENRA.

Mr. Sodergren stated processing a new ENRA could take some time to negotiate and would come back during a public session which could take a couple months.

Mayor Ives thanked everyone for coming and providing their input and sentiments.

Council Member Elliott asked Mr. Sodergren for the advantages to leaving the existing ENRA in place and then terminating the previous ENRA later. Mr. Sodergren stated staff and counsel recommend terminating the existing ENRA with Tracy's California Blast to avoid any confusion and document where the City stands on that agreement.

Mayor Pro Tem Maciel stated he has a healthy skepticism about how the applicants can make this happen and pay for it. Mayor Pro Tem Maciel indicated the City has asked for proof of financial ability and a clearer indication from the applicant that this would be viable.

Council Member Rickman stated he was in support of negotiating a new ENRA.

Mayor Ives stated the project was bigger than anything the City has seen. Mayor Ives indicated he was glad to see that Mr. Rogers was willing to provide the required financial information so he can show the City that he can do the project and we can move forward with the necessary steps.

Mayor Ives stated it appeared Council was in favor of moving forward with a new ENRA.

Mr. Rogers indicated he would like the City to send him a default letter and then enter into a new ENRA.

Mr. Sodergren stated Mr. Rogers has been sent several default letters and that the applicant has requested a six-month extension of that 60-day default. Mr. Sodergren stated Council can legally terminate the ENRA at this meeting.

Mr. Malik stated that if Council directed staff to negotiate a new ENRA, it could take up to four months. Mr. Sodergren added that the first step would be to negotiate a deposit and cost recovery agreement which must be in place before the City negotiates a new ENRA

Council Member Abercrombie recommended cancelling the existing ENRA and directing staff to negotiate a new ENRA.

Council Member Elliott asked what the impact would be if the existing ENRA was terminated and staff directed to begin a new one. Mr. Rogers stated it would completely stop him. Mr. Rogers suggested it could be done in two weeks

It was moved by Council Member Abercrombie and seconded by Council Member Rickman to direct staff to continue working under the existing California Blast ENRA, begin negotiations on a new ENRA with Spirit of California, and complete a cost recovery agreement.

Mr. Elliott indicated he could support the motion if the cost recovery was in place to not detract staff from other priorities.

Mr. Sodergren stated there will be provisions for deposits to cover the estimated amount of cost time in the cost recovery agreement

Voice vote found all in favor; passed and so ordered.

8. ITEMS FROM THE AUDIENCE – None.
9. COUNCIL ITEMS - Council Member Rickman complemented the Grand Theatre staff for the excellent Halloween displays at the Grand Theatre.

Council Member Abercrombie stated Brighter Christmas would hold its first meeting on Thursday, November 8, at 6:30 p.m., at the Transit Station.

10. ADJOURNMENT - It was moved by Council Member Abercrombie and seconded by Council Member Elliott to adjourn. Voice vote found all in favor; passed and so ordered. Time: 9:56 p.m.

The above agenda was posted at the Tracy City Hall on October 31, 2012. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

ATTEST:

City Clerk