

October 15, 2013, 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 provided by Pastor Tim Heinrich, Crossroads Baptist Church.

Roll call found Council Members Manne, Rickman, Young, Mayor Pro Tem Maciel, and Mayor Ives present.

Mayor Ives presented Certificates of Appointment to new adult Youth Advisory Commissioners Lori Souza and Laura Hall-Tsirelas, and reappointed Commissioner Wes Huffman.

1. CONSENT CALENDAR - Following the removal of item 1-B by Council Member Rickman, it was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adopt the Consent Calendar. Roll call vote found all in favor; passed and so ordered.
 - A. Approval of Minutes – Regular meeting minutes of August 20, 2013, were approved.
 - C. Acceptance of Yosemite Vista Unit 2, Phase 2, Tract 3495, for Bright Development – Resolution 2013-161 accepted the project.
 - D. Authorize Amendment of the City's Classification and Compensation Plans and Position Control Roster by Approving the Establishment of a Class Specification and Pay Range for a Part-Time, Limited Service Police Range Master in the Police Department – Resolution 2013-162 authorized amendment of the plan.
 - B. Approve a Minor Amendment to the Aspire (formerly Tracy Sierra Development) Apartment Project Planned Unit Development Final Development Plan and Off-Street Parking Space Reduction – The Project is Located on Approximately 10.8 Acres on the North Side of Pavilion Parkway, Northeast of the Intersection of Pavilion Parkway and Power Road – Application Number PUD13-0005 – Applicant is Tracy 300 L.P. – Council Member Rickman indicated he pulled the item because he opposed the project when it was originally presented to Council, and would still oppose the item. It was moved by Mayor Pro Tem Maciel and seconded by Council Member Young to adopt Resolution 2013-163 approving the minor amendment. Voice vote found Council Members Manne, Young, Mayor Pro Tem Maciel and Mayor Ives in favor Council Member Rickman opposed.
2. ITEMS FROM THE AUDIENCE – Tim Heinrich, on behalf of Circle B. Ranch neighbors, addressed Council regarding traffic and safety concerns while entering and exiting the subdivision. Mr. Heinrich asked that the vegetation be trimmed to increase visibility at the two access intersections of the subdivision and that Council consider improvements including lighted crosswalks and traffic signals.

Steve Nicolaou provided Council with a handout from the Secretary of State showing the California Franchise Tax Board suspended Turlock Air Center's powers, rights and privileges on March 1, 2013. Mr. Nicolaou stated based on that suspension, Turlock Air Center is not authorized to do business in the State of California.

Steve Stuhmer, Turlock Air Center, stated he had spoken with the State Board of Equalization and they show him in good standing.

Paul Miles addressed Council regarding allegations of an illegal agreement with Surland Companies and referenced documents he provided at the October 1, 2013, Council meeting. Mr. Miles stated that denial by staff of an agreement between the City of Tracy and Surland was unacceptable.

Dave Helm provided Council with a document that included a newspaper article, copies of Statements of Economic Interest filed by Mayor Ives, and a copy of a complaint filed with the Fair Political Practices Commission concerning Mayor Ives. Mr. Helm stated he objected to Mayor Pro Tem Maciel's characterization of individuals provided at the October 1, 2013, Council meeting. Mr. Helm provided a history of various Council actions including funds paid to rename a street near the auto dealers, Surland Communities given free wastewater facility usage, Growth Management Ordinance and Residential Growth Allotment process being changed, and fuel sales rates changing.

3. PUBLIC HEARING TO RECEIVE PUBLIC TESTIMONY FOR ANNUAL UNMET TRANSIT NEEDS, CITY OF TRACY, FISCAL YEAR 2013-14 – Ed Lovell, Management Analyst, provided the staff report. Under provisions of the State of California Transportation Development Act (TDA), local public hearings must be held annually to review any unmet transit needs prior to the allocation of TDA funds.

The City of Tracy requested TDA funds for Fiscal Year 2012-13 for the following purposes:

1. Public Transportation Operating Costs	\$ 687,450
2. Public Transportation Capital Costs	\$ 410,227
3. Roads and Streets Projects	\$2,175,484
4. Pedestrian and Bicycle Projects	\$ 52,316
5. TDA Administration	<u>\$ 76,100</u>

TOTAL 2012-13 CLAIM: \$3,401,577

The TRACER Public Transit System provides Fixed Route and Paratransit Bus services Monday through Friday from 7:00 a.m. until 7:00 p.m., and Saturdays from 9:00 a.m. to 5:00 p.m. The Paratransit Subsidized Taxi service operates during the days and hours that the Paratransit Bus service is not in operation.

No decision as to the sufficiency of local transit services is requested from the Council. The minutes of the public hearing on October 15, 2013, shall be forwarded to the San Joaquin County Council of Governments (SJCOG) which has the responsibility of determining whether transit needs remain unmet and would be reasonable to meet by the applicable jurisdiction. Staff members from SJCOG will attend the Tracy public hearings to witness the community responses and to answer specific questions concerning the TDA process. The Notice of Public Hearing relative to the Unmet Transit Needs Hearings was published in the TriValley Herald newspaper, as well as a circular

that was delivered to over 40 social services/activity agencies within the Tracy community.

Staff recommended that Council open the public hearing to record any unmet transit needs.

Mayor Ives opened the public hearing.

Cindy Gustafason, Tracy Senior Advocacy Association, stated they have identified an unmet Transit need for seniors at the Moorehead Mobile Home Park on Chrisman Road, indicating residents are no longer served by the County or City bus system.

Wanita Thibault, a Tracy resident, addressed Council regarding City staff warning her not to call City offices, concerns about bus stops and disabled access by the DMV, Winco grocery store, and the Boys and Girls Club. Ms. Thiabault expressed concerns regarding buses not having a diamond E license plate, drivers going too fast and slamming on the brakes, mistreatment of ADA passengers, and the inconsistent application of rules for riders.

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

Mayor Ives asked if the operational items would be dealt with internally. Mr. Lovell stated yes.

Council Member Young asked if once all concerns are documented, is there any follow up that Council receives regarding improvements or changes. Mr. Lovell stated staff can provide feedback to Council regarding the operational items. Mr. Lovell added that the unmet needs are forwarded to SJCOG who then determines whether the needs are reasonable to meet or not and provides a final report.

Council Member Young asked how long before Council would receive an update on the operational items. Mr. Lovell stated staff can bring an update back to Council as part of the annual transit report.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to accept the report for Annual Unmet Transit Needs for FY 2013-14. Voice vote found all in favor; passed and so ordered.

Mayor Ives asked Mr. Lovell to provide Council with a list of the operational needs when the annual transit report is given.

4. PUBLIC HEARING TO APPROVE AN AMENDMENT TO THE SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN (SJMSCP) DEVELOPMENT FEE, RESULTING IN AN INCREASE IN FEES FOR 2014 – Victoria Lombardo, Senior Planner, provided the staff report. In 2001, City Council approved a resolution to establish the authority to collect a development fee for the SJMSCP. That fee was established in 2001, and subsequently updated in 2005, 2007, 2008, 2009, 2010, 2011, 2012 and 2013.

The formula for updating the fee was categorized into three distinct components to better calculate an accurate fee per acre [FEE = Category A (acquisition) + Category B (assessment & enhancement) + Category C (management & admin)]. The final

mitigation fees reflect true costs in each category and other real costs associated to fulfill the goals of the plan.

Category A (acquisition) – Comparables - This category is directly related to land valuation based on comparables, which occur in specific zones of the plan. The category is evaluated annually by taking all qualified comparables in each zone, including San Joaquin Council of Governments, Inc. (SJCOG) easements, to set a weighted cost per acre using the same methodology as in the Financial Analysis Update in 2006 as amended in mid-2012 by the Habitat Technical Advisory Financial Sub-Committee and SJCOG, Inc. The SJCOG, Inc. easements are evaluated using the appraised value of the property in the before condition included with the fee title sales of other property occurring in San Joaquin County. The final weighted cost per acre of each zone is calculated into a blended rate under Category A (acquisition) figure for each habitat type.

The criteria to determine valid comparables used in the weighted calculation are:

1. All SJCOG transactions (fee title and appraised value of unencumbered property)
2. Sales not less than 40 acres
3. Sales not greater than 500 acres
4. No parcels with vineyard or orchard (except SJCOG transactions for special needs)
5. Must be land which would fulfill mitigation under the plan
6. Comparable sales reviewed by the Habitat Technical Advisory Financial Sub-committee
7. Not greater than two years old from the date of June 30, each year with all acceptable comparables included (criteria 1-5). A minimum of ten acceptable comparables are required for analysis. If a minimum of ten transactions are not available, the time period will extend at three month intervals prior to the beginning date until ten comparables are gathered.

The calculation results in an increase to the Agricultural/Natural Habitat type of Category A component from \$7,788.41 to \$8,288.74.

Category B (assessment & enhancement) - Consumer Price Index - This category is an average of the California Consumer Price Index (CPI), as reported by the California Department of Finance, for a 12 month period following a fiscal year (July – June) to keep up with inflation on a yearly basis. The CPI has been deemed appropriate regarding the cost of inflation for this category. The California CPI calculation increased 1.7%. The calculation results in an increase of the Category B component to be \$3,189.59, up from last year's \$3,136.27.

Category C (management & administration) - Consumer Price Index - This category is an average of the California CPI, as reported by the California Department of Finance, for a 12 month period following a fiscal year (July – June) to keep up with inflation on a yearly basis. The CPI has been deemed an appropriate measure regarding the cost of inflation for this category. The California CPI calculation increased 1.9%. The calculation results in an increase of the Category C component to be \$1,816.28, up from \$1,785.92 in 2013.

SJCOG staff calculated the fees using the SJMSCP Financial Analysis formula model [FEE= Category A (acquisition) + Category B (assessment & enhancement) + Category C (management & Admin)]. The overall result in the calculations was an increase in the fees from 2013 to 2014.

All of the land within and adjacent to the current City limits are classified as Open Space or AG/Natural, as there are no vernal pools near the City of Tracy. The current (2013) per-acre fees in the relevant categories are \$6,364 per acre for Open Space and \$12,711 for AG/Natural.

Monitoring Plan Funding - Along with the annual index adjustment, the SJMSCP is required to monitor the plan to address funding shortfalls as stated in Section 7.5.2.1 of the plan. SJCOG shall undertake an internal review of the SJMSCP funding plan every three years to evaluate the adequacy of each funding source identified in the plan, identify existing or potential funding problems, and identify corrective measures, should they be needed in the event of actual or potential funding shortfalls. This will be reported to the permitting agencies for review in Annual Reports. A review of the Financial Analysis Plan, similar to the process undertaken in the 2006 review, will occur every five years to ensure the adopted methodology is fulfilling the goals of the plan.

Staff recommended that Council approve the amended development fees for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.

Ms. Lombardo pointed out a couple of errors in the table, but indicated that the proposed fees column to be adopted were correct.

Council Member Young asked Ms. Lombardo to recheck the final numbers for Category C.

Council Member Rickman asked if paying this fee was an option for the developers. Ms. Lombardo stated yes, it was the developer's option.

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 Mayor Pro Tem Maciel and seconded by Council Member Young to adopt Resolution 2013-164, approving the amended development fees for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan. Voice vote found all in favor; passed and so ordered.

5. PUBLIC HEARING TO INTRODUCE AN ORDINANCE AMENDING THE TRACY MUNICIPAL CODE (ZONING REGULATIONS) REGARDING TIME LIMITS AND EXTENSIONS FOR DEVELOPMENT REVIEW PERMITS (TMC CHAPTER 10.08, ARTICLE 30) – APPLICATION NUMBER ZA13-0002 – Alan Bell, Senior Planner, provided the staff report. The proposal is a City-initiated request to amend the Tracy Municipal Code (TMC) Development Review process to (1) create flexibility in the duration of a Development Review approval and (2) allow for extensions of time if the applicant does not obtain a building permit prior to Development Review expiration.

Development Review is the typical, discretionary process in the City of Tracy a developer follows to obtain approval of a site plan, building architecture, utility connections, and other development details. Development Review typically occurs after (or concurrent with) zoning for a site and prior to (or concurrent with) building permit approval.

TMC Section 10.08.4080 prescribes a one-year time limit for a Development Review approval. No provisions are made for longer periods of time, when appropriate, for an

applicant to obtain a building permit or to obtain an extension of the Development Review approval.

The proposal establishes a two-year, initial time limit for Development Review approval and allows the City to grant an approval for a greater period of time, up to three years, if the size, complexity, or other characteristics of the project warrant a longer time period. For example, a project may have multiple phases, each of which may take two or more years to complete. For a project with multiple buildings or phases, the City may find it reasonable to grant an approval to last more than two years.

The proposed amendment adds a provision for an applicant to seek an extension of their approval, in the event they have not obtained building permits prior to Development Review expiration. This provision recognizes that an applicant may not always accurately forecast the time they need to obtain a building permit due to unforeseen circumstances such as market demand, financing, or other issues.

The proposed amendment also includes a few clean-up items, such as updating the definition of "Director" and clarifying that the Director may refer Development Review applications to the Planning Commission for decision.

This minor amendment to the City's development process will increase flexibility for property owners and the City. It makes the entitlement process more predictable and is consistent with the City's on-going efforts to make Tracy more business friendly.

On September 25, 2013, the Planning Commission conducted a public hearing to review the project. No speakers addressed the Commission regarding the proposal.

This item will not require any specific expenditure from the General Fund. Project applicants pay application processing fees to help off-set costs associated with processing Development Review applications and extensions.

Staff and the Planning Commission recommended that City Council approve the proposed amendments regarding time limits and extensions for Development Review applications.

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

Council Member Young stated she was concerned that this action not create any unnecessary delay on the City's part.

The Clerk read the title of proposed Ordinance 1189.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to waive the reading of the text. 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 introduce revised Ordinance 1189. Voice vote found all in favor; passed and so ordered.

6. DISCUSS AND PROVIDE DIRECTION ON THE (1) AIRPORT IMPROVEMENTS AND TIMELINE PRIOR TO FINALIZING THE AIRPORT DESIGN AND LAYOUT PLAN, AND (2) REVIEW ITEMS RELATED TO SAN JOAQUIN COUNTY AIRPORT LAND USE COMMISSION'S DETERMINATION THAT AN APPLICATION TO AMEND THE ELLIS

SPECIFIC PLAN FROM SURLAND COMMUNITIES, LLC. IS NOT CONSISTENT WITH THE SAN JOAQUIN COUNTY AIRPORT LAND USE COMMISSION'S AIRPORT LAND USE COMPATIBILITY PLAN – Leon Churchill, Jr., City Manager, stated there were two components and two issues; The first item regarding runway length is based on feedback from the Federal Aviation Administration (FAA), which is definitive, the runway length needs to be as it is currently; 2) The option/decision still remains with the Council whether to pursue the overrule process.

Ed Lovell, Management Analyst, provided information relating to Airport improvements and repavement grant timeline. A longstanding City goal has been to repave the Airport runway. Over the years, staff has taken steps necessary to secure FAA funding. The most recent step was completion of a Pavement Maintenance and Management Plan that delineated the necessary pavement improvements at the Airport. On June 18, 2013, staff presented Council with an update on the Airport Pavement Project and recommended changes to both the runway width and length. Staff recommended adjusting the runway width from 100 feet to 75 feet and the taxiway width from 40 feet to 35 feet. This recommendation was made in order to meet FAA standards and receive full funding. Additionally, because the City had an opportunity to complete a revised Airport design, staff also recommended reducing the runway length from 4,002 feet to 3,997 feet, which was estimated to be compatible with existing operations and planned development at the airport. Subsequent to the June 18, 2013, recommendations on runway width and length, staff better understands the FAA's grant review and grant award timeline.

The total cost for a complete re-pavement of the Airport is estimated at \$15,589,000. The FAA requires a 10% match. The City will submit an FAA pavement grant application in the amount of \$13,255,740 (90% of funding), which requires a City funding match of \$2,333,260 (a 10% match is an approved Capital Improvement Project). The improvements would be completed over four years, as FAA funding is received on an annually proportioned basis.

Mr. Lovell outlined the necessary timeline in order to meet the FAA 2014 funding cycle. Because the City's goal is to ensure timely submittals of required documents to meet the 2014 funding cycle and because changing the runway length in the Airport Land Use Plan (ALP) would add an additional three months to the FAA review, staff recommends leaving the runway length at 4,002 feet.

The Airport Land Use Compatibility Plan (ALUCP) restricts land use within a safety zone that covers a portion of the Ellis project. Surland submitted applications to amend the City's General Plan and Ellis Specific Plan, which the Airport Land Use Commission (ALUC) determined to be inconsistent with the ALUCP. As a result, City Council must decide whether to overrule the ALUC's determination. The overruling allows denser housing within the safety zone than is currently permitted.

The State Aeronautics Act (Act) establishes Airport Land Use Commissions for the purpose of "...protect public health, safety, and welfare, by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards with areas around public airports to the extent that these areas are not already devoted to incompatible uses." In San Joaquin County, the San Joaquin Council of Governments (SJCOG) serves as the ALUC.

The ALUC is required to adopt an ALUCP for the Airport and the surrounding area. By law, the City must submit to the ALUC any amendments to the General Plan or a Specific Plan, or adoptions or approvals to a zoning ordinance or building regulation within the area covered by the ALUCP. If the ALUC determines that an action, regulation, or permit is inconsistent with the ALUCP, the City may, after a public hearing, overrule the determination by a two-thirds vote of the City Council.

If Council chooses to overrule the ALUC, the City must provide the ALUC and the State Division of Aeronautics (Division) a copy of the proposed decision and findings at least 45 days prior to the decision to overrule. The ALUC and the Division may provide comments to City Council within 30 days of receiving the proposed decision and findings. The comments by the Division and the ALUC serve as advisories to the City Council.

Andrew Malik, Development Services Director, provided information regarding Ellis approval timelines. In January 2013, Council approved a General Plan Amendment and a Specific Plan for the Ellis project (current approvals). The current approvals allow 2,250 houses at Ellis, however only four or five houses are permitted in the area currently restricted by the ALUCP safety zones.

In July 2013, Surland submitted applications requesting a General Plan Amendment and Specific Plan Amendment to the Ellis project, which were revised in August, 2013 (proposed amendments). The proposed amendments would allow density in this area of Ellis at approximately four to nine units per every acre of land.

Subsequently, in a letter dated September 30, 2013, the City received notification from SJCOG regarding a determination that the proposed amendments are not consistent with the ALUCP. The notification provides three options:

- 1) Do not approve the application;
- 2) Request a revision to the project for consistency with the Airport Land Use Plan;
- 3) As provided within the State Aeronautics Act PUC Sections 21676 and 21676.5 overrule the ALUC determination by a two-thirds vote of the governing body.

City Council has the authority to overrule the ALUC. Staff is seeking direction from the Council as to whether or not staff should begin work on determining findings for an overruling. Council has the following two options:

- 1) **Direct staff to not pursue an overruling** - Under this option, staff is unable to recommend approval of the proposed amendments unless they are changed to conform to the ALUCP;
- 2) **Direct staff to pursue an overruling** - This option is a three-step process. First, staff would seek an airport consultant and recommend Council approval of a contract relating to making findings (one month). Second, a draft of the findings will be presented to the ALUC and the Division of Aeronautics for comment (two-three months). Third, the application for amendments to the Ellis project would proceed to Planning Commission for a hearing to make a recommendation to Council and then Council for a hearing and action on the overrule and the applications (three months). This

option would ultimately require a two-thirds vote of the Council, which equates to a four-fifths vote of five members, as mentioned above.

With regard to the Airport Pavement Design, the City currently has a contract with a consultant for the ALP update. At this time it is not known whether that contract would have to be amended to address FAA related processes if Council directs staff to shorten the runway to less than 4,002 feet.

With regard to the Ellis Specific Plan Amendment, if Council chooses to pursue an overrule, these costs would be paid by Surland under the City's Cost Recovery Agreement, therefore there is no impact to the General Fund.

Staff recommended that Council discuss and provide direction on the (1) Airport improvements and timeline, maintaining runway length at 4,002 feet, prior to finalizing the airport design and layout plan, and (2) review items related to San Joaquin County Airport Land Use Commission's determination that the application to amend the Ellis Specific Plan from Surland Communities, LLC is not consistent with the San Joaquin County Airport Land Use Commission Compatibility Plan.

Mayor Pro Tem Maciel referred to Attachment A which presents a historical timeline on runway length and asked staff to review the timeline. Mr. Lovell indicated the timeline was a graphical depiction of what the runway length has been since approximately 1975 which has been approximately 4,000-4,002 feet. Mr. Lovell stated there were a couple instances where the runway appears at a shorter length which was due to displaced thresholds.

Mayor Pro Tem Maciel stated the attachment provides a detailed breakdown and at one point references an actual measurement when the runway length became questionable. Mr. Lovell stated that incident occurred after a slurry seal project in 2007, due to paving and re-stripping issues. At that point the runway was surveyed and determined that due to discrepancies at the end of the runway it was a few feet shorter than 4,000 feet and subsequently restored to 4,000 feet in 2012.

Mayor Pro Tem Maciel asked if staff had detail on how that process occurred. Mayor Pro Tem Maciel indicated the runway length numbers, over the years, has been nebulous.

Council Member Rickman, referring to an FAA document, stated that at the June 18, 2013, Council meeting he asked a question if the length of the runway had anything to do with funding and the answer received was "no". Council Member Rickman stated this document from the FAA indicates it does have to do with funding. Mr. Lovell stated that on June 18, 2013, the funding issue was related to the width of the runway, not the length. Subsequent, staff received information from the FAA indicating if the City were to change the runway length without significant justification, that it could put the City's funding in jeopardy. Council Member Rickman stated if the City reduces the runway under 4,002 it could jeopardize funding. Mr. Lovell stated that is what the FAA has communicated.

Council Member Rickman asked if the runway length was at 3,997 feet, Surland could build between four and nine dwellings per acre in the safety zone. Mr. Malik stated yes. Council Member Rickman asked what the density would be with a runway length at 4,002 feet. Mr. Malik stated one house per five acres or approximately five homes.

Council Member Rickman, referring to runway length and the types of planes that can land, stated he has heard several answers. Council Member Rickman asked if the runway length was left at 3,997 versus 4,002 feet, did it have an effect on the planes that can land now. Mr. Lovell stated it was the opinion of the City's Airport consultant that the difference of five feet will not make a difference in the type of planes that can land at the City's airport.

Council Member Rickman asked if a pilot's insurance would be affected with a runway length of 3,997 feet. Mr. Lovell stated he has not been given a definitive answer if there is an insurance requirement, but has been told that landing on a certain runway length is at the pilot's discretion.

Council Member Rickman asked what about liability. Mr. Lovell stated staff did not have a definitive answer.

Council Member Rickman referred to an Airport Agreement Memorandum dated April 26, 2013, from Les Serpa to Rod Buchanan, which agreement states if the City reduces the runway length to 3,997 feet, Surland will perform certain acts. Mr. Churchill stated he was familiar with the document.

Council Member Rickman indicated he had spoken with Mr. Churchill at the last Council meeting and it was stated that the City did not enter into the agreement. Mr. Churchill stated that was correct.

Council Member Rickman asked if the City offered any formal denial. Mr. Churchill stated no formal denial was provided; what was communicated to Mr. Serpa was that the process contained contingencies that should not be done through an agreement but rather through a normal application process including an amended Specific Plan. Mr. Churchill indicated Surland is in the middle of the Specific Plan Amendment process.

Council Member Rickman asked what the check for \$50,000 payable to the City of Tracy from Surland or Les Serpa was about. Mr. Churchill stated he would answer once Council was done providing comments.

Council Member Young asked why the runway length was now an issue when Council was told the runway length would not have an impact on receiving grant funding. Mr. Lovell stated nothing has been officially submitted to the FAA as part of the Airport Layout Plan. Mr. Lovell added that staff was recommending that the runway length remain as listed at 4,002 feet.

Council Member Young asked when the last report was completed that showed the runway length at 4,002 feet. Mr. Lovell stated in 2001, the last ALP was approved by the FAA showing runway 1230 at 4,002 feet, which is the document that has been used for the Airport ever since.

Council Member Young asked how often the ALP is updated. Mr. Lovell stated the ALP was typically updated when significant changes are made at the Airport or upon FAA request.

Council Member Young asked if the City made an amendment to the plan in 2007. Mr. Lovell stated when staff realized that the Airport runway was shorter than 4,002 feet a notice to airmen was issued stating that the runway was actually 3,996 feet versus what was stated on the ALP.

Council Member Young stated she needed clarity regarding the various dates and runway lengths that have been given. Mr. Churchill stated the ALP from 2001, is the governing document; to deviate from that would require amending the Airport Layout Plan which would jeopardize the federal funding process. Mr. Churchill added that additional and more recent information since June 2013, received from FAA regarding reducing the runway length indicated it would jeopardize that funding.

Council Member Manne asked for the difference between the Airport Master Plan and the Airport Layout Plan. Mr. Lovell stated the Airport Layout Plan was a document that is on record with FAA which shows what the Airport currently is, including length, safety areas around the runways, and a little bit about the Airport's future. Mr. Lovell stated the Airport Master Plan is a document that shows the vision for the Airport and what the City wants it to become in the future.

Council Member Manne asked if it was a City document. Mr. Lovell stated it was a City document, which is funded by the FAA.

Council Member Manne asked if the runway length was measured back in 2001 when the ALP was approved. Mr. Lovell stated he did not know.

Council Member Manne indicated the base line for the runway length appears to have changed over years. Council Member Manne asked if the runway length is shortened below 4,002 feet, would the City lose federal funding. Mr. Lovell stated the FAA has provided an opinion stating if the City changes the runway length, that it would put our funding in jeopardy.

Council Member Manne asked if that information was provided in the staff report. Mr. Churchill stated the information was provided to Council in correspondence sent on Friday, November 1, 2013.

Council Member Manne stated he received information from a handout which states adjusting and shortening airport runway 1230 without justification and approval "may" violate grant assurances. Mr. Churchill stated there are two threats to funding. Mr. Churchill added what was presented in the agenda summary was a timing concern; changing the runway length requires changing the layout plan which adds time which will cause the City to miss the funding cycle with the FAA. Mr. Churchill further stated that very late on Thursday he received correspondence from the FAA which stated substantively changing the runway length is of great concern and could jeopardize funding.

Council Member Manne stated he understood that timelines could affect the timing of the funding, not necessarily that the City would not receive funding. Mr. Churchill stated that was correct. Mr. Churchill added that it was also communicated that it could violate grant assurances.

Mayor Ives asked if the City had received FAA grants since 2001, using the ALP or was a specific runway length provided. Mr. Lovell stated the last major airport project done in 2007 referred to the current ALP.

Mr. Churchill stated there were two significant issues before the City: 1) There have been questions raised related to a proposal staff received by Surland this year. Mr. Churchill, stated staff receives a number of proposals, some in writing and some

verbally. Staff then reviews the proposals to see if they are in the best interests of the City and ready for Council consideration. Mr. Churchill added that many proposals do not make it to Council because they are deemed not in the best interests of the City. The City did receive a proposal from Les Serpa offering to pay various fuel flowage guarantee fees to the airport for several years if the City took several actions related to the Airport Layout Plan including safety zones and other Ellis related actions. In this case, it was determined that the process to obtain the contingencies listed in the proposal was not through an agreement, but rather through the normal application submittal process for an amended Specific Plan. 2) There has been inquiry relating to the \$50,000 payment to the City received from the Tracy Airport Center (TAC) for its fuel flowage guarantee outlined in the facility lease agreement. Under the lease, TAC is obligated to submit payments to the City of Tracy's Finance office. The City Attorney's Office received a payment from TAC and forwarded it to the Finance department for processing. The TAC payment was made by way of payment from Surland Companies. While a third party agreement may exist between TAC and Surland, the City is not aware of any details of any such agreement.

Council Member Rickman asked for confirmation that the agreement Mr. Churchill referred to was between Surland and the TAC, not the City. Mr. Churchill stated staff could only speculate.

Council Member Rickman asked Mr. Churchill if he knew for certain that a deal exists between Surland and the TAC. Mr. Churchill stated the City can surmise that there was enough of an agreement that Surland made the payment on behalf of the TAC.

Council Member Rickman asked about the \$.07 for the fuel flowage. Mr. Churchill stated that does not exist. Council Member Rickman asked Mr. Churchill if he had any knowledge of an agreement regarding the \$.07 fuel flowage. Mr. Churchill stated no.

Council Member Rickman asked why the City did not issue a denial after the proposal was received since it is so volatile. Mr. Churchill stated in retrospect a formal notice in writing may have been in the best interest of the City, however, the City made its opinion very clear to Surland Companies.

Council Member Rickman asked why Council was not informed that a \$50,000 check had been received following the June 18, 2013, Council meeting. Dan Sodergren, City Attorney, stated staff does not normally notify Council of lease payments made.

Council Member Rickman asked if the City knew about this payment prior to the June 18, 2013, Council meeting, or that a possible agreement was taking place. Mr. Churchill stated no, but the City did know that TAC had an obligation to meet its lease obligations, but knew of no third party agreements. Council Member Rickman asked Mr. Churchill if he was aware of any agreement between Surland and TAC. Mr. Churchill stated no.

Les Serpa, on behalf of Surland Communities, provided a background on the Ellis project which started over ten years ago. Mr. Serpa stated in approximately 2005, a new City Manager was brought on board, as well as new operators at the Airport. At that time, Surland was asked by the then City Manager to halt processing their application and the City hired a consultant to determine runway length. Mr. Serpa stated there have been continued issues with the airport.

Mr. Serpa stated the FAA has concerns with the design of the airport and the aircraft that can use the airport. Mr. Serpa stated Surland was confused with what the City was

trying to do at the airport regarding runway length. Mr. Serpa suggested the improvements at the airport be core sampled to ensure they comply with FAA standards, a survey done on the length of the runway, and the City should send their consultant and staff to the FAA to determine what the appropriate length of the runway should be. Mr. Serpa further stated that if Council determined that the runway length should be 4,002 feet, Surland could live with that. Mr. Serpa stated there should be some process to determine the correct length. Mr. Serpa stated they had a differing opinion, stating the airport length does not change what the safety zone should be. Regarding land use, Mr. Serpa asked Council to hire a consultant to bring back findings regarding what is being proposed. Mr. Serpa added that the findings should tell Council if an overrule is pursued, would the City be violating any grant assurances, which Surland was not proposing.

George Williams, Williams Aviation, stated he has reviewed the email from Mr. Robert Lee, an airport specialist, indicating the correspondence should have come from the regional director. Mr. Williams stated the Tracy Airport, as shown by the FAA shows an airport at 4,002 feet. Mr. Williams stated an aeronautical survey was needed. Regarding an override and incompatible development, Mr. Williams stated if an agency pursues an override and allows incompatible development, it could be in violation of grant funding. Mr. Williams outlined various rules regarding incompatible development.

Tom Cannon, Williams Aviation, clarified that the category of the airport is based on a critical design aircraft. Mr. Cannon stated that the 1998 Master Plan indicated that in 2016 the critical (design) aircraft for Tracy would be a King Air 200, which is a B2 aircraft. Mr. Cannon stated the only problem with Tracy being a B2 airport was the separation distance between the runway and the parallel taxiway. Mr. Cannon stated the FAA concerns involve noise which is not an issue for the Ellis project.

Mayor Ives asked if there was a future critical aircraft for a B1 airport. Mr. Cannon stated that has not been determined.

Mayor Pro Tem Maciel asked how far away does the runway have to be from a road or perimeter fence before it is considered usable runway. Mr. Cannon stated the approach of runway 30, because of a road or fencing, has a displaced threshold for landing.

Barbara Lynchman, Counsel to Surland, addressed Council regarding aviation issues. Ms. Lynchman stated the FAA has preemptive authority over airport design and safety issues, while Council has local land use jurisdiction and complete allocation of land use issues. Ms. Lynchman stated the FAA has funding authority and can make life difficult for the City under prescribed circumstances; in this case, the Surland proposal does not affect the areas of concern. Ms. Lynchman added that the ALUC has modified authority to prescribe safety zones for arrival and departure of aircraft. Ms. Lynchman stated if Council chooses to pursue an overrule, they must show that the City meets the purposes of the Act. Ms. Lynchman further stated it was her opinion that the Council may act in a manner they find to be proper based on consultation with knowledgeable consultants, and the City will not lose funding from the FAA and can justifiably override the decision of the ALUC.

Dave Helm addressed Council regarding documents he previously provided at the last Council meeting. Mr. Helm stated he submitted a public records request for all checks received from the TAC in 2013, and one check in the amount of \$25 was provided. Mr. Helm provided the Clerk with a copy of the check. Mr. Helm asked Council why they would jeopardize funding if Surland did not have a problem with the runway length of

4,002 feet. Mr. Helm suggested Council leave the runway alone, get the grant funding, and let Surland build their homes.

Richard Ortenheim, referring to Mayor Pro Tem Maciel's question regarding runway length, stated the FAA has the runway length recorded at 4,002 feet which has to be maintained by the operator until it is requested to change.

Steve Nicolaou stated when the Draft Environment Impact Report was circulated, an Alternative 10 was circulated which envisioned a shorter runway which he opposed. Mr. Nicolaou stated he has met on two occasions with Mr. Serpa requesting that he protect the airport. Mr. Nicolaou urged Council to keep the runway length at 4,002 feet and not pursue an override.

Paul Miles seconded Mr. Helm's comment and asked Council to focus on what the benefit is to Tracy. Mr. Miles asked when the determination was made that Surland should not have proposed an agreement but rather submit an application for a Specific Plan amendment. Mr. Churchill stated shortly after it was proposed.

Mr. Miles asked if there was some documentation regarding the determination and it has been provided to Mr. Helm through a public records request. Mr. Churchill stated the feedback was verbal. Mr. Miles commented that it was inappropriate for a Council Member to criticize a citizen who expresses concern at a Council meeting.

Mayor Pro Tem Maciel stated his previous comment was not directed at any particular individual.

Marsha McCray stated each person brings a different perspective to issues because of what is important to them. Ms. McCray stated if the airport has been inaccurately reported, the City should conduct a survey to determine the exact length of the runway and report it to the FAA.

Mayor Ives called for a recess at 9:27p.m., reconvening at 9:38 p.m.

Dave Anderson, President of the Tracy Airport Association, provided a presentation to Council regarding the Tracy Airport. Mr. Anderson stated he was in support of staff's recommendation to keep the runway length at 4,002 feet. Mr. Anderson asked Council to not pursue the path of an override of the ALUC.

Andy Wilson, Director at large for the CA Pilots Association, requested that Council not pursue an overrule and approve the land use as is.

Mike Souza, representing the Tracy Hills project owner, stated accusations have been made that the Tracy Hills owners have used thug tactics indicating it was untrue and that they will be sending a letter to the City asserting that they have nothing to do with what is going on.

Steve Herum, representing Surland Companies, addressed Council regarding the ALUC and its relation to City Council. Mr. Herum stated the ALUC is responsible to adopt an airport plan but does not have the final say. Mr. Herum further stated local officials/City Council has the ability to reverse the decision which is a right that is expressly given by State law. Mr. Herum asked that Council exercise their right.

Ms. Lynchman responded regarding a comment made about runway length and the degradation of insurance by pilots. Mr. Lynchman stated the length of the runway is a non-issue for insurance purposes.

Mark Connolly stated he does not believe Mr. Churchill or Mr. Buchanan engaged in contract making without direct knowledge of the Mayor or Council. Mr. Connolly stated the airport has always been, is today, and always shall be, 4,002 feet. Mr. Connolly stated the City of Tracy hired a contractor who botched a paving job and the airport was not properly repaired which resulted in the airport runway being shortened. Those mistakes did not change any of the official records of any parties. Mr. Connolly stated Surland documented an agreement between Surland and the City of Tracy stating it will pay \$50,000 on behalf of the airport operator, and Surland is going to get \$.07 of gas revenue and the City will then go to the San Joaquin Council of Government to reduce the runway to 3,996 feet. Mr. Connolly stated he has not heard Mr. Serpa explain why Surland paid \$50,000 to the City of Tracy. Mr. Connolly stated he did not believe that Mr. Churchill or Mr. Sodergren knew what was going on regarding the check. Mr. Connolly stated the City will not accept the land dedication from Surland and the pool will never be built.

Dave Anderson asked if staff indicated the runway length does not limit the type of aircraft that can land. Mr. Lovell stated the City's airport consultant has indicated shortening the runway length by four or five feet does not affect the type of plane that can land. Mr. Anderson read from a May 25, 2012, document where Mr. Churchill reported that 4,000 feet is the magic number for the type of planes that can land.

Art Coon, an attorney representing Surland, stated there was never an agreement between the City of Tracy and Surland, which has been confirmed by the City Manager. Mr. Coon further stated at the October 1, 2013, Council meeting, Mr. Connolly made a series of false, fraudulent and defamatory accusations about the Surland Companies. Mr. Coon explained the events surrounding the alleged agreement and the \$50,000 check submitted by Surland.

Dave Helm asked if there is an agreement between Surland and the airport operator. Mr. Helm asked what happened to the \$.17 per gallon due to the City of Tracy. Mr. Helm indicated there seemed to be a quid pro quo situation.

Mr. Serpa stated there is no agreement between the City of Tracy, the airport operator, or the TAA. Mr. Serpa stated his goal is to work in harmony with the airport.

John Favors stated the City needed to look at this as an opportunity. Mr. Favors asked staff and Council to look at what aviation will look like in 20 years. Mr. Favors suggested the City look at purchasing property around the New Jerusalem Airport so it does not become land-locked like the Tracy Airport.

Council Member Rickman asked Mr. Churchill if he could comment regarding the \$.17 per gallon. Mr. Sodergren stated Amendment One of Lease Agreement with TAC does require a fuel flowage fee of \$.07 per gallon on all fuel sold. Council Member Rickman asked if the City is receiving the \$.07. Mr. Churchill stated yes, pursuant to the agreement with TAC.

Mayor Pro Tem Maciel stated the agenda item addresses two specific areas: to provide direction to staff regarding maintaining the runway length; and the San Joaquin Council of Government's Land Use Commission determination. Mayor Pro Tem Maciel clarified

that at the last meeting he did not refer to any single person regarding flinging noodles. Mayor Pro Tem Maciel stated that there have been too many personal attacks, and encouraged those commenting on an issue other than what was on the agenda, was not productive. Mayor Pro Tem Maciel stated he was tired of being accused of lying and now being accused of criminal acts.

Regarding runway length, Mayor Pro Tem Maciel stated it appears that historically there are documents reflecting a runway length of 4,002 feet. Mayor Pro Tem Maciel stated it is important to move forward and get the runway repaved so it works. Regarding the override, Mayor Pro Tem Maciel stated the overrule process is a legal process that the law allows. Mayor Pro Tem Maciel stated he needs clarification regarding the safety zone and was in favor of giving direction to staff that considers an overrule process. Mayor Pro Tem Maciel stated growth must be kept compatible with Airport; the benefit is that this development and any development in town should be able to move forward as long as it meets the necessary criteria.

Council Member Young stated safety is always important and must be kept in mind. Council Member Young stated no information regarding a proposal or a check was provided to Council. Regarding a boutique airport, Council Member Young stated she looked for the best in every project to help Tracy grow forward. Council Member Young referred to Attachment A in the staff report that provided a history of the runway length, stating she was concerned about the runway length. Council Member Young suggested Council direct staff to begin the process of an overrule to see if it is viable.

Council Member Rickman stated he has done a lot of research on the airport, including reviewing Council minutes, newspaper articles, etc., dating back to 2009. Council Member Rickman discussed the discrepancies Council has received regarding runway lengths, small airports, medium airports, boutique airports, etc. Council Member Rickman stated he was concerned about the memorandum/agreement from Surland stating it was unfortunate that there was not something in writing where the City denied the agreement and the fact that Council was not notified of the agreement. Council Member Rickman stated he still had an uneasy feeling regarding the issue. Council Member Rickman stated he believed the right choice is to keep the runway length at 4,002 feet. Regarding the overrule, Council Member Rickman stated Council does need to take into account the vote by the SJCOG. Council Member Rickman stated he was not in favor of pursuing an overrule.

Council Member Manne stated he agrees with many comments made by his colleagues. Council Member Manne further stated he reached out to members of the public and stakeholders for their input on the airport. Council Member Manne stated the City needed a baseline on the runway length. Council Member Manne stated a runway length of 4,002 feet doesn't hurt anyone. Regarding the overrule Council Member Manne stated he still had unanswered questions. Council Member Manne stated the only question that has to be answered for him is the safety question.

Mayor Ives stated it was about interfaces between uses. Mayor Ives stated the City has to have a staff member who knows the FAA and is really smart. Mayor Ives further stated the FAA had to do better than communicating formally through e-mail and asked staff to ask for a formal letter. Mayor Ives stated it was hard for him to see that the Airport was an asset; 20 years ago an Airport Master Plan was developed and 20 years it has operated without the Ellis project. Mayor Ives stated the airport is still a loser, it is not a winner, and airport advocates have had a lot of time to prove it. Mayor Ives stated if the runway is 4,002 feet, then the City has to mitigate the safety zone; the question is,

what is the correct safety zone. Mayor Ives stated he does not mind going with an airport runway length of 4,002 feet as long as the City continues to study it. Mayor Ives stated he was in favor of moving forward on an overrule which will allow the City to study the issue.

Council Member Rickman asked Mayor Ives to clarify the overrule process. Mayor Ives stated the process would likely involve a consultant. Mr. Sodergren stated if Council chooses to overrule the determination of the ALUC, the City will have to find that the overrule is consistent with the purposes of the Act, including health and safety, noise, and compatibility. Mr. Sodergren further stated the City would have to hire a consultant to study those issues and bring back substantial evidence to the Council in order for the Council to make the determination that the overrule is consistent with the purposes of that Act.

Council Member Rickman asked where would it leave the safety zone if Council chose not to pursue the overrule. Mr. Sodergren stated if Council chose not to pursue an overrule, staff would continue to process the Specific Plan Amendment application with a recommendation of denial because it was inconsistent with the Act.

Council Member Young asked if that denial would be for the Specific Plan Amendment. Mr. Sodergren stated yes.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Rickman to provide direction to staff regarding Airport improvements and timeline maintaining the runway length at 4,002 feet prior to finalizing the airport design and layout plan. Voice vote found all in favor; passed and so ordered.

It was moved by Mayor Pro Tem Maciel and seconded by Council Member Young that Council direct staff to pursue an overrule process regarding the San Joaquin County Airport Land Use Commission's determination that the application to amend the Ellis Specific Plan from Surland Communities, LLC is not consistent with the San Joaquin County Airport Land Use Commission Compatibility Plan. Roll call vote found Council Members Manne, Young, Mayor Pro Tem Maciel and Mayor Ives in favor; Council Member Rickman opposed.

7. ITEMS FROM THE AUDIENCE – None.
8. STAFF ITEMS
 - A. RECEIVE AND ACCEPT THE CITY MANAGER INFORMATIONAL UPDATE – Leon Churchill, Jr., City Manager, provided the staff report. Council accepted the City Manager's informational update.
9. COUNCIL ITEMS - Council Member Manne announced that the Pregnancy Resource Center's Annual Fundraising Banquet and silent action was being held Thursday, October 17, 2013, at 6:30 p.m., at the Holy Family Center at 12100 W. Valpico Road.

Council Member Rickman wished everyone a safe and happy Halloween.

Council Member Young voiced thankfulness that she would not have to wear the Tracy High School jersey any longer.

10. ADJOURNMENT - It was moved by Mayor Pro Tem Maciel and seconded by Council Member Manne to adjourn. Voice vote found all in favor; passed and so ordered. Time: 11:48 p.m.

The above agenda was posted at the Tracy City Hall on October 10, 2013. The above are summary minutes. A recording is available at the office of the City Clerk.

Mayor

City Clerk