

January 22, 2013, 6:00 p.m.

City Council Chambers, 333 Civic Center Plaza

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

1. Mayor Ives called the meeting to order at 6:00 p.m., and led the Pledge of Allegiance.
2. Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel and Mayor Ives present.
3. ITEMS FROM THE AUDIENCE – None.
4. CONSENT CALENDAR - Following the removal of item 4-B by a member of the audience, it was moved by Mayor Pro Tem Maciel and seconded by Council Member Young to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - A. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT AND SCOPE OF WORK WITH RBF CONSULTING (RBF) TO AUGMENT STAFF RESOURCES RELATED TO THE ENVIRONMENTAL DOCUMENTATION FOR THE CORDES RANCH PROJECT – Resolution 2013-009 approved the agreement.
 - B. APPROVAL OF THE REVISED WATER SUPPLY ASSESSMENT FOR THE ELLIS SPECIFIC PLAN - Steve Bayley, Deputy Director Public Works, provided the staff report. Mr. Bayley stated that in 2008, a Water Supply Assessment (WSA) was prepared for the Surland Development Agreement and the Ellis Specific Plan. The WSA was approved by Council at the April 1, 2008 meeting. Subsequent revisions to the land use plans for the development and clarifications to the original Ellis WSA warrant revisions to the original Ellis WSA.

The WSA was prepared in accordance with the California Water Code, including SB 610. The purpose of the WSA is to demonstrate the sufficiency of the City's water supplies to satisfy the water demands of the proposed project, while still meeting the current and projected water demands of the community. The WSA was prepared by West Yost Associates for the City.

The proposed Ellis Specific Plan is located adjacent to the southwestern portion of the City, and is not currently located within the City limits. The Ellis Specific Plan is also located on agricultural land previously served by the Plain View Water District, which has merged into the Byron Bethany Irrigation District. The Ellis Specific Plan includes a mix of residential, commercial, office/professional, institutional, and recreational uses covering approximately 321 acres. The Ellis Specific Plan includes a maximum of 2,250 residential units, 180,000 square feet of commercial space, a 12 acre middle school, and approximately 21 acres of neighborhood parks. A 16 acre swim center is included as part of the WSA. The swim center may be located in the Ellis Specific Plan area or at another location within the City.

The projected water demand has been calculated based on proposed land uses within the Ellis Specific Plan using standard unit water use factors. The WSA provides analysis of the estimated demands for build out of the Ellis Specific Plan. The determination of sufficiency is based on the City's currently available supplies as well as planned future supplies. The potable water demand for the Ellis Specific Plan

has been conservatively estimated to be 1,076 acre-feet per year and the recycled water demand has been estimated to be 116 acre-feet per year.

There is no fiscal impact associated with the acceptance of the WSA. The costs of preparing the WSA were borne by the developer.

Staff recommended that Council approve the Revised Water Supply Assessment for the Ellis Specific Plan.

Celeste Garamendi, 139 W. Twelfth Street, addressed the Council.

Mayor Ives called for a recess at 6:06 p.m. to allow staff to address technical difficulties with the sound system, reconvening at 6:25 p.m.

Ms. Garamendi continued, stating the court judgment of October 2011, identified one of the deficiencies was related to Water Supply Assessment documentation. Ms. Garamendi indicated she believed the deficiencies still exist. Ms. Garamendi stated the Water Supply Assessment needed to be re-done without eliminating certain projects from the analysis.

Mr. Bayley stated the Water Supply Assessment was based on the 2008 adopted General Plan and Urban Water Management Plan. Mr. Bayley added that court findings were addressed throughout the document and that staff believed all deficiencies addressed in the court document, including demand reductions, had been addressed, and met legal standards.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2013-010 approving the Revised Water Supply Assessment for the Ellis Specific Plan. Voice vote found all in favor; passed and so ordered.

5. PUBLIC HEARING TO CONSIDER CERTIFICATION OF THE FINAL REVISED ENVIRONMENTAL IMPACT REPORT FOR THE SURLAND COMMUNITIES LLC ELLIS PROJECT APPLICATIONS, AND TO CONSIDER APPROVAL OF THE SURLAND COMMUNITIES LLC APPLICATIONS FOR GENERAL PLAN AMENDMENT, MODIFIED ELLIS SPECIFIC PLAN, ANNEXATION OF THE ELLIS SITE TO THE CITY OF TRACY AND INTRODUCTION OF AN ORDINANCE APPROVING AN AMENDED AND RESTATED DEVELOPMENT AGREEMENT WITH SURLAND COMMUNITIES LLC. THE ELLIS SPECIFIC PLAN SITE IS APPROXIMATELY 321-ACRES LOCATED AT THE NORTHWEST CORNER OF CORRAL HOLLOW ROAD AND LINNE ROAD. APPLICATIONS GPA11-0005, SPA11-0002, A/P11-0002, AND DA11-0002 - APPLICANT IS THE SURLAND COMMUNITIES LLC - Bill Dean, Assistant Development Services Director, introduced Laura Worthington-Forbes, RBF Consulting, and asked that Dan Sodergren, City Attorney, provide preliminary comments. Mr. Sodergren indicated it was appropriate for Council Member Manne to take action on the item. Mr. Sodergren introduced Rick Jarvis, Special Counsel for the City.

Mr. Jarvis addressed the legal issue regarding whether it was appropriate for the Council to approve the entitlements while the City was proceeding with an appeal. Mr. Jarvis stated there were good reasons to continue with the appeal even if the City approved the proposed project. Mr. Jarvis added that if no litigation was filed challenging approval of the application and it becomes final, it would be prudent to abandon the appeal at that time. Mr. Jarvis stated if litigation was filed with approval of this project, continuing with the appeal could have a good impact on subsequent actions.

Brief Project History - Mr. Dean stated the Ellis project has undergone significant community, Planning Commission and Council review during the course of the past seven years. The review and involvement by the Planning Commission and Council spanned the “original” applications for Ellis project development, which concluded at hearings in December 2008, as well as the current applications which were the subject of a Planning Commission hearing on December 19, 2012.

1. Surland Communities, LLC (Surland) and City staff received Council direction to pursue a Development Agreement (DA) in 2006 for the purposes of securing various development rights for Surland and funding and land for a swim center for the City.
2. In addition to the DA, Surland made applications for a General Plan Amendment, Ellis Specific Plan, and annexation, constituting the “original” applications.
3. After a lengthy entitlement process which included completion of an Environmental Impact Report (EIR), the Planning Commission evaluated and made recommendations to Council relative to Surland’s applications, and the Council approved the applications in December 2008.
4. In 2009, the Tracy Alliance for a Quality Community (TRAQC) filed a lawsuit challenging the City’s approvals.
5. In 2011, a trial court set aside the project approvals and the City and Surland appealed that decision. The appeal is ongoing.
6. In 2011, Surland filed applications for a modified Ellis Specific Plan, General Plan Amendment, Annexation and DA and the City began processing the applications including preparing a Revised EIR.
7. During 2012, Council provided direction on potential DA terms, and Planning Commission conducted several hearings on the scope and content of a Revised EIR for the project, where the Ellis project applications were also discussed.
8. On December 19, 2012, the Planning Commission conducted a public hearing to consider the applications and recommended certification of the EIR and approval of the applications.

Revised Environmental Impact Report - On August 22, 2012, the Planning Commission conducted its second hearing related to the Revised EIR. A Draft Revised EIR was prepared and circulated for a 45-day public review period, pursuant to the California Environmental Quality Act (CEQA). The review period lasted from July 31, 2012, through September 13, 2012.

The Draft Revised EIR was published along with a summary of the proposed DA terms, a draft of the proposed General Plan Amendment, a Draft of the Modified Ellis Specific Plan, as well as the Technical Appendices to the Draft EIR. A Final Revised EIR was published on November 21, 2012, and includes the Draft Revised EIR, comment letters, responses to those comments, and errata.

General Plan Amendment - Mr. Dean added that the effect of the proposed amendment was to correct acreages listed in the land use tables of the Land Use Element, and to modify the text of the TR-Ellis land use designation. Several other text changes were requested including a minor change affecting the wording of a growth-related policy, exchanging the word “applications” for “approvals”, and exchanging the word “considered” to “issued”. One text change reflects the fact that the Tracy Transit Station is now completed. Another change relates to allowing smaller sized Village Centers at the project, and the last requested change relates to encouraging high density development near rail lines.

Modified Ellis Specific Plan - The Modified Ellis Specific Plan was called the Modified Ellis Specific Plan as a means to distinguish it from the Ellis Specific Plan approved in 2008, which is the subject of the aforementioned lawsuit. The Modified Ellis Specific Plan has minor revisions to four pages since it was published with the Draft Revised EIR. The changes are as follows:

- First two cover pages have a reference date of December 2012
- Page 17 clarifies that the 2009 ALUP applies to development at Ellis (since the document has print on both sides of a page, page 18 is also shown, but has no changes)
- Glossary has been updated to make correct reference to 2009 ALUP.

The Modified Ellis Specific Plan represents a comprehensive planning document for the project site. The document sets forth a vision, zoning-level diagrams, and regulations for the development of the entire site. Should it be approved, it will become the zoning for the Ellis site. A key component of the Specific Plan is a Pattern Book, or comprehensive design guidelines for building placement, architecture and landscaping through the site.

The Modified Ellis Specific Plan is consistent with the General Plan and furthers the Community Character Element Goals, Objectives and Policies related to high quality neighborhood design and architecture, including CC-2 (General Plan pages 3-17 through 3-19), CC-5 (General Plan pages 3-22 through 3-24), and CC-6 (General Plan pages 3-24 through 3-28).

Mr. Dean outlined the public benefits that the City would receive via the DA which include:

- \$10 million for a swim center (payable to City after LAFCo annexation and completion of any litigation in favor of applicant in two payments. First payment would be due no later than 60 days after annexation and the second payment no later than three years following the first payment)
- 16-acres of land for a swim center at the Ellis site, if selected by Council. Council would have one year to choose the Ellis site for a swim center in order to benefit from the offer of 16-acres of land
- Design assistance for the construction of a swim center.

Developer benefits include:

- Vesting project approvals for the Ellis Specific Plan
- 2,250 RGAs for use at Ellis Specific Plan at a maximum rate of 225 per year and in accordance with the City's current Growth management Ordinance recently adopted Growth Management Ordinance Guidelines
- Water supply for 2,250 residential units
- DA term of 25 years
- Naming rights to the swim center
- No wastewater treatment cost for first 800 residential units of capacity
- Wastewater conveyance in Corral Hollow line for 330 residential units, with potential to secure additional 220 residential units worth of capacity.
- No cost for 550 units of Corral Hollow wastewater conveyance

Other terms:

- If City elects to pursue a publicly operated swim center, City to contribute all 'Plan C' Aquatic Center funds (approximately \$3 million in CIP 7854) toward the construction of the swim center.

At the public hearing conducted by the Planning Commission on December 19, 2012, several people entered testimony into the record. The main concerns expressed related to the pipeline, airport land use compatibility, the wide density ranges allowed by the proposed zoning, traffic congestion on Corral Hollow Road as well as the timing and implementation of the Corral Hollow Road widening and associated improvements. Concern was also expressed about the public noticing for the project EIR.

The main comments in favor of the project relate to the length of time that has been invested in pursuing project approvals and need for a family swim center in the community.

The Planning Commission voted unanimously in favor of EIR certification and project approvals.

There is no impact to the General Fund. All costs associated with the Surland applications are covered by Surland pursuant to the Cost Recovery Agreement dated February 12, 2012.

Staff and the Planning Commission recommended that the Council take the following actions:

- 1) Certify the Final Revised EIR, adopt findings of fact, a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program for the Surland Communities LLC applications;
- 2) Approve the General Plan Amendment, (Application GPA11-0005);
- 3) Approve the Modified Ellis Specific Plan (Application SPA11-0002);
- 4) Approve annexation of the Ellis site to the City of Tracy, by means of annexation petition application to LAFCo (Application - A/P11-0002);
- 5) Introduce an ordinance approving a Development Agreement with Surland Communities LLC (Application DA11- 0002)

Andrew Malik, Development Services Director, provided an overview of the DA.

Laura Worthington-Forbes, RBF Consulting, provided a background on the final review of the EIR, including comments made and response to those comments.

Bill Dean addressed issues raised at the Planning Commission meeting including impacts to the airport, density, public notice requirements, pipeline safety and traffic mitigation.

Mr. Dean indicated a revised resolution was provided to the Council which was posted on the City's website on January 18, 2013. Mr. Dean stated the revision was necessary due to a typographical error on page two; the correction should read 180,000 square feet.

Mayor Ives opened the Public Hearing.

Les Serpa, 1024 Central Avenue, submitted a letter and resumes of the speakers at the meeting, and provided an outline of the proposed project.

Mike Rosenfeld, Kiefner & Associates, a pipeline expert, indicated the plan meets all the requirements of pipeline safety, that he had reviewed all the documents and it was his professional opinion that the pipelines do not pose a risk to the residents.

Dave Bennett, Bennett Aviation & Consulting Group, stated he retired from the FAA in 2008, and outlined his previous job experiences. Mr. Bennett indicated he had reviewed the plans for the Ellis project and has determined that it complies with FAA standards. Mr. Bennett added that based on his experience, if the project was approved, the City would be at no risk for airport grants, or other issues with the FAA.

Barbara Lichman, who specializes in airport development law, stated she advised Surland on issues related to airport land uses and compatibility as well as uses around airport. Ms. Lichman stated she advised Surland on the State Aeronautics Act, the CalTrans Aeronautic Handbook, and the 2009 Airport Land Use Compatibility and assured Council that the proposed project complies with each of these mandates.

Barry Long provided an overview of the Ellis Specific Plan and Pattern Book.

Les Serpa provided a presentation regarding the proposed swim center.

Mayor Ives invited members of the audience to address Council on the item.

Three local swimmers addressed Council in support of the aquatics center.

Michelle Loomis, 1221 Claremont Court, read an article from the Tracy Press dated July 21, 2005. Ms. Loomis stated that Ellis Aquatics was awarded a USA swim meet for 2013, which will bring in over 350 families to the city. Ms. Loomis asked Council to move forward on the proposal.

Several local swimmers, parents, coaches, and scholarship recipients addressed Council in support of the proposed aquatic center.

Steve Nicolau, 1068 Atherton Drive, addressed Council regarding a provision in the Amended DA providing for free wastewater treatment capacity for 800 residential units which represents a savings of \$5.5 million for the developer. Mr. Nicolau referred to Article 5, Section 5.24 of the Tracy Municipal Code (TMC) regarding collection and treatment of wastewater. Mr. Nicolau suggested that Council may not have the right to approve the DA based on the sections referenced in the TMC.

Dave Helm addressed Council regarding Fire Department response times. Mr. Helm also asked how the City would pay for the pool.

Celeste Garamendi, 139 W. Twelfth Street, addressed Council regarding density variations, excess RGAs, response to comments regarding the airport, park requirements, placement of the swim center, pipeline setbacks and potential airport noise and traffic issues. Ms. Garamendi asked that Council not approve the DA and requested the items she outlined be addressed.

Austin Lowe, 2690 Atherton Court, a water polo player and swimmer, addressed Council regarding the lack of swim facilities. Mr. Lowe suggested solutions, rather than problems, be presented to Council.

Sue Rainey, Hamlet Court, thanked Council and previous Councils for their efforts in moving the project forward.

George Riddle, 1850 Harvest Landing Lane, provided a historical background on the Tracy Airport. Mr. Riddle provided Council with handouts and an explanation of those handouts. Mr. Riddle recommended changes to the DA regarding the location of the swim center.

Robert Tanner, 1371 Rusher Street, stated if the City can get money for the pool and support it, then it should be done.

Mark Connolly, 121 E. Eleventh Street, on behalf of TRAQC, stated the project was worse than originally proposed and places the City in an inferior position for the next 25 years. Mr. Connolly identified what he believed were legal defects in the EIR which were outlined in his letter and attachments provided to the Council. Mr. Connolly stated he did not believe it was in the best interests of the City for Council to approve the application.

Bob Sarvey, 501 W. Grant Line Road, provided Council with a handout, discussed the DA regarding infrastructure, pipeline safety, alternative analysis for significant impacts and read into the record a letter from Mabel Moitoso and a letter from the Alvarez family.

Mayor Ives called for a recess at 9:05 p.m. reconvening at 9:17 p.m.

Michel Bazinet, 1005 Mabel Josephine Drive, stated those who were opposed to the project were opposed to any growth in Tracy and any project that adds housing will be challenged. Mr. Bazinet indicated Council needed to confirm that Ellis is the best place to locate a swim center and urged approval of the project.

Marsha McCray, 560 W. Schulte, addressed Council in support of the proposed project.

Dave Anderson, 1940 Earl Way, addressed Council with concerns surrounding the airport that were not included in the EIR. Mr. Anderson discussed the location of the proposed swim center, conformance to 2009 ALUP, safety and noise, and the possibility of purchasing land for use as open space protecting encroachment on the airport.

Molly Lowe, 2690 Atherton Court, addressed Council indicating the proposed project has undergone more scrutiny than any other project in the city. Ms. Lowe stated that staff has done their homework and has addressed every concern.

As there was no one further wishing to address Council on the subject, the public hearing was closed.

Laura Worthington Forbes discussed concerns raised by the audience pertaining to the EIR including: fire response times, payment of public facility impact fees, airport noise, and site alternatives. Mr. Dean added that housing density ranges were common in the city.

Mr. Malik indicated the DA deals with existing infrastructure and that nothing will be passed on to rate payers. Dan Sodergren, City Attorney, stated the development fee provisions are intended to ensure that new infrastructure is funded fairly. Mr. Sodergren added any new capacity would be funded by a Finance and Implementation Plan.

Mr. Dean asked Frederick Venter, RBF Consulting, to address traffic volume and impacts. Mr. Venter indicated they used the Travel Demand Model to assign trips to the network via impacts on Lammers and Corral Hollow Roads. Mr. Venter stated the project does not add sufficient trips onto Corral Hollow Road and that they will pay their fair share toward the cumulative traffic impact fee program for the widening of Corral Hollow Road. Mr. Venter added that the intersection of Corral Hollow Road and Valpico Road already operates at Level of Service (LOS) E in the afternoon. The additional traffic realized with this project causes the LOS to go to F, which will require improvements at the intersection.

Mayor Pro Tem Maciel asked how Tracy Rural derives their funding. Mr. Malik indicated from a \$.03 per square foot building fee and a \$.11 property tax. Mayor Pro Tem Maciel asked if there would be a significant increase in funding as the project developed. Mr. Malik stated yes.

Mayor Pro Tem Maciel asked what the time line was for build out of the Ellis project. Mr. Dean indicated it was dictated by the building industry but could be between 10 and 20 years.

Council Member Rickman asked when the next inspection was scheduled for the pipeline. Mr. Rosenfeld stated PG&E performed inspections in 2005 and 2006 and are required to repeat those assessments within seven years which means in 2012 and 2013. Mr. Rosenfeld added that there was a six month leeway to allow for scheduling.

Council Member Rickman asked Mr. Rosenfeld to compare the San Mateo incident to the situation in Tracy. Mr. Rosenfeld stated San Mateo had very old standards, pipelines, construction techniques, and that in-line testing was not available. Mr. Rosenfeld indicated the origin of the pipe in Tracy is known, correct testing has taken place, and in-line testing is possible.

Council Member Rickman asked what would be the appropriate setbacks. Mr. Rosenfeld indicated there were no minimum setbacks established or required in Federal or State pipeline regulations.

Council Member Rickman asked Mr. Rosenfeld if he believed the pipeline was safe. Mr. Rosenfeld stated yes.

Mayor Pro Tem Maciel asked if PG&E would be forced to replace any lines. Mr. Rosenfeld stated he believed line 401 would need replacement once Ellis becomes populated.

Council Member Young asked if the pipeline started and ended in the Ellis project area. Mr. Rosenfeld stated no; the pipeline was all around Tracy and surrounding cities.

Council Member Young asked if there were special designs that needed to be adhered to. Mr. Rosenfeld stated nothing is allowed to be built directly above a pipeline.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2013-011 certifying the modified Ellis Project Final Revised Environmental Impact Report, adopting Findings of Fact, a Statement of Overriding Considerations and a Mitigation Monitoring Program for the Surland Communities LLC Applications (Applications GPA11-0005; A/P 11-0002; SPA11-0002; DA11-0002). Voice vote found all in favor; passed and so ordered.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adopt Resolution 2013-012 approving a General Plan Amendment, the modified Ellis Specific Plan, and Annexation of the Ellis Site, Applications GPA11-0005; A/P11-0002; SPA11-0002. Voice vote found all in favor; passed and so ordered.

The Clerk read the title of proposed Ordinance 1182.

It was moved by Council Member Rickman and seconded by Mayor Pro Tem Maciel to waive reading of the text. Voice vote found all in favor; passed and so ordered.

It was moved by Council Member Rickman and seconded by Mayor Pro Tem Maciel to introduce Ordinance 1182. Voice vote found all in favor; passed and so ordered.

Mayor Ives indicated it might be appropriate to address and determine a location for the swim center.

7. Adjournment - It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to adjourn. Voice vote found all in favor; passed and so ordered. Time: 10:24 p.m.

The above agenda was posted at the Tracy City Hall on January 17, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor Pro Tem

City Clerk