

4-5-16
Items from the
Audience

Nora Pimentel

From: Gary Hampton
Sent: Monday, February 08, 2016 3:51 PM
To: Troy Brown
Cc: Michael Maciel; Daniel Sodergren
Subject: Re: Courtesy Notification: Personnel Complaint

Troy,
I will agree to work from home this week, thank you.

The only reason my work comp attorney became involved in my labor contract is because the City's first proposed separation agreement was integrated with my workers compensation case. I can think of no scenario where I will waive any rights or benefits in my work comp case in an employment separation agreement, wherein I have only requested compensation that I'm already contractually entitled. Surely you don't believe I will withdraw my work comp claim to receive an employment separation package of \$25,000, a fraction of salary and accrued leaves, as the City first proposed, causing my work comp attorney to get involved? Again, withdrawing work comp claims and/or waiving benefits on a life altering medical condition is a non-starter.

Of course my attorney didn't realize the issue was time sensitive, he wasn't aware I was being released to work. He's also not aware of the unique situation of two police chiefs and/or what I believe to be deterioration of my work conditions. I have maintained confidentiality about my beliefs related to work conditions, to this point.

Our January 13th verbal agreement on the separation package established February 1, 2016 as the effective date. I'm not sure why you would think the matter wasn't time sensitive. How do you propose I initiate retirement proceedings and secure family health care without a date of employment separation. You have been advised multiple times that I would be released within the first half of February and that I no longer wanted to work under your oversight, hence the reason we agreed to February 1st as the effective date for the separation agreement. My wife and I proceeded with life planning, post City of Tracy employment, based upon your verbal agreement establishing February 1st as the effective date. We have since been forced to rescind those actions.

I'm not sure why so much time is required to calculate my salary (no benefits) through the term of my employment contract, research my accrued vacation leave and review my sick leave accrual on December 15, 2015. I'm pretty confident Rocki in payroll can provide the information within 15 minutes of the request. I recognize you will expect hold harmless agreements protecting yourself and the city from litigation, which is surely standard canned language that our astute city attorney's office can provide in an hour.

I suspect, but hope I'm wrong, the reason this is being complicated is because the City is trying to integrate the work comp case with the employment separation agreement (again) to minimize exposure. Save yourself and the City time and money, I will not agree to any integration of the two issues. I will simply assume my contractual employment and take the actions that I deem necessary to insure I can work in a professional environment.

Gary Hampton

Sent from my iPad

> On Feb 8, 2016, at 2:37 PM, Troy Brown <Troy.Brown@ci.tracy.ca.us> wrote:

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> Gary,

>

> The City's legal counsel has had discussions with your legal counsel, Mr. Shepard, over the past few weeks. Perhaps you were not aware of these discussions until your conversation with the City Attorney this morning. The City Attorney and I felt that, because legal issues were being discussed, it was best to let the lawyers handle it, which is why I did not respond to your most recent email.

>

> Several weeks ago, the City's counsel contacted Mr. Shepard to ask for the name of the attorney representing you in non-workers' comp employment matters so the City could contact that person to discuss possible resolution of such matters. Mr. Shepard represented to the City's counsel that he did represent you for those other purposes as well. He and the City's counsel discussed your leave and retirement issues, and the City has been following up with HR with calculations of affected leave banks, etc. Your attorney was notified this was happening. The City's counsel specifically asked him if any particular time-sensitivity existed regarding the next steps. He indicated it was not time sensitive.

>

> We anticipate having necessary information completed in the next few days. Based on your email below, we understand Mr. Shepard does not represent you other than for workers' comp purposes. The City's counsel will provide the information both to you and Mr. Shepard, because both sets of issues (workers comp and other employment matters) are implicated.

>

> In the meantime, my understanding is that you have been medically cleared for duty beginning tomorrow (Feb. 9). The City intends to fully honor your existing agreement through its expiration date at the end of March. However, I am asking you to work from home in an "on call" capacity. This will allow you to continue your recovery process consistent with your current medical restrictions, as well as to be available to field calls and questions from Larry Esquivel relating to the Police Department generally and his transition into the position. I know that all of us want that transition to go as smoothly as possible for the Department and our community.

>

>

> Thank you,

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> Troy Brown | City Manager

> City Manager's Office

> 333 Civic Center Plaza | Tracy, CA 95376 Office (209) 831.6115 | Fax

> (209) 831.6120

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> -----Original Message-----

> From: Gary Hampton

> Sent: Saturday, February 06, 2016 9:33 PM

> To: Troy Brown

> Cc: Michael Maciel; Daniel Sodergren

> Subject: Courtesy Notification: Personnel Complaint

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> City Manager Brown,

> Although you have been non responsive to my emails since January 13th, including those seeking information and direction accommodating my return to work next week, I'm extending to you this courtesy notification. On Monday February 8th I will formally file with the City of Tracy a complaint of hostile work environment, breach of employment contract and violation of my rights under California Labor Code 132a and California Government Code 3300-3313. I have already made the same courtesy notification to Mayor Michael Maciel and have carbon copied Tracy City Attorney Daniel Sodergren, herein.

>

> Contrary to the misinformation you continue to disseminate regarding my purported frustration relating to delayed medical treatment (I was forced to endure), you know well my frustration relates to the manner in which you have treated me and not the delayed treatment. I no longer have the tolerance to endure your misconduct, which includes,

but is not limited to: misrepresentation of my medical leave time, unauthorized dissemination of confidential personal medical information for the purposes of undermining me with elected officials and my staff, as well as your ongoing sarcastic, profanity laced, discriminatory and threatening language directed to me. Most problematic has been your propensity to engage in dishonesty relating to issues concerning me.

>

> I will be seeking City Council intervention by requesting council to convene an immediate special closed session to hear my complaint about your conduct and performance and convene a formal investigation into the complaint. I will also request council to carry out the January 13th separation agreement that we mutually agreed on, which you commissioned a contract attorney to draft but did not execute (I question if you even have the authority to commit and execute such an agreement). This will immediately alleviate having to work under your direction and/or supervision. Your conduct and actions during your supervision over me the past year is unconscionable - and I would be surprised if the majority of council didn't agree. The complaint is being filed with City Council as they are your immediate supervisors, each will receive my complaint.

>

> Please be advised my work comp Attorney, Mr. Kenneth Sheppard, represents me in my workers compensation claim and not matters relating to my employment agreement with the City of Tracy. As you know he has availed his assistance in reviewing the two separate proposed separation agreements insuring there's no conflict with my workers compensation case. If necessary, however, I can obtain legal representation through CA Chiefs in matters relating to this complaint but choose at this time to rely on internal processes.

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> Gary Hampton

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Tuesday, April 05, 2016

To: City Council of Tracy California
From: David C. Helm
Re: Recommendation for Distinguished Service Award

I hereby nominate Gary Hampton for the City of Tracy's Distinguished Service Medal. Mr. Hampton served the City of Tracy's Police Chief in an exemplary manner. His stewardship, integrity, personal commitment, intelligence, dogmatic pursuit of excellence and seemingly inexhaustible efforts served this community and the Police Department in a manner which is unparalleled.

This counsel appointed Mr. Hampton as the Acting City Manager, during a time of crisis. He, along with Ms. Maria Hurtado, the Acting City Manager, guided the city and its employees, through troubled times and restored order, morale and sought to restore public confidence that had been eroded.

Mr. Hampton returned early from an injury, foregoing necessary physical therapy, to serve as the Public Safety Director, wherein he headed both the Police Department and the Fire Department, working 12 hours a day, and was additionally on call seven days a week.

Mr. Hampton's performance in all of the positions he held while with the City of Tracy was excellent. I have never seen a public servant more committed to the principles enumerated in the Law Enforcement Code of Ethics.

Mr. Hampton has retired from the City of Tracy and now serves as the City Manager in Turlock. It would be a travesty to allow Mr. Hampton to bid farewell without acknowledging what an incredible asset he has been and to acknowledge all of his accomplishments while serving our community.

I therefore petition this council to proceed with awarding Mr. Hampton the Distinguished Service Medal to acknowledge all of his many accomplishments and efforts on behalf of a grateful citizenry.

Thank you,



David C. Helm

Dora Pimentel

From: Gary Hampton
Sent: Wednesday, February 10, 2016 9:57 PM
To: Stacey Sheston
Cc: Daniel Sodergren; Bill Sartor; ksheppard@jonesclifford.com; Michael Maciel; Troy Brown
Subject: Re: City of Tracy/leave issues

Ms. Sheston,

Thank you for your email. Mr. Ken Sheppard does in fact represent me in my workers compensation claim, and was kind enough to look over a separation agreement the City proposed early January 2016 because it was ridiculously integrated with the settlement of my work comp claim. Not a scenario I'm willing to consider. Mr. Sheppard has also offered to represent me in my employment contract if necessary. Frankly, the simple separation agreement City Manager Brown and I mutually agreed to on January 13th and he verified in an email to me, seems to be a moving target. I was expecting to receive the agreement this week and ask Mr. Sheppard to insure there are no conflicts with work comp case.

I concur with the calculations on sick leave reinstatement. However, I am not in agreement concluding my career at my home, serving as my work station. I have been reinstated for duty and agreed to remain home through Friday, January 12th providing additional time for the City to complete the separation agreement. Now I read the proposal is for me to remain at home as my work station through the term of my contract and reinstatement of sick leave. Further time spent in "working at home" status simply adds to the malignment already occurring. Moreover, it's simply an adverse action taken without due process, which would only be validated by my participation. City Manager Brown has previously suggested placing me on paid administrative leave to facilitate my paid status while remaining home, which I adamantly opposed. He proposed a feigned personnel investigation against me (into a previously investigated complaint by local resident Paul Miles), thereby placing me in a paid status while remaining home.

On January 13th City Manager Troy Brown and I agreed to conclude my employment prior to the term of my employment contract, thereby parting ways to avoid the relationship from further deterioration and possible litigation. We verbally agreed my employment would conclude on February 1, 2016, the City would buy-out the remainder of the salary (no benefits) afforded in the full term of my employment contract (3/31/16), City would provide the cash value of accrued sick leave dating back to the end of my 4850 leave - and of course the City would cash-out accrued vacation leave (which I'm entitled in any circumstance). Although we verbally agreed and City Manager Brown confirmed that fact in an email to me, he failed to execute the agreement.

Remaining home isolated from employment, thereby creating a situation of malignment and the appearance an adverse action has been taken against me by the City is outright humiliating. Not to mention its dishonest, unethical and immoral for me to pretend I'm working from home. These are three pillars I have based my leadership on during my 14 years as a police chief and imposed discipline in support of the pillars. I have also explained that while sitting home, pretending to be working from home, I carry the full liability (civil and criminal) if an officer uses deadly force, engages in gross negligence, etc. It will be my name listed as a defendant. The police chief is solely responsible for policy and procedure and all actions of the 150 staff members of the police department.

Let's be clear, this situation has been created by City Manager Troy Brown. He has known since November 25th that I would be cleared for work the first week of February 2016. If we are not able to execute the previously agreed upon separation agreement - I plan to return to work February 16th, after fulfilling my agreement to remain home this week

while the "final work" was being completed on the separation agreement. I will take the steps necessary upon my return to protect myself from what I believe is an escalating hostile and discriminatory work environment. The separation agreement situation has made no progress in a month, which I suspect is by design and creating much undue stress for my wife and I. I am an honorable and professional law enforcement officer of 33 years and don't appreciate the games City Manager Brown is playing with me and my family.

Gary Hampton
(209)640-8635

Sent from my iPad

On Feb 10, 2016, at 3:44 PM, Stacey Sheston <Stacey.Sheston@bbklaw.com> wrote:

Dear Chief Hampton-

We have not yet had the pleasure of meeting. I am working with the City on some employment matters including your issues. I have spoken with and am copying Mr. Sheppard, as I understand he is your counsel of record for purposes of your workers' compensation claim (and related 4850 benefits), but I have recently learned you are unrepresented as to any other issues regarding your employment. If that is not correct and I should correspond with other counsel, please let me know right away.

I understand that you were out for a period of time in 2014-15 relating to an industrial knee injury, that you worked a modified duty schedule for part of that time, and that 4850 leave time was applied to that modified duty period. Evaluating the situation in the light most favorable to you, the City has determined that 4850 leave should not have been applied to that period, meaning that your 4850 benefits would not have expired last November 19, but rather would have lasted through February 3, 2016. Similarly, you would not have had to utilize a certain amount of accrued sick leave due to 4850 time expiring in Nov 2015. Treating time between Nov 19, 2015 and Feb 3, 2016 as the remainder of your 4850 leave, we have calculated that several sick leave hours should be credited to your leave bank (as offset by 'buy back' sick hours you have already received in your bank). The City has determined that 274.13 hours should be credited to your sick leave bank, an amount calculated as follows:

Hours used Nov 19-Feb 3 rd	402
TDD buy back est. 11/19/15 thru 2/8/16)	<127.87>

Sick leave bank credit	274.13 hours

If you have any concern about this calculation, please let me know at your earliest convenience. The City plans to credit your sick leave bank this week. None of this bears on your pending workers' comp claims, of course, as that is a separate process through which whatever benefits you may be entitled to will be determined. I know you are working with Mr. Sheppard (and the City's workers' comp counsel) on that side of things.

Beyond that, I understand that you have recently been cleared for work in a modified duty capacity (as of Feb 9, 2016), and that a full medical clearance may be on the near horizon. I'm sure you are glad to be "on the mend," as they say. Per previous communications to you from the City, for the duration of your employment agreement term through March 31, 2016, you will remain in an "on call"/"working from home" status at full salary and benefits. My understanding of the goal for this short period is to have you available to help answer questions from your successor and assist as needed in that transition.

I hope this addresses your recent leave-related concerns. Please let me know (or have your counsel let me know) if you have any questions. My contact information is all listed below.

Sincerely,
Stacey Sheston





Stacey Sheston

Partner

stacey.sheston@bbklaw.com

T: (916) 551-2099 C: (916) 812-4736

www.BBKlaw.com  

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

Nora Pimental

From: Gary Hampton
Sent: Friday, February 12, 2016 1:51 PM
To: Stacey Sheston
Cc: Daniel Sodergren; Bill Sartor; Kenneth Sheppard; Michael Maciel; Troy Brown
Subject: Re: City of Tracy/leave issues

Ms. Sheston,

I sincerely appreciate your assistance in correcting the issue of miss applied 4850 leave (from my perspective) and reinstatement of sick leave.

City manager Troy Brown's negligence in proposing and agreeing to an employment separation agreement, on behalf of the city (not supported by law), is not surprising to me. I suspect his negligence relating to employment law also extends to section 132a of the California labor code.

I will pursue my concerns and complaints about City Manager Brown's conduct toward me through more formal processes with legal representation afforded by the California Police Chief Association, while Mr. Kenneth Sheppard represents me in my workers compensation claim.

Once again, thank you for your courtesy and assistance.

Gary Hampton, Chief of Police
City of Tracy

On Feb 12, 2016, at 9:57 AM, Stacey Sheston <Stacey.Sheston@bbklaw.com> wrote:

Thank you for your prompt response, Chief, and I am glad we have resolved the leave calculation issue. The City will go ahead and reinstate the 274.13 hours to your sick leave bank.

As to the potential for a separation agreement, certain factors make such an agreement impractical in these circumstances. First, the city attorney's office and I agree that any such agreement would require City Council consideration and approval in open session. Second, as you are aware, the most recent amendment to your contract removed the severance provisions, thus expressly eliminating that potential benefit. (Although you are entitled to the leave and benefits set forth in the City Council's Department Head Salary and Benefits resolution, the severance provisions in that resolution were not incorporated into your contract and, as such, do not apply.) Finally, your proposed terms for a separation agreement are unlawful under subsections (a) and (c) of California Government Code section 53260, which provide that any separation agreement cannot do more than provide you with "an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract." That restriction, as well as the city's policies on how accrued sick leave can be utilized, make the monetary terms you described impossible in these circumstances. As to the

balance of your message relating past events, I hope you can appreciate that I do not feel a response from me is appropriate because I must deal with this matter based on where the situation currently stands.

As of Feb 9th (based on your release to work on at least modified duty), the City has put you back into an active payroll status with all the compensation and benefits that entails. Based on your stated plans to retire upon contract expiration, the City located a successor and started the transition so it can be as smooth and orderly as possible. The current assignment of "on call" duties while receiving your full compensation and benefits for the remaining few weeks on your contract is simply a part of that ongoing transition process. (On a side note, I do have to respectfully disagree with your statements about any new or additional exposure to you existing under this arrangement (and you would have the same defense and indemnity benefits you have always had under the Government Claims Act in any event)).

It is important for the City to have the transition to the new Police Chief go well. As such, the City believes it is best for Mr. Esquivel to continue in the role of Acting Police Chief. At the same time, it is important for you to be available to offer recommendations to, and to field questions from, Mr. Esquivel by phone, email, or if you or Mr. Esquivel find necessary, in person at Police Department headquarters. No "adverse action" attaches under this scenario, as you retain your position for the balance of your contract and are totally economically whole in accordance with its terms.



Even stepping back from the importance of a smooth transition at the Department (which I have to believe is important to you, as well), honoring the balance of your employment agreement by keeping you in regular pay status for the short period between now and the end of March appears to be in everyone's best interest. You get the benefit of the entire compensation term you negotiated for in your employment agreement, and by receiving it as salary through the end of the agreement term it is "PERS-able" income that augments your retirement benefit. You also continue to accrue additional related benefits (e.g. vacation hours that have cash value) described in the agreement. Meanwhile, the City can focus on a smooth transition at the Department.

Finally, I also hope that, given your path of recovery, additional medical treatment for your recent injury will not be necessary, but if it is, the separate workers' compensation benefit process will continue so that your needs can be addressed properly and in accordance with the Labor Code. That process and your pending claims are not impacted by any of the above.

Thank you for the dialog with me, Chief – I understand this is a challenging time for you on a lot of fronts, from working to rehab from your injury, to preparing for the next chapter of your life with your family in retirement and all that adjustment entails. The City and I are working to facilitate a smooth transition for everybody, one that respectfully honors the years of service you have given the City, as well as helps the City set the Department up to move forward effectively under your successor. I look forward to working through this with you toward that result.

Have a nice weekend-
s



Stacey Sheston
Partner
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T: (916) 551-2099 C: (916) 812-4736
www.BBklaw.com  

From: Gary Hampton [<mailto:Gary.Hampton@TracyPD.com>]
Sent: Wednesday, February 10, 2016 9:57 PM
To: Stacey Sheston
Cc: Daniel Sodergren; Bill Sartor; ksheppard@jonesclifford.com; Michael Maciel; Troy Brown
Subject: Re: City of Tracy/leave issues

Ms. Sheston,

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Gary Hampton
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Sent from my iPad

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Sincerely,
Stacey Sheston

Stacey Sheston

Partner

<image001.jpg>

stacey.sheston@bbklaw.com

T: (916) 551-2099 C: (916) 812-4736

www.BBKlaw.com

<image002.jpg>

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Nora Fimentel

From: Gary Hampton
Sent: Saturday, February 13, 2016 7:01 AM
To: Troy Brown
Cc: Stacey Sheston; Daniel Sodergren; Bill Sartor; Kenneth Sheppard; Michael Maciel
Subject: Re: City of Tracy/leave issues

Troy,

Thank you but I will pass on any further discussions with you, I will let my attorneys speak on my behalf. As for the right to receive a retired police identification endorsed for concealed weapon carry, that is a right clearly outlined in the California Penal Code. My status as a police officer is in good standing already.

On Feb 13, 2016, at 5:17 AM, Troy Brown <Troy.Brown@ci.tracy.ca.us> wrote:

Gary,

I'm pleased that the sick leave hours issue has been resolved.

Regarding the employment separation agreement, there were several elements to it you requested on our phone call in early January. I always knew the severance piece would be problematic and I'm not going to get into a back and forth about that here.

If you are still interested in pursuing the other elements of the separation agreement let me know. That included: having a good standing as a peace officer affording you the opportunity to obtain a concealed weapons permit and providing a positive reference. Put simply, if there are still elements toward a separation agreement that you're interested in pursuing let me know or if the resolution of the sick hours and finality of the severance question is as much resolution as we can make. Is there anything else you'd like to work through?

Troy

Sent from my iPad

On Feb 12, 2016, at 3:51 PM, Gary Hampton <Gary.Hampton@TracyPD.com> wrote:

Ms. Sheston,

I sincerely appreciate your assistance in correcting the issue of miss applied 4850 leave (from my perspective) and reinstatement of sick leave.

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Police Chief Association, while Mr. Kenneth Sheppard represents me in my workers compensation claim.

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Gary Hampton, Chief of Police
City of Tracy

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As of Feb 9th (based on your release to work on at least modified duty), the City has put you back into an active payroll status with all the compensation and benefits that entails. Based on your stated plans to retire upon contract expiration, the City located a successor and started the transition so it can be as smooth and orderly as possible. The current assignment of "on call" duties while receiving your full compensation and benefits for the remaining few weeks on your contract is simply a part of that ongoing transition process. (On a side note, I do have to respectfully disagree with your statements about any new or additional exposure to you existing under this arrangement (and

you would have the same defense and indemnity benefits you have always had under the Government Claims Act in any event)).

It is important for the City to have the transition to the new Police Chief go well. As such, the City believes it is best for Mr. Esquivel to continue in the role of Acting Police Chief. At the same time, it is important for you to be available to offer recommendations to, and to field questions from, Mr. Esquivel by phone, email, or if you or Mr. Esquivel find necessary, in person at Police Department headquarters. No "adverse action" attaches under this scenario, as you retain your position for the balance of your contract and are totally economically whole in accordance with its terms.



Even stepping back from the importance of a smooth transition at the Department (which I have to believe is important to you, as well), honoring the balance of your employment agreement by keeping you in regular pay status for the short period between now and the end of March appears to be in everyone's best interest. You get the benefit of the entire compensation term you negotiated for in your employment agreement, and by receiving it as salary through the end of the agreement term it is "PERS-able" income that augments your retirement benefit. You also continue to accrue additional related benefits (e.g. vacation hours that have cash value) described in the agreement. Meanwhile, the City can focus on a smooth transition at the Department.

Finally, I also hope that, given your path of recovery, additional medical treatment for your recent injury will not be necessary, but if it is, the separate workers' compensation benefit process will continue so that your needs can be addressed properly and in accordance with the Labor Code. That process and your pending claims are not impacted by any of the above.

Thank you for the dialog with me, Chief -- I understand this is a challenging time for you on a lot of fronts, from working to rehab from your injury, to preparing for the next chapter of your life with your family in retirement and all that adjustment entails. The City and I are working to facilitate a smooth transition for everybody, one that respectfully honors the years of service you have given the City, as well as helps the City set the Department up to move forward effectively under your successor. I look forward to working through this with you toward that result.

Have a nice weekend-
s



Stacey Sheston
Partner
stacey.sheston@bbklaw.com
T: (916) 551-2099 C: (916) 812-4736
www.BBKlaw.com  

From: Gary Hampton [<mailto:Gary.Hampton@TracyPD.com>]
Sent: Wednesday, February 10, 2016 9:57 PM
To: Stacey Sheston
Cc: Daniel Sodergren; Bill Sartor; kshppard@ionesclifford.com; Michael Maciel; Troy Brown
Subject: Re: City of Tracy/leave Issues

Ms. Sheston,

Thank you for your email. Mr. Ken Sheppard does in fact represent me in my workers compensation claim, and was kind enough to look over a separation agreement the City proposed early January 2016 because it was ridiculously integrated with the settlement of my work comp claim. Not a scenario I'm willing to consider. Mr. Sheppard has also offered to represent me in my employment contract if necessary. Frankly, the simple separation agreement City Manager Brown and I mutually agreed to on January 13th and he verified in an email to me, seems to be a moving target. I was expecting to receive the agreement this week and ask Mr. Sheppard to insure there are no conflicts with work comp case.

I concur with the calculations on sick leave reinstatement. However, I am not in agreement concluding my career at my home, serving as my work station. I have been reinstated for duty and agreed to remain home through Friday, January 12th providing additional time for the City to complete the separation agreement. Now I read the proposal is for me to remain at home as my work station through the term of my contract and reinstatement of sick leave. Further time spent in "working at home" status simply adds to the malignment already occurring. Moreover, it's simply an adverse action taken without due process, which would only be validated by my participation. City Manager Brown has previously suggested placing me on paid administrative leave to facilitate my paid status while remaining home, which I adamantly opposed. He proposed a feigned personnel investigation against me (into a previously investigated complaint by local resident Paul Miles), thereby placing me in a paid status while remaining home.

On January 13th City Manager Troy Brown and I agreed to conclude my employment prior to the term of my employment contract, thereby parting ways to avoid the relationship from further deterioration and possible litigation. We verbally agreed my employment would conclude on February 1, 2016, the City would buy-out the remainder of the salary (no benefits) afforded in the full term of my employment contract (3/31/16), City would provide the cash value of accrued sick leave dating back to the end of my 4850 leave - and of course the City would cash-out accrued vacation leave (which I'm entitled in any circumstance). Although we verbally agreed and City Manager Brown

confirmed that fact in an email to me, he failed to execute the agreement.

Remaining home isolated from employment, thereby creating a situation of malignment and the appearance an adverse action has been taken against me by the City is outright humiliating. Not to mention its dishonest, unethical and immoral for me to pretend I'm working from home. These are three pillars I have based my leadership on during my 14 years as a police chief and imposed discipline in support of the pillars. I have also explained that while sitting home, pretending to be working from home, I carry the full liability (civil and criminal) if an officer uses deadly force, engages in gross negligence, etc. It will be my name listed as a defendant. The police chief is solely responsible for policy and procedure and all actions of the 150 staff members of the police department.

Let's be clear, this situation has been created by City Manager Troy Brown. He has known since November 25th that I would be cleared for work the first week of February 2016. If we are not able to execute the previously agreed upon separation agreement - I plan to return to work February 16th, after fulfilling my agreement to remain home this week while the "final work" was being completed on the separation agreement. I will take the steps necessary upon my return to protect myself from what I believe is an escalating hostile and discriminatory work environment. The separation agreement situation has made no progress in a month, which I suspect is by design and creating much undue stress for my wife and I. I am an honorable and professional law enforcement officer of 33 years and don't appreciate the games City Manager Brown is playing with me and my family.

Gary Hampton
(209)640-8635

Sent from my iPad

On Feb 10, 2016, at 3:44 PM, Stacey Sheston
<Stacey.Sheston@bbklaw.com> wrote:

Dear Chief Hampton-

We have not yet had the pleasure of meeting. I am working with the City on some employment matters including your issues. I have spoken with and am copying Mr. Sheppard, as I understand he is your counsel of record for purposes of your workers' compensation claim (and related 4850 benefits), but I

have recently learned you are unrepresented as to any other issues regarding your employment. If that is not correct and I should correspond with other counsel, please let me know right away.

I understand that you were out for a period of time in 2014-15 relating to an industrial knee injury, that you worked a modified duty schedule for part of that time, and that 4850 leave time was applied to that modified duty period. Evaluating the situation in the light most favorable to you, the City has determined that 4850 leave should not have been applied to that period, meaning that your 4850 benefits would not have expired last November 19, but rather would have lasted through February 3, 2016. Similarly, you would not have had to utilize a certain amount of accrued sick leave due to 4850 time expiring in Nov 2015. Treating time between Nov 19, 2015 and Feb 3, 2016 as the remainder of your 4850 leave, we have calculated that several sick leave hours should be credited to your leave bank (as offset by 'buy back' sick hours you have already received in your bank). The City has determined that 274.13 hours should be credited to your sick leave bank, an amount calculated as follows:

Hours used Nov 19-Feb 3 rd	402
TDD buy back est. 11/19/15 thru 2/8/16) <127.87>	---

Sick leave bank credit hours	274.13

If you have any concern about this calculation, please let me know at your earliest convenience. The City plans to credit your sick leave bank this week. None of this bears on your pending workers' comp claims, of course, as that is a separate process through which whatever benefits you may be entitled to will be determined. I know you are working with Mr. Sheppard (and the City's workers' comp counsel) on that side of things.

Beyond that, I understand that you have recently been cleared for work in a modified duty capacity (as of Feb 9, 2016), and that a full medical clearance may be on the near horizon. I'm sure you are glad to be "on the mend," as they say. Per previous communications to you from the City, for the duration of your employment agreement term through March 31, 2016, you will remain in an "on call"/"working from home" status at full salary and benefits. My understanding of the goal


for this short period is to have you available to help answer questions from your successor and assist as needed in that transition.

I hope this addresses your recent leave-related concerns. Please let me know (or have your counsel let me know) if you have any questions. My contact information is all listed below.

Sincerely,
Stacey Sheston

Stacey Sheston


Partner

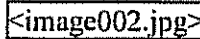
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stacey.sheston@bbklaw.com

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www.BBKlaw.com

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This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

Nora Fimentel

From: Gary Hampton
Sent: Saturday, February 27, 2016 7:31 PM
To: Robert Rickman
Subject: Appeals+court:+Stanislaus+deputy+deserves+a+retrial+on+damages

<http://www.modbee.com/news/local/article62793432.html>

Bob,

Interesting read (above referenced article) - three judge panel from 5th District Court of Appeals ruled this week in Modesto case that disability discrimination is proven when an employer removes someone because of the disability. No need to prove ill will on part of employer.

I have a disability and was cleared to return to work by my treating physician, yet City Manager Brown intervenes and denies my return to work. So, I have been removed from my position of Public Safety Director, which is a position I'm entitled pursuant to a contractual employment agreement, and previously been allowed to perform under a physician's clearance letter. More interesting is the fact the CM took this adverse action against me following my notification to him of his misconduct.

It would be interesting to hear what the City has to say about the discriminatory and retaliatory treatment in light of the Appellate Court decision. I'm not an attorney but CM Browns actions seem to expose the City to civil litigation. Even if I don't file suit, a violation of Labor Code 132a (discrimination against injured worker) mandates a penalty equal to 3 times the employees annual earnings.

Gary H.

4-5-16
Item 3

Pipelines and Informed Planning Alliance (PIPA)

Summary Report for Elected
and Appointed County Officials

Contents

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- Background 4
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- Recommended Practices 7
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Preface

The Pipelines and Informed Planning Alliance (PIPA) is a stakeholder initiative led and supported by the US Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA). PIPA's goal is to reduce risks and improve the safety of affected communities and transmission pipelines through implementation of recommended practices related to risk-informed land use and development near transmission pipelines. The PIPA recommended practices describe actions that can be taken by key stakeholders, including local government, transmission pipeline operators, property developers/owners, and real estate commissions, to enhance pipeline safety.

In December 2010, PIPA issued its report, **Partnering to Further Enhance Pipeline Safety In Communities Through Risk-Informed Land Use Planning: Final Report of Recommended Practices**. The report provides recommended practices for stakeholder implementation. The report is supplemented by the PHMSA report, **Building Safe Communities: Pipeline Risk and its Application to Local Development Decisions**. The PIPA Report and an interactive table of the PIPA-recommended practices are available online at www.PIPA-Info.com.

NACo applauds the findings of the PIPA Report. It offers nearly 50 recommended practices for local communities, developers and pipeline operators to use to help reduce the safety risks that can result from the growth of communities near transmission pipelines. The recommendations can help guide land-use planning and development decisions to help protect growing communities and the existing pipeline infrastructure. The recommendations address how communities can gather information about transmission pipelines and how local planners, developers and pipeline operators should communicate during all phases of new community development to understand and minimize pipeline risks. NACo helped identify elected county officials and key county professional staff, including planners, to participate in the PIPA initiative.

This issue brief is being published in support of an agreement NACo signed with PHMSA in 2008 to help build county officials' awareness and capacity to improve transmission pipeline safety, especially through development and implementation of local land use practices. Information in this issue brief is taken directly from the PIPA Report with the purpose of conveying the report's findings and distilling the information specifically important to NACo members, including county elected and appointed officials, planners, emergency managers and other key county staff.



Background

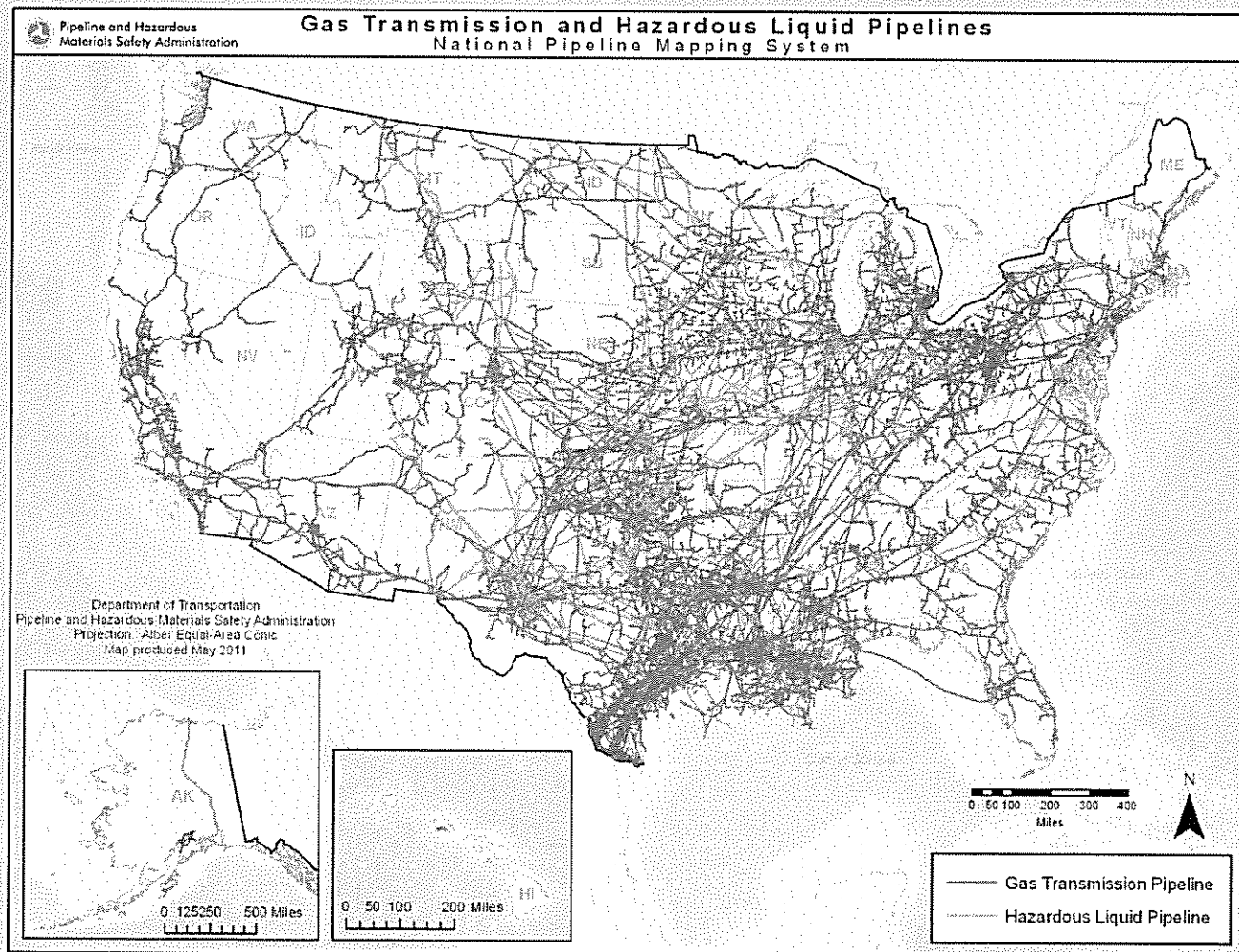
The transmission pipeline system in the United States is considered the most efficient and safest way to transport natural gas and petroleum products across the country. This network of pipelines is an essential element of our nation's energy infrastructure; it serves virtually every community by supplying their commercial, industrial and residential energy needs. Despite a relatively high degree of safety in transporting volatile gases and hazardous liquids, pipelines can pose safety and environmental hazards to local communities.

To understand the possible consequences, one needs to look no further than San Mateo County, Calif. On September 9, 2010, a 30-inch-diameter natural gas pipeline exploded in a fireball, killing seven people and leveling a residential neighborhood in the city of San Bruno, leaving hundreds homeless.

Over the past several decades, many transmission pipelines were constructed in rural areas. This provided relative protection to the pipelines and assured minimal impacts to local communities. More recently, economic growth with expanding housing and commercial development has often resulted in community encroachment on existing pipelines. Economic growth has also prompted a need for even more pipelines in order to meet growing energy demands and changing production areas. The complex national network of transmission pipelines travels through the jurisdictions of many county governments, and counties are often the first to respond when an emergency occurs due to a pipeline rupture. Counties have a responsibility to ensure the safety of their communities by enforcing good land use practices around pipelines.

Why is this important? Urbanization and population growth may bring residents closer to transmission pipeline corridors. Promoting local awareness of pipeline safety and encouraging good land use practices to protect both communities and pipelines ensures coexistence between pipelines and local communities.

Figure 1: U.S. Network of Hazardous Liquid and Natural Gas Transmission Pipelines



Regulating Pipeline Safety

PHMSA, along with its state partner agencies, regulates the safe construction, testing, operation, and maintenance of transmission pipelines. Federal pipeline safety regulations include targeted regulations for inspecting and managing the integrity of pipeline segments that have the potential to impact populated and developed areas, and regulations requiring pipeline operators to educate the public on pipeline safety.

However, local county and municipal governments (and in some cases state governments), rather than the federal government, are the most common regulators of land use and property development, including land use and development near pipelines. Local governments are increasingly required to make decisions concerning land use planning and development in the vicinity of transmission pipelines. Some local governments have enacted or are developing ordinances to regulate land use and development near transmission pipelines.

PIPA Report

As noted, the goal of the Pipelines and Informed Planning Alliance is to reduce risks and improve the safety of affected communities and transmission pipelines through implementation of recommended practices related to risk-informed land use near transmission pipelines.

Approximately 130 representative stakeholder participants undertook the work to develop the PIPA recommended practices. PHMSA plans to continue working with stakeholders to ensure that a sound implementation strategy is developed and that the PIPA recommended practices are communicated to and understood by those who need to adopt them.

The PIPA Report is organized into several important discussion areas including: the definition of key stakeholders, transmission pipelines benefits and risks, general recommended practices, and appendices which include model ordinances and technical information.

Key Stakeholders

Key stakeholders identified in the PIPA Report include the following groups that are responsible for key decision making processes that have influence on both the pipeline and the communities that surround the pipeline.

Local government officials (typically the town, city, county, borough, or parish legislative body) are responsible for the health, safety, and welfare of the residents and for establishing development regulations and zoning. However, there are many variations in the way local governments and planning processes are structured. Generally detailed recommendations on land use regulations, zoning, and in some cases comprehensive plans, are made

by professional planning staff. In some jurisdictions, planning commissions either endorse or reject those recommendations. The final decision regarding land use planning is generally made by the elected local government legislative body.

The property developer/owner is responsible for project planning relating to a parcel of land. This involves gathering all available and necessary information and making decisions affecting a planned development project, such as proposed excavation, construction, or development activity, as well as developing the project plans and getting the necessary approvals and permits to ensure all zoning and construction requirements are met.

Transmission pipeline operators are responsible for the safe operation and maintenance of hazardous liquid and/or natural gas transmission pipelines. These pipelines are subject to federal pipeline safety regulations administered either directly by PHMSA or by a state agency. Operator responsibilities include taking actions to avoid pipeline damage or failure. Such actions include: periodic testing and continued maintenance of transmission pipeline facilities, development of emergency plans, performance of leak surveys, continuing surveillance, encroachment mitigation and right-of-way patrolling, and the development and implementation of damage prevention programs and public awareness programs.

Real estate commissions are generally established to protect the public interest in real estate brokerage transactions in each state. The commission may have many diverse goals and objectives. For example, one goal may be to assure that licensees are competent and morally fit to act as real estate brokers. Another goal may be to ensure that real estate licensees comply with the real estate practice standards imposed by the real estate license law and commission rules. Finally, a third goal may be to identify and address issues affecting real estate consumers and practitioners.

Transmission Pipeline Benefits and Risks

Benefits

Transmission pipelines provide benefits to the nation's general economy and security by providing efficient, cost effective, reliable, safe and secure delivery of the energy products we rely upon. Everyone in the U.S. uses and benefits from the energy and consumer products produced from natural gas and petroleum made available by pipeline transportation. They also benefit from natural gas and petroleum products used in transportation and transportation-related industries, heating homes, providing electricity, and meeting the energy needs of the U.S. armed services.

In the context of total economic impact, almost all transportation energy in this country comes from petroleum which implies the importance of transmission pipelines to the American economy. Many industries also rely on raw materials that are derived from large volumes of crude oil and natural gas delivered by transmission pipelines. A significant percentage of the economic benefits

from our core national industry sectors, including food products, pharmaceuticals, plastics and resins, industrial organic chemicals, and automotive, would not be possible without oil and natural gas energy and related feed stocks transported by transmission pipelines.

Risks

Although transmission pipeline incidents are infrequent, they present potential serious consequences that may significantly impact the public. Risks associated with transmission pipelines result from accidental releases of the transported products, or associated explosions or fires, which can impact public safety and the environment. Accidental pipeline releases can result from a variety of causes, including natural disasters, excavation and other outside force damage, internal and external corrosion, mechanical failure, and operator error.

Reducing transmission pipeline risks and enhancing safety is best achieved through proper pipeline operation and maintenance by pipeline operators. The following can also contribute significantly to reducing pipeline risks: Comprehensive and effective public awareness and damage prevention programs (Brookings County, SD Brochure) <http://primis.phmsa.dot.gov/tag/PrjHome.rdm?prj=326>, risk-informed planning, design and construction of industrial, commercial and residential developments near transmission pipelines, and effective regulatory

oversight of operators for compliance with applicable pipeline safety regulations.

Transmission pipeline failures present risks that may impact people and property beyond the edge of pipeline rights-of-way (ROW). To address these risks, some communities have imposed zoning restrictions, including fixed-distance building setbacks for development along transmission pipeline ROW. However, each situation is unique relative to the pipeline characteristics and the areas surrounding the pipeline ROW. Thus, PIPA recommends that implementing a risk-informed approach to land use planning and development and establishing good communication with the transmission pipeline operator are more appropriate than establishing a fixed-distance setback to be applied in all situations. (GIS to Manage Expanding Pipeline System within Dallas / Fort Worth Metro Area.) <http://primis.phmsa.dot.gov/tag/PrjHome.rdm?prj=327>

When weighing the potential risks of hazardous materials releases in areas proposed for development, local governments should obtain all available information and base decisions on a balanced consideration of all risks. This includes consideration of all modes of hazardous materials transportation in the area, including roads, railway transportation, and transmission pipelines. (Underground Pipeline Inventory and Assessment for Incident Management in Montgomery County, VA) <http://primis.phmsa.dot.gov/tag/PrjHome.rdm?prj=328>



Recommended Practices

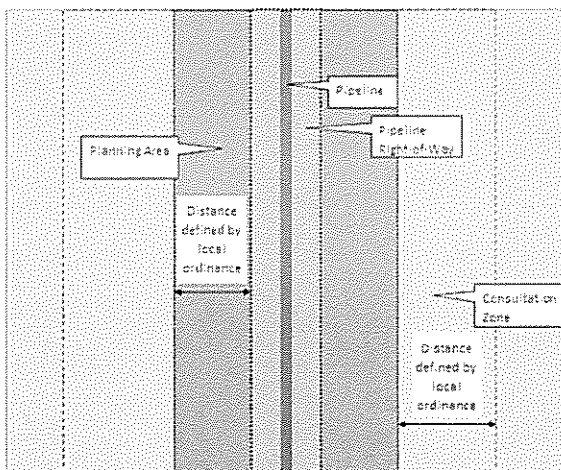
PIPA recommended practices address mapping, land records management, communications, and design and development considerations. Stakeholders in both land use planning/development and transmission pipeline safety are encouraged to become aware of and implement PIPA recommended practices as appropriate.

The recommended practices developed through the PIPA initiative are not mandated by any public or private entity. Furthermore, in some cases implementation of the recommended practices may not be feasible or cost effective. They are intended to provide guidance to pipeline operators, local officials, property owners and developers to provide for the safe use and development of land near transmission pipelines. Some local governments may want to adopt certain practices within their development regulations; others may simply encourage voluntary adoption by their local development community. Both approaches have been used by communities around the country. (Transportation Pipeline Risk Reduction Overlay District in Brookings County, SD) <http://primis.phmsa.dot.gov/tag/PrjHome.rdm?prj=326>

The PIPA recommended practices (Pages 17 - 94 of the PIPA Report) are grouped into two scenarios:

- Baseline recommended practices to be implemented by stakeholders in preparation for future land use and development, and
- New development recommended practices to be implemented by stakeholders when land use and development projects are proposed.

Two of the baseline recommended practices address consultation zones and planning areas. These are important concepts for local governments to put into practice. These two recommended practices are described and illustrated in the graphic below.



Consultation Zone-BL05 Define Transmission Pipeline Consultation Zone

Local governments should define a consultation zone to provide a mechanism to initiate a dialogue between property developers/owners and operators of nearby transmission pipelines when new land uses and property developments are being planned. Optimally, the consultation zone distance should be measured from the transmission pipeline centerline and should be based on specific pipeline characteristics and local conditions. This dialogue will serve to: (1) protect the transmission pipeline by promoting adequate consideration of the potential safety impacts of the proposed land use or property development on the pipeline; and (2) raise awareness of the potential safety impacts of the transmission pipeline on the proposed land use or development so they can be taken into account during planning and design.

Absent site-specific information, it is suggested that a standard consultation zone distance, on either side of the pipeline centerline, of 660 feet be used for natural gas transmission pipelines. For hazardous liquid pipelines (box), also absent site-specific information, it is suggested that a standard consultation zone distance in a range from 660 to 1,000 feet be considered. Again, it is recommended that communities develop and utilize site-specific distances for consultation zones, based on the unique characteristics for the pipeline and the area surrounding the pipeline. The transmission pipeline operator can be helpful and should be consulted in assisting local governments to better understand the pipeline characteristics when they develop site-specific consultation zone distances.

Hazardous liquid pipelines transport petroleum, petroleum products, or anhydrous ammonia. Petroleum includes crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas. Petroleum products are flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds. Compressed carbon dioxide is also transported via hazardous liquid pipelines.

Planning Areas-BL06 Implement New Development Planning Areas around Transmission Pipelines

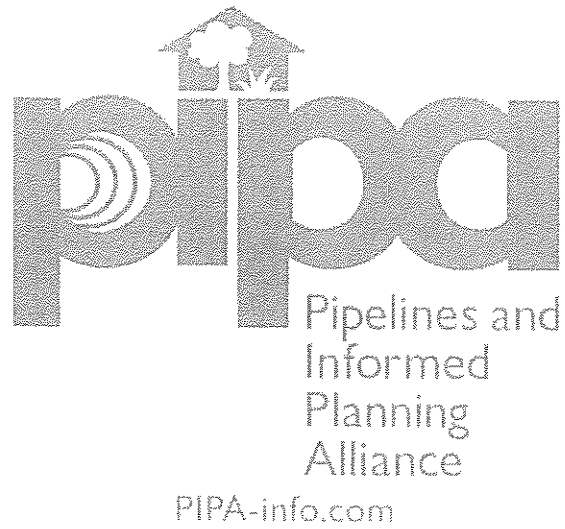
Local governments should consider implementing "planning areas" to enhance safety when new land use and property development is planned near transmission pipelines. A planning area can provide for the application of additional development regulations, standards, or guidelines to ensure safety when development occurs in close proximity to a transmission pipeline.

Absent site-specific information, it is suggested that a standard planning area distance, on either side of the pipeline centerline, of 660 feet be used for natural gas transmission pipelines. For hazardous liquid pipelines, also absent site-specific information, it is

suggested that a standard planning area distance in a range from 660 to 1,000 feet be considered. The suggested standard distances are intended to apply to common pipeline sizes and pressures and do not take into account the possibility of flow of liquid or heavier than air gases. Thus, in either case it is recommended that communities develop and use site-specific distances for planning areas, based on the unique characteristics for the pipeline and the area surrounding the pipeline. The transmission pipeline operator can be helpful and should be consulted in assisting local governments to better understand the pipeline characteristics when they develop site-specific planning area distances.

Conclusion

As transmission pipeline failures may adversely affect the general public, it is important for local governments to make risk-informed decisions regarding land use planning and development in proximity to transmission pipelines. Consequently, local governments should consider the risks, including both likelihood and consequences, of transmission pipeline incidents when making such decisions. They should make full use of available resources and reference the PIPA Report.



**Partnering to Further Enhance Pipeline Safety
In Communities
Through Risk-Informed Land Use Planning
Final Report of Recommended Practices
November 2010**



The Pipelines and Informed Planning Alliance is sponsored by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety.

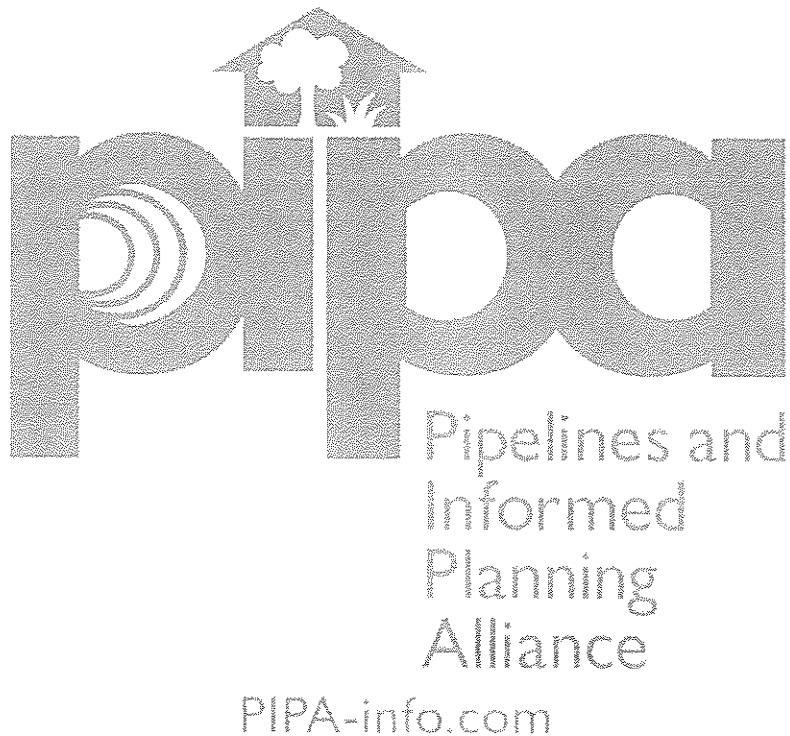
The initial PIPA effort was conducted by approximately 130 stakeholder participants representing a wide range of interests, organizations, and viewpoints on pipelines and community planning. Appendix A of this report lists the initial PIPA participants.

Our thanks go out to all of the PIPA participants and the many other unidentified individuals who may have supported the PIPA effort in one way or another.

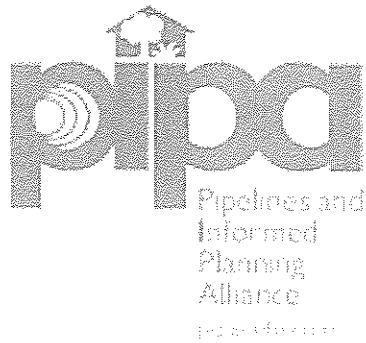
Cycla Corporation supported the initial PIPA effort and provided assistance in preparing this report and integrating it into [PHMSA's Stakeholder Communications website](#).

The PIPA logo was created by Sven Upsons and provided courtesy of The Danielle Dawn Smalley Foundation, Inc., Crandall, Texas.

PIPA information may be found online at [PIPA-Info.com](#).



**Pipelines and Informed Planning Alliance (PIPA)
Recommended Practice Evaluation Worksheet
For Local Governments**



Version 1.0 (2011)

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

Pipelines and Informed Planning Alliance (PIPA)

PIPA is a stakeholder initiative led and supported by the US Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA). PIPA's goal is to reduce risks and improve the safety of affected communities and transmission pipelines through implementation of recommended practices related to risk-informed land use and development near transmission pipelines. The PIPA recommended practices are not mandated by any public or private entity. However, they were developed by task teams of representative stakeholders using a consensus agreement process and the PIPA participants recommend that all stakeholders become aware of and implement the PIPA recommended practices where appropriate.

The PIPA recommended practices describe actions for key stakeholders, including local government, transmission pipeline operators, property developers/owners, and real estate commissions, to improve pipeline safety. Local governments are encouraged to become familiar with each of the recommended practices. Even though the local government may not be taking action under a practice, the local government may be affected by other stakeholders implementing the practice. This document is to assist local governments in evaluating their own current practices in comparison with PIPA recommended practices.

Within the PIPA Report, each recommended practice includes the practice title, a brief practice statement, the stakeholder audience intended to take action to implement the practice, practice details, and references if applicable. The recommended practices are grouped into one of two scenarios:

- Baseline (BL) Recommended Practices – These practices should be implemented by stakeholders in preparation for future land use and development.
- New Development (ND) Recommended Practices – These practices should be implemented by stakeholders when specific new land use and development projects are proposed.

The following table shows each PIPA recommended practice statement, actions a local government might consider to implement the practice, and a column for use in describing the local government's current relevant practices and the actions needed or that are being considered to address the recommended practice. The practices are grouped in functional categories which include: Land Planning and Development, Pipeline Maintenance & Damage Prevention, Maps & Records, and Communication. Practices for which local governments have a primary action are presented first. Practices for which other stakeholders have the primary action are shaded and follow those for local governments.

Beginning, an example is provided of how a local government might evaluate how it currently addresses PIPA Recommended Practice BL01.

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

<i>PIPA RP #</i>	<i>Practice Title and Description</i>	<i>Local Government Practice</i>	<i>Current Practice Action(s) Needed or Considered</i>
BL01	<p>Obtain Transmission Pipeline Mapping Data</p> <p>Local government agencies responsible for land use and development planning or the issuance of development permits should obtain mapping data for all transmission pipelines within their areas of jurisdiction from PHMSA's National Pipeline Mapping System or from the transmission pipeline operators and show these pipelines on maps used for development planning.</p> <p><i>Primary Action: Local Government</i></p>	<p>Agencies responsible for land use and development planning or the issuance of development permits should obtain mapping data for all transmission pipelines within their areas of jurisdiction from PHMSA's National Pipeline Mapping System or from the transmission pipeline operators and show these pipelines on maps used for development planning.</p>	<p>N/A –Transmission pipelines not mapped in county GIS. They are currently not required to be shown on site plans, development maps, or plat maps.</p> <hr/> <p>The Planning and Zoning Department should work with NPMS and identified pipeline operators to obtain mapping data for all transmission pipelines within the county. Mapping overlays should be developed to show pipelines located on plat maps. A process should be implemented for periodic review to ensure mapping data is current.</p>

For more information, local governments can contact the PHMSA Community Assistance and Technical Services (CATS) representatives. Email: Christie.Murray@dot.gov.

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
Recommended Practices: Primary Action for Local Government			
Land Planning and Development			
BL03	<p>Utilize Information Regarding Development around Transmission Pipelines</p> <p>Transmission pipeline operators should provide information about their pipelines to local governments and property developers/owners who are planning development around their pipelines. Local government authorities regulating development should use this information to establish requirements regarding land use and development around transmission pipelines.</p> <p><i>Primary Action: Local Government, Pipeline Operator</i></p>	<p>Local government authorities regulating development should solicit, gather, and use information provided by pipeline operators to establish requirements regarding land use and development around transmission pipelines.</p>	
BL04	<p>Adopt Transmission Pipeline Consultation Zone Ordinance</p> <p>Local governments should adopt land development procedures requiring property developers/owners to consult with transmission pipeline operators early in the development process, so that development designs minimize risks to the populace living or working nearby and are consistent with the needs and legal rights of the operators.</p> <p><i>Primary Action: Local Government</i></p>	<p>Adopt procedures requiring property developers/owners to consult with affected transmission pipeline operators early in the development process, so that development designs minimize risks to populations living or working nearby and are consistent with the needs and legal rights of the pipeline operators. Approval of development plans should include a check-off to confirm consultation has occurred. A check-off should also be included to remind property developer/owner that calling 811 before digging is required.</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
BLOS	<p>Define Transmission Pipeline Consultation Zone</p> <p>Local governments should define a "consultation zone" to provide a mechanism for communication between property developers/owners and operators of nearby transmission pipelines when new land uses and property developments are being planned.</p> <p><i>Primary Action: Local Government</i></p>	<p>Define a "consultation zone" wherein proposed land use changes and development occurring within the zone must be communicated to affected transmission pipeline operators by the property developer/owner. Approval of development plans should require pipeline locations be included in site plans and maps and a check-off that the property developer/owner has contacted pipeline operators regarding development plans within the consultation zone. A check-off should also be included to remind property developer/owner that calling 811 is required before digging.</p>	
BL06	<p>Implement New Development Planning Areas around Transmission Pipelines</p> <p>Local governments should consider implementing "planning areas" to enhance safety when new land use and property development is planned near transmission pipelines.</p> <p><i>Primary Action: Local Government</i></p>	<p>Define and implement "planning areas" to enhance safety when new land use and property development is planned near transmission pipelines. A planning area can provide for the application of additional development regulations, standards, or guidelines to ensure safety.</p> <p>Reference PIPA Recommended Practices ND11 through ND23 which describe additional considerations for use within a planning area. Local governments should discuss the development of planning areas with affected pipeline operators.</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
ND06	<p>Require Consideration of Transmission Pipeline Facilities in Land Development Design</p> <p>Whenever development is proposed on property containing transmission pipeline facilities, local governments should require that the submitted land development plans address in detail the steps necessary to safely integrate the transmission pipeline into the design of the project.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>Require that land development plans submitted for approval address in detail the steps necessary to safely integrate affected transmission pipelines into the design of the project. This should be included along with other issues that must be addressed as part of the land development process, such as the availability of potable water, sewer, adequate roads, environmental constraints, etc.</p> <p>Require documented consideration of PIPA Recommended Practices ND11 through ND23, as applicable, for new land development located within a transmission pipeline planning area, to reduce the potential safety impacts of transmission pipeline incidents and to avoid interference with pipeline operations when development is adjacent to or crosses a pipeline right-of-way.</p>	
ND08	<p>Collaborate on Alternate Use and Development of Transmission Pipeline Right-of-Way</p> <p>Property developers/owners, local governments and transmission pipeline operators may collaborate on alternative use of the transmission pipeline right-of-way and related maintenance.</p> <p><i>Primary Action: Local Government , Property Developer/Owner, Pipeline Operators</i></p>	<p>Collaborate with operators and affected property developers/owners to identify alternative uses of transmission pipeline rights-of-way and define who would maintain the rights-of-way under specific circumstances.</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
ND09	<p>Provide Flexibility for Developing Open Space along Transmission Pipeline Rights-of-Way</p> <p>Local governments should consider allowing site planning flexibility in the development of commercial, industrial or residential property whenever a transmission pipeline is located in, or in close proximity to, the proposed development.</p> <p><i>Primary Action: Local Government</i></p>	<p>Adopt regulations that allow creative designs that address both public and transmission pipeline safety concerns by allowing site planning flexibility in property development. This can enable development when there are specific constraints, such as nearby pipelines or environmentally sensitive areas. Such flexibility can allow, for example, clustered, higher-density development to be located within broader swaths of open space, thereby creating buffers to the constraining areas.</p> <p>The goal is to allow the same overall density of development within a given area while providing more space between the transmission pipeline and the development.</p>	
ND11	<p>Reduce Transmission Pipeline Risk through Design and Location of New Parking Lots and Parking Structures</p> <p>Parking lots and parking structures should be preferentially located and designed to reduce the consequences that could result from a transmission pipeline incident and to reduce potential interference with transmission pipeline maintenance and inspections.</p> <p><i>Primary Action: Local Government, Property Developer/Owner</i></p>	<p>Require that permitting reviews for commercial developments such as parking lots and parking structures consider location and design elements to reduce the potential safety impacts of transmission pipeline incidents and to avoid interference with pipeline operations when development is adjacent to a pipeline right-of-way.</p>	
ND12	<p>Reduce Transmission Pipeline Risk through Design and Location of New</p>	<p>Require that permitting reviews for road developments consider</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<p>Roads</p> <p>Roads and associated appurtenances should be preferentially located and designed to reduce the consequences that could result from a transmission pipeline incident and reduce the potential of interference with pipeline operations and maintenance.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>location and design elements to reduce the potential safety impacts of transmission pipeline incidents and to avoid interference with pipeline operations when development is adjacent to or crosses a pipeline right-of-way. Require that state and local government road development be subject to the same considerations.</p>	
ND13	<p>Reduce Transmission Pipeline Risk through Design and Location of New Utilities and Related Infrastructure</p> <p>Utilities (both above and below ground) and related infrastructure should be preferentially located and designed to reduce the consequences that could result from a transmission pipeline incident and to reduce the potential of interference with transmission pipeline maintenance and inspections.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>Require that permitting reviews for new utilities and related infrastructure developments consider location and design elements to reduce the potential safety impacts of transmission pipeline incidents and to avoid interference with pipeline operations when development is adjacent to or crosses a pipeline right-of-way. Require that all municipally-owned and operated utilities be subject to the same considerations.</p>	
ND14	<p>Reduce Transmission Pipeline Risk through Design and Location of Aboveground Water Management Infrastructure</p> <p>Storm water and irrigation water management facilities, retention ponds, and other above-ground water management infrastructure should be preferentially located and designed to reduce the consequences that could result from a transmission pipeline incident and to reduce the potential of interference with transmission pipeline</p>	<p>Require that permitting reviews for new aboveground water management infrastructure developments consider location and design elements to reduce the potential safety impacts of transmission pipeline incidents and to avoid interference with pipeline operations when development is adjacent to or crosses a pipeline right-of-way. Require that all such developments to be owned and operated by the local government be subject to the same</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<p>operations and maintenance.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>considerations.</p>	
ND15	<p>Plan and Locate Vegetation to Prevent Interference with Transmission Pipeline Activities</p> <p>Trees and other vegetation should be planned and located to reduce the potential of interference with transmission pipeline operations, maintenance, and inspections.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>When possible, facilitate effective communications for the proper planning and location of vegetation to reduce the potential of interference with transmission pipeline operations, maintenance, and inspections.</p>	
ND16	<p>Locate and Design Water Supply and Sanitary Systems to Prevent Contamination and Excavation Damage</p> <p>Individual water supplies (water wells), small public/private water systems and sanitary disposal systems (septic tanks, leach or drain fields) should be designed and located to prevent excavation damage to transmission pipelines, interference with transmission pipeline maintenance and inspections, and environmental contamination in the event of a transmission pipeline incident.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>Require that permitting reviews for the development of new water supplies (wells), water supply systems, and sanitary disposal systems consider location and design elements to reduce the potential of environmental contamination in the event of a pipeline incident, prevent excavation damage to the pipeline, and avoid interference with pipeline operations when development is adjacent to or crosses a pipeline right-of-way. Require that all such developments to be owned and operated by the local government be subject to the same considerations.</p>	
ND17	<p>Reduce Transmission Pipeline Risk in New Development for Residential, Mixed-Use, and Commercial Land Use</p>	<p>Require that permitting reviews for the development check to ensure appropriate life safety codes and enhanced fire protection have</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<p>New development within a transmission pipeline planning area (see PIPA Recommended Practice BLO6) should be designed and buildings located to reduce the consequences that could result from a transmission pipeline incident and to provide adequate access to the pipeline for operations and maintenance.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>been considered where needed. Consider modeling of fire, explosion, or toxic release impacts that could occur during a transmission pipeline incident for the specific land use under consideration. Also consider egress models for such incidents.</p>	
ND18	<p>Consider Transmission Pipeline Operation Noise and Odor in Design and Location of Residential, Mixed-Use, and Commercial Land Use Development</p> <p>Consider noise, odor and other issues when planning and locating developments near above-ground transmission pipeline facilities, such as compressor stations, pumping stations, odorant equipment, regulator stations and other pipeline appurtenances.</p> <p><i>Primary Action: Local Government , Property Developer/Owner, Pipeline Operators</i></p>	<p>Use information provided by pipeline operators regarding aboveground pipeline facilities to understand the impact of such facilities on proposed land use and development. Establish requirements for land use and development around the particular aboveground sites based upon the guidance on specific land uses provided in the PIPA recommended practices.</p>	
ND19	<p>Reduce Transmission Pipeline Risk through Design and Location of New Industrial Land Use Development</p> <p>New industrial land use development within a transmission pipeline planning area (see PIPA Recommended Practice BLO6) should be designed and buildings located to reduce the consequences that could result from a transmission pipeline incident and reduce the potential of interference with transmission pipeline operations and</p>	<p>Require that permitting reviews for new developments check to ensure appropriate life safety codes and enhanced fire protection have been considered where needed. Consider modeling of fire, explosion, or toxic release impacts that could occur during a transmission pipeline incident for the specific land use under consideration. Also consider egress models for such incidents.</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<p>maintenance.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>If appropriate, land use and development design should take this modeling into account to minimize potential impacts. The models should be fit-for-purpose and the model user should have appropriate expertise.</p>	
ND20	<p>Reduce Transmission Pipeline Risk through Location, Design, and Construction of New Institutional Land Use Developments</p> <p>New development of institutional facilities that may be difficult to evacuate within a transmission pipeline planning area (see PIPA Recommended Practice BLO6) should be designed and the facilities located and constructed to reduce the consequences that could result from a transmission pipeline incident. Such facilities should also be located to reduce the potential of interference with transmission pipeline operations and maintenance activities. Emergency plans for these facilities should consider potential transmission pipeline incidents.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>Require that permitting reviews for new developments check to ensure appropriate life safety codes and enhanced fire protection have been considered where needed. Consider modeling of fire, explosion, or toxic release impacts that could occur during a transmission pipeline incident for the specific land use under consideration. Also consider egress models for such incidents.</p> <p>If appropriate, land use and development design should take this modeling into account to minimize potential impacts. The models should be fit-for-purpose and the model user should have appropriate expertise.</p>	
ND21	<p>Reduce Transmission Pipeline Risk through Design and Location of New Public Safety and Enforcement Facilities</p> <p>New development of emergency responder facilities within a transmission pipeline planning area (see PIPA Recommended Practice BLO6) should be designed and the facilities located and constructed to reduce the consequences that could</p>	<p>Require that permitting reviews for new developments check to ensure appropriate life safety codes and enhanced fire protection have been considered where needed. Consider modeling of fire, explosion, or toxic release impacts that could occur during a transmission pipeline incident for the specific land use under consideration. Also consider egress</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<p>result from a transmission pipeline incident. Such facilities should also be designed and located to avoid the potential of interference with pipeline operations and maintenance. Planning for these facilities should include emergency plans that consider the effects of a transmission pipeline incident.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>models for such incidents.</p> <p>If appropriate, land use and development design should take this modeling into account to minimize potential impacts. The models should be fit-for-purpose and the model user should have appropriate expertise.</p>	
ND22	<p>Reduce Transmission Pipeline Risk through Design and Location of New Places of Mass Public Assembly (Future Identified Sites)</p> <p>New development of places of potential mass public assembly within a transmission pipeline planning area (see PIPA Recommended Practice BLO6) should be designed and the facilities located and constructed to reduce the consequences of a potential transmission pipeline incident, the risk of excavation damage to the pipeline, and the potential of interference with transmission pipeline operations and maintenance. Planning for these facilities should include emergency plans that consider the effects of a potential pipeline incident.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>Require that permitting reviews for new developments check to ensure appropriate life safety codes and enhanced fire protection have been considered where needed. Consider modeling of fire, explosion, or toxic release impacts that could occur during a transmission pipeline incident for the specific land use under consideration. Also consider egress models for such incidents. The models should be fit-for-purpose and the model user should have appropriate expertise.</p> <p>Note that transmission pipeline operators are required by existing pipeline safety regulations to provide emergency liaison and consultations and must maintain, modify as appropriate, and follow their plans, procedures and programs they are required under Title 49 Code of Federal Regulations, Parts 192 and 195, respectively.</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
ND23	<p>Consider Site Emergency Response Plans in Land Use Development</p> <p>Emergency response plan requirements should be considered in new land use development within a planning area (see PIPA Recommended Practice BL06) to reduce the risks of a transmission pipeline incident.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>Be receptive to coordination with pipeline operators regarding emergency planning. Note that transmission pipeline operators are required by existing pipeline safety regulations to provide emergency liaison and consultations and must maintain, modify as appropriate, and follow their emergency plans, procedures and programs they are required under Title 49 Code of Federal Regulations, Parts 192 and 195, respectively.</p> <p>Require that permitting reviews for new developments check to ensure appropriate life safety codes and enhanced fire protection have been considered where needed. Consider modeling of fire, explosion, or toxic release impacts that could occur during a transmission pipeline incident for the specific land use under consideration. Also consider egress models for such incidents.</p> <p>If appropriate, land use and development design should take this modeling into account to minimize potential impacts. The models should be fit-for-purpose and the model user should have appropriate expertise.</p>	
Pipeline Maintenance and Damage Prevention			
BL14	<p>Participate to Improve State Excavation Damage Prevention</p>	<p>Take steps to eliminate exemptions from one-call requirements that can result in</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<p>Programs</p> <p>All pipeline safety stakeholders should participate in the work of organizations seeking to make improvements to state excavation damage prevention programs, especially efforts to reduce exemptions from participation in one-call systems.</p> <p><i>Primary Action: Local Government , Property Developer/Owner, Pipeline Operators</i></p>	<p>damage to pipelines and other underground facilities. This includes eliminating exemptions for:</p> <ol style="list-style-type: none"> 1. Facility owners, including municipalities, that enable them to avoid participation in the one-call system. Excavators may not be informed of such exemptions and may fail to get facilities marked before digging. 2. Certain excavators and/or types of excavators, such as municipal, county and state departments of transportation, that enable them to begin digging without getting underground facilities located and marked. 3. Certain types of excavation, such as road grading, which can and do damage pipelines and other underground facilities just as any other types of excavation do. 	
BL16	<p>Halt Dangerous Excavation Activities near Transmission Pipelines</p> <p>Transmission pipeline operators should have procedures and established contacts with local enforcement personnel in order to act appropriately to halt dangerous excavation activities that may damage their pipelines and potentially cause an immediate threat</p>	<p>Local government enforcement agencies and personnel should be prepared to respond appropriately when notified by pipeline operators to stop unsafe excavation practices near pipelines. Local enforcement personnel play a critical role due to their authority to legally halt unsafe excavation. Local</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<p>to life or property.</p> <p><i>Primary Action: Local Government , Pipeline Operators</i></p>	<p>government agencies with the authority to halt dangerous excavations may vary, with titles such as Public Safety Office, Police, Fire Department, Fire Marshal, Utility Coordinator, or Code Enforcement. The responsible agency should recognize the outreach from the transmission pipeline operator and work cooperatively to build understanding and relationships in advance to facilitate timely responses actions when needed.</p>	
ND24	<p>Install Temporary Markers on Edge of Transmission Pipeline Right-of-Way Prior to Construction Adjacent to Right-of-Way</p> <p>The property developer/owner should install temporary right-of-way (ROW) survey markers or fencing on the edge of the transmission pipeline ROW or buffer zone, as determined by the transmission pipeline operator, prior to construction to provide a clearly defined boundary. The property developer/owner should ensure that the temporary markers or fencing are maintained throughout the course of construction.</p> <p><i>Primary Action: Local Government , Property Developer/Owner</i></p>	<p>Require as a condition of the excavation permit the installation of temporary right-of-way (ROW) survey markers or fencing on the edge of any transmission pipeline ROW or buffer zone, as determined by the transmission pipeline operator, prior to construction to provide a clearly defined boundary. The markers should be installed before work begins and remain in place until construction is complete. The local government or other entity responsible for construction inspections should verify that the fencing is properly installed and maintained.</p>	
ND25	<p>Contact Transmission Pipeline Operator Prior to Excavating or Blasting</p>	<p>Require developers, excavators, and property owners to notify affected transmission pipeline operators prior to excavating</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<p>Anyone planning to conduct excavating, blasting and/or seismic activities should consult with affected transmission pipeline operators well in advance of commencing these activities. Excavating and blasting have the potential to affect soil stability or lead to movement or settling of the soil surrounding the transmission pipeline.</p> <p><i>Primary Action: Local Government , Property Developer/Owner, Pipeline Operators</i></p>	<p>and/or blasting operations as part of the permitting or licensing process. Appropriate local government agencies should be engaged in the permitting or licensing process for blasting, well in advance of the actual blasting operation, when transmission lines may be impacted.</p>	
Maps and Records			
BL01	<p>Obtain Transmission Pipeline Mapping Data</p> <p>Local government agencies responsible for land use and development planning or the issuance of development permits should obtain mapping data for all transmission pipelines within their areas of jurisdiction from PHMSA's National Pipeline Mapping System or from the transmission pipeline operators and show these pipelines on maps used for development planning.</p> <p><i>Primary Action: Local Government</i></p>	<p>Agencies responsible for land use and development planning or the issuance of development permits should obtain mapping data for all transmission pipelines within their areas of jurisdiction from PHMSA's National Pipeline Mapping System or from the transmission pipeline operators and show these pipelines on maps used for development planning.</p>	
BL08	<p>Manage Land Records</p> <p>Land use agreements between pipeline operators and property owners should be documented and managed and, when necessary, recorded.</p> <p><i>Primary Action: Local Government, Pipeline Operator</i></p>	<p>Local governments (appropriate statutory offices) should facilitate the recording of land documents and provide public access to the records and public notice (i.e. constructive notice) of encumbrances on affected properties. Land documents may include easement agreements, encroachment agreements, letters</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
		of no objection, partial releases, and easement amendments.	
ND07	<p>Define Blanket Easement Agreements When Necessary</p> <p>Upon request by the landowner, a transmission pipeline easement agreement may be defined to an acceptable, reasonable, and safe width and explicit location. State statutes or local government regulations may require easements to be defined prior to the approval of rezoning, subdivision plats and development permits.</p> <p><i>Primary Action: Local Government, Property Developer/Owner, Pipeline Operators</i></p>	Require transmission pipeline easements to be defined prior to the approval of rezoning, subdivision plats and development permits. Blanket easements should be defined to a specific location to avoid confusion regarding which lands are burdened by the easement rights of the transmission pipeline operator. Require easements to be recorded at the appropriate statutory office (e.g., county recorder, parish clerk)	
ND10	<p>Record Transmission Pipeline Easements on Development Plans and Final Plats</p> <p>Local governments should require all recorded development plans and final plats to clearly show the location of transmission pipeline easements and identify the pipeline operators.</p> <p><i>Primary Action: Local Government, Property Developer/Owner</i></p>	Adopt requirements that all recorded development plans and final plats must clearly show the location of transmission pipeline easements and identify the pipeline operators.	
ND26	<p>Use, Document, Record and Retain Encroachment Agreements or Permits</p> <p>Encroachment agreements should be used, documented, recorded and retained when a transmission pipeline operator agrees to allow a property developer/owner or local government to encroach on the pipeline right-of-way for a long or perpetual duration in a manner that conflicts with the activities allowed on the easement.</p>	Contact the transmission pipeline operator and provide information about the proposed encroachment when local government desires to encroach on a transmission pipeline right-of-way (ROW) for a long or perpetual duration in a manner that conflicts with the activities allowed by the easement agreement. Documented in an encroachment agreement by the landowner and the easement	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<i>Primary Action: Local Government , Property Developer/Owner, Pipeline Operators</i>	owner after the encroachments and acceptable uses of the right- of-way are agreed upon.	
ND27	<p>Use, Document and Retain Letters of No Objection and Conditional Approval Letters</p> <p>Transmission pipeline operators may use, document and retain "letters of no objection" in agreeing to land use activities on or near a transmission pipeline right-of-way. Such land uses may or may not be temporary.</p> <p><i>Primary Action: Local Government , Property Developer/Owner, Pipeline Operators</i></p>	Determine if letters of no objection should be included as a requirement in local government development regulations when transmission pipeline operators agree to land use activities on or near a transmission pipeline right-of-way.	
Recommended Practices: Primary Action for Stakeholder Other Than Local Government			
Land Planning and Development			
ND02	<p>Gather Information for Design of Property Development near Transmission Pipelines</p> <p>In designing a proposed property development the property developer/owner should use all reasonable means to obtain information about transmission pipeline facilities in the area of the proposed development.</p> <p><i>Primary Action: Property Developer/Owner, Pipeline Operators</i></p>	When possible, facilitate effective communications among pipeline safety stakeholders regarding land use planning and development near transmission pipelines to help assure public and pipeline safety.	
ND03	<p>Review Acceptability of Proposed Land Use of Transmission Pipeline Right-of-Way Prior to Design</p> <p>The property developer/owner should review preliminary information about</p>	When possible, facilitate effective communications among pipeline safety stakeholders regarding land use planning and development near transmission pipelines to help	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<p>acceptable land uses on a transmission pipeline right-of-way prior to the design of a property development.</p> <p><i>Primary Action: Property Developer/Owner</i></p>	<p>assure public and pipeline safety. Understanding encroachment issues can help to facilitate their resolution.</p> <p>(Reference PIPA Recommended Practice BL13.)</p>	
ND04	<p>Coordinate Property Development Design and Construction with Transmission Pipeline Operator</p> <p>When property development is planned within the consultation zone (reference PIPA Recommended Practice BL05), the property developer/owner and the transmission pipeline operator should communicate to ensure possible impacts of pipeline incidents and maintenance needs are considered during development design and construction.</p> <p><i>Primary Action: Property Developer/Owner, Pipeline Operators</i></p>	<p>When possible, facilitate effective communications among pipeline safety stakeholders.</p>	
Pipeline Maintenance and Damage Prevention			
BL12	<p>Notify Stakeholders of Right-of-Way Maintenance Activities</p> <p>Transmission pipeline operators should notify affected stakeholders of right-of-way maintenance activities, including vegetation management.</p> <p><i>Primary Action: Pipeline Operators</i></p>	<p>When possible, facilitate effective communications among pipeline safety stakeholders regarding land use planning and development near transmission pipelines to help assure public and pipeline safety.</p>	
BL13	<p>Prevent and Manage Right-of-Way Encroachment</p> <p>Transmission pipeline operators should</p>	<p>When possible, facilitate effective communications among pipeline safety stakeholders regarding land</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<p>communicate in a documented and timely manner with property developers/owners to prevent or rectify unacceptable encroachments or inappropriate human activity within the transmission pipeline right-of-way.</p> <p><i>Primary Action: Pipeline Operators</i></p>	<p>use planning and development near transmission pipelines to help assure public and pipeline safety. Understanding encroachment issues can help to facilitate their resolution.</p>	
BL15	<p>Enhance Damage Prevention Practices near High-Priority Subsurface Facilities</p> <p>Transmission pipeline operators should implement enhanced damage prevention practices within the transmission pipeline right-of-way to ensure that pipeline operators and excavators meet on-site prior to excavation activity near high-priority subsurface facilities.</p> <p><i>Primary Action: Pipeline Operators</i></p>	<p>Take steps to eliminate exemptions from one-call requirements that can result in damage to pipelines and other underground facilities, as noted above. Local governments should ensure their own departmental personnel responsible for excavating are aware of the need to communicate with pipeline operators before digging near pipelines and require confirmation that such communication occurs. When possible, local governments should facilitate effective communications among pipeline safety stakeholders regarding land use planning and development near transmission pipelines to help assure public and pipeline safety.</p>	
Maps and Records			
BL07	<p>Understand the Elements of a Transmission Pipeline Easement</p> <p>Property developers/owners should</p>	<p>Affected local government agencies, such as records departments, should be familiar with the issues, elements of and</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
	<p>have an understanding of the elements of and rights conveyed in a transmission pipeline easement.</p> <p><i>Primary Action: Property Developer/Owner</i></p>	<p>rights conveyed in transmission pipeline easements and be able to assist property developers/owners in identifying and understanding same. Local government should facilitate access to easement agreements and survey documents where possible. Local government should work with the property developer/owner and pipeline operators to ensure that land use and development plans do not interfere with the current or potential future locations of such pipeline facilities or the operation and maintenance of the pipeline and related facilities.</p>	
BL09	<p>Document and Record Easement Amendments</p> <p>Easement amendments should be documented, managed and recorded.</p> <p><i>Primary Action: Property Developer/Owner, Pipeline Operators</i></p>	<p>Local governments (appropriate statutory offices) should facilitate the recording of land documents and provide public access to the records and public notice (i.e. constructive notice) of encumbrances on affected properties. Land documents may include easement agreements, encroachment agreements, letters of no objection, partial releases, and easement amendments.</p>	
BL17	<p>Map Abandoned Pipelines</p> <p>When a transmission pipeline operator abandons a transmission pipeline, information regarding the abandoned pipeline should be maintained and included in the information provided to the one-call center.</p> <p><i>Primary Action: Pipeline Operators</i></p>		

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	Practice Title and Description	Local Government Practice	Current Practice Action(s) Needed or Considered
BL18	<p>Disclose Transmission Pipeline Easements in Real Estate Transactions</p> <p>As part of all real estate sales contracts, each state should require the disclosure of known transmission pipeline easements on the property.</p> <p><i>Primary Action: Real Estate Commission</i></p>		
ND28	<p>Document, Record and Retain Partial Releases</p> <p>Partial releases may be used to allow some part of the transmission pipeline right-of-way to be released from certain easement conditions, and should be documented, recorded and retained.</p> <p><i>Primary Action: Property Developer/Owner, Pipeline Operators</i></p>	<p>Facilitate the recordation at the appropriate statutory office (i.e. county recorder, parish clerk) of partial releases that allow some part of the transmission pipeline right-of-way to be released from certain easement conditions.</p> <p>Establish procedures for retention of those releases for the life of the easement.</p>	
Communication			
BL10	<p>Implement Communications Plan</p> <p>Transmission pipeline operators should develop and implement effective communications plans when communicating acceptable transmission pipeline right-of-way uses and activities to property developers/owners and other stakeholders.</p> <p><i>Primary Action: Property Developer/Owner, Pipeline Operators</i></p>	<p>When possible, facilitate effective communications among pipeline safety stakeholders regarding land use planning and development near transmission pipelines, to help assure public and pipeline safety.</p>	
BL11	<p>Effectively Communicate Pipeline Risk and Risk Management Information</p> <p>Transmission pipeline operators should identify barriers to effectively</p>	<p>When possible, facilitate effective communications among pipeline safety stakeholders regarding land use planning and development near transmission pipelines to help</p>	

Checklist for Local Government To Evaluate Land Use and Development Practices Near Transmission Pipelines

PIPA RP #	<i>Practice Title and Description</i>	<i>Local Government Practice</i>	<i>Current Practice Action(s) Needed or Considered</i>
	<p>communicating with stakeholders and use communication techniques designed to overcome those barriers and effectively engage stakeholders to communicate with them regarding pipeline risks and how the operator manages such risks.</p> <p><i>Primary Action: Pipeline Operators</i></p>	<p>assure public and pipeline safety.</p>	

Who We Are

The Pipelines and Informed Planning Alliance (PIPA)

is a collaborative initiative comprising pipeline safety stakeholders whose goal is to reduce risks and improve the

safety of affected communities and transmission pipelines through the communication and implementation of PIPA-recommended practices. The PIPA-recommended practices are intended to help communities make risk-informed decisions in planning for land use and development for areas adjacent to transmission pipelines.

PIPA Stakeholders

PIPA stakeholders represent a wide range of interests, organizations and viewpoints on pipelines and community planning, including:

- Local, state and federal government agencies
- Emergency responders
- Public and community organizations
- Excavators and property developers
- Pipeline facility operators

PIPA-Recommended Practices and the Role of Local Governments

PIPA-recommended practices include actions to be taken by local governments to affect proposed changes in land use or new development adjacent to existing transmission pipelines. Local governments have a key role in helping ensure the safety of people, property, the environment and transmission pipeline infrastructure.

The PIPA-recommended practices are intended to help local governments enhance safety by establishing requirements that guide stakeholder communications and actions early in the planning stages. For example, PIPA-recommended practices suggest that local governments adopt ordinances that define and establish transmission pipeline consultation zones.



Transmission Pipeline Consultation Zone
distance from a transmission pipeline to a new property development which triggers a dialogue between the property developer/owner and the pipeline operator

Underground Pipeline

Another PIPA recommendation is that land use changes or development within a consultation zone require property developers/owners to consult with transmission pipeline operators early in the development process. Doing so will ensure that development plans minimize risks to the people living or working nearby, and are consistent with the needs and legal rights of developers and pipeline operators.

Communication Helps Ensure Safety

Land use changes and development near transmission pipelines can create risks to communities and to the pipeline infrastructure. Safety is a primary and common goal for all stakeholders and should be considered when decisions are made that impact life, property or the environment. Early communication among stakeholders can help.

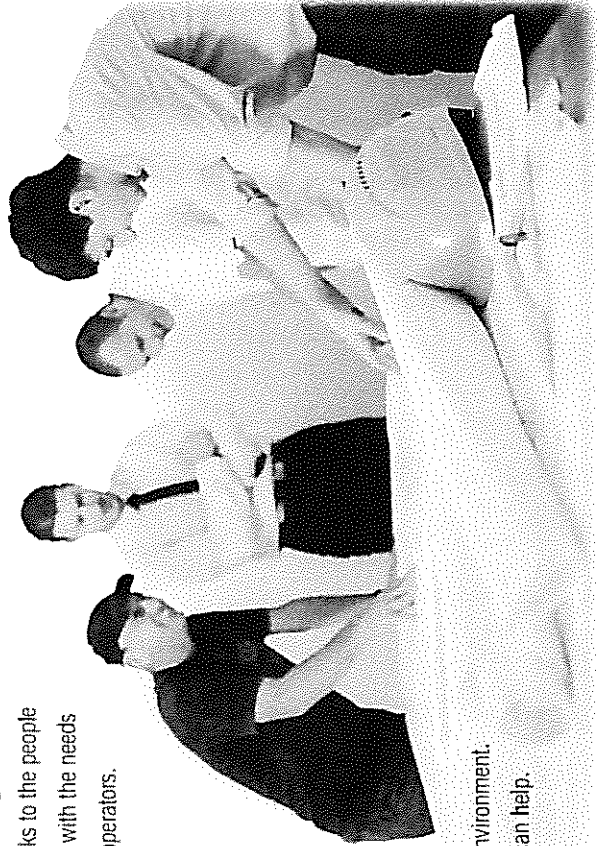
Risk Informed Decisions

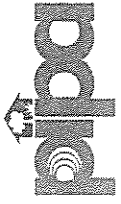
Reducing risk and improving community and pipeline safety can be challenging. Stakeholders often have differing and, sometimes, conflicting concerns. All stakeholders are best served by efficient, effective decision-making processes that involve reasonable time and expense. When each stakeholder understands the relevant interests, issues and concerns of other stakeholders, it becomes easier to communicate and collaborate to reach mutually agreeable solutions. As communities grow and evolve, we are very likely to see an increase in development near existing transmission pipelines. Communication and collaboration among stakeholders is vital to improving pipeline safety. It is important that stakeholders become risk-informed and consider adoption and implementation of PIPA-recommended practices.

Find more information regarding PIPA and the

Recommended Practices at: PIPA-info.com

or contact us at info@PIPA-info.com.





How to Locate Transmission Pipelines in Your Area

The **National Pipeline Mapping System (NPMS)** is managed by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS). The NPMS includes the locations and characteristics of hazardous liquid and gas transmission pipelines, liquefied natural gas plants and breakout tanks.



NPMS online interactive maps show pipeline facilities and the areas they traverse. This information can be a valuable tool for planning community growth and emergency response. Access to the maps requires a password, which will be provided to federal, state and local government agencies upon request. Members of the public can find contact information for pipeline companies operating in a county or postal code via the NPMS website (<http://www.npms.phmsa.dot.gov>).

OPS Stakeholder Communications Website

Information about pipeline system construction, operation, and maintenance is available on the OPS Stakeholder Communications website. The site also provides current statistical reports on pipeline incidents and enforcement activity. Visit <http://primis.phmsa.dot.gov/comm>.

OPS Community Assistance

OPS Community Assistance and Technical Services managers are committed to improve communication with pipeline safety stakeholders and identify opportunities for improving pipeline safety, especially in the areas of public awareness and damage prevention. For more information, go to: <http://primis.phmsa.dot.gov/comm/CATS.htm>.

OPS TAG Grants

The OPS Technical Assistance Grants program offers funding to local governments to help them implement PIPA-recommended practices. For information, go to the OPS Stakeholder Communications website, under "Grants".



Know what's below.
CALL before you dig.



Find more information regarding PIPA and PIPA Recommended Practices, go to: PIPA-info.com or scan this QR code on your smartphone. Contact us at info@PIPA-info.com.



Land Development in Close Proximity to Transmission Pipelines

POWLAN CASSIDY LAW

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April 4, 2016

Honorable Michael Maciel, Mayor
and Members of the Tracy City Council
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376

Re: April 5, 2016 City Council Special Meeting: Agenda Item 4, Discussion and Direction Regarding the Adoption of an Overlay Zone to Establish Land Use and/or Development Standards Along the I-205 Corridor East of Tracy Boulevard.

Dear Mayor Maciel and Honorable Members of the City Council:

This firm represents YRC Inc. doing business as YRC Freight (“YRC”), in connection with the proposed sale of a portion of its land to an affiliate of Industrial Property Trust, Inc. (“IPT”). YRC is the owner and operator of a freight terminal on approximately 78 acres of land located at 1535 E. Pescadero Avenue (the “Property”). YRC is under contract to sell approximately 22 acres of the Property located to the west of its freight facility (the “Sale Property”) to IPT. On January 4, 2016, IPT submitted an application (the “Application”) to the City of Tracy (“City”) for a warehousing and distribution facility on the Sale Property (the “Project”). The Application is now complete and should be processed by City Staff.

As you know, on January 5, 2016, the City Council adopted a 45-day moratorium (the “Moratorium”) prohibiting the approval of entitlements for new warehouse or distribution facilities along a specified stretch of the I-205 corridor from Tracy Boulevard east to the City limits (the “Study Area”). On February 16, 2016, the City Council held a workshop to discuss options related to additional development regulations in the Study Area. On that same date, the City Council rejected a proposed extension of the Moratorium for a period of 10 months and 15 days.

On March 29, 2016, we obtained the Staff Report for the April 5, 2016 Special Meeting proposing to initiate proceedings to adopt an I-205 Overlay Zone. The proposed overlay zone included in the Staff Report would drastically change the long-standing planning and zoning regulations applicable to the Property. It would prohibit warehouse/distribution uses within 500 feet of I-205, limit maximum building size to 75,000 square feet, and impose a 100 foot building

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setback from I-205.¹ If enacted, it would make the existing YRC facility a nonconforming use, and if applied to the Sale Property, it would essentially prohibit development of the Project.

YRC objects to the commencement of proceedings to establish the proposed I-205 Overlay Zone; such a zone cannot lawfully be imposed on the Property or applied to the Project.

1. IPT's Application is complete and thus subject to the rules now in effect.

Warehousing and distribution are uses long allowed on the Sale Property under the controlling General Plan, Industrial Areas Specific Plan ("ISP"), and the Tracy Zoning Ordinance ("TZO"). In reliance on the site's planning and zoning designations, IPT submitted the Application to the City on January 4, 2016. In accordance, with TZO § 10.08.4000 and Tracy Subdivision Ordinance ("TSO") § 12.24.020, the Application seeks approval of Development Review and a Vesting Tentative Parcel Map.

The City did not formally respond to the Application with a notice of incompleteness. Instead, on February 1, 2016, City Staff provided IPT with an internal memo dated January 28, 2016, listing comments of the City's contract engineer on the Application. *See*, January 28, 2016, Memorandum from Nanda Gottiparthi of SNG& Associates, to Senior Planner Victoria Lombardo. The comments refer to the need to depict certain items on the submitted plans, ensure that the submitted plans conform to City standards, and request an executed Cost Recovery Agreement ("CRA") to fund various technical studies.

City Staff has since verbally indicated to IPT that its Development Review application is complete, but its Vesting Tentative Map application may not be complete due to the need to submit technical studies related to potential traffic, storm drainage, water, and wastewater impacts of the Project. *See*, March 8, 2016 letter from IPT's attorney David Gold to City Attorney Daniel Sodergren.² The Application is deemed complete pursuant to the Permit Streamlining Act ("PSA")³ for at least three reasons. First, the City did not provide a written determination of incompleteness within the requisite 30-day time-frame; second, nothing in the January 28th memo indicates the need

¹ It would also limit floor area ratio to 0.40 whereas 0.45 is currently allowed and would require City Council approval of a development review permit whereas City Staff or Planning Commission approval (appealable to City Council) is currently required. ISP §§ 4.1.3.1, 5.1.; TZO §§ 10.08.4020, 10.08.4040.

² All of the letters and other documents referenced herein, including my February 16, 2016 letter to the City Council in opposition to the Moratorium extension, are in the City's files and are herein incorporated by reference into the record of proceedings for this matter. Upon request, copies of these documents will be furnished to the City.

³ Since the Application seeks approval of permits for development, it is subject to the PSA. *See*, Gov. Code §§ 65927, 65928, 65931.

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to submit the various technical studies now sought by City Staff; and third, the City did not adhere to the requirements to publish information needed in order to submit a complete application or provide criteria by which it would assess completeness.

First, the City did not provide a written determination of incompleteness within the requisite 30-day window. The PSA expressly states that the City's failure to do so results in the Application being deemed complete as a matter of law. *See*, Government Code § 65943(a):

Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project. ***If the written determination is not made within that 30-day period, the application is deemed complete as a matter of law.***⁴

The January 28th memo containing comments of the City's contract engineer on the Application does not equate to a formal letter of incompleteness. Local agencies throughout the State routinely provide such letters to applicants, and the contract engineer's memo is nowhere akin to the type of formal letter regularly sent by agencies listing the items needed for a complete application.

Second, nothing in the January 28 memo indicates the need to submit technical studies in order for the Application to be deemed complete. The City cannot now request any new or additional information that was not specified in its January 28 memo. Gov. Code §§ 65943(a), 65944(a). The memo does indicate the need for IPT to fund various environmental-related studies, and IPT accordingly submitted the executed CRA to the City on February 8, 2016.⁵ Moreover, the PSA specifically states that an applicant is not required to submit technical environmental studies in order for an application to be deemed complete. Gov. Code § 65941(b) (noting that any criteria adopted concerning application completeness "shall not require the applicant to submit the informational equivalent of an environmental impact report as part of a complete application, or to otherwise require proof of compliance with [the California Environmental Quality Act ("CEQA")] as a prerequisite to a permit application being deemed complete.")⁶

⁴ Emphasis in quotations is supplied and citations are omitted unless otherwise noted.

⁵ IPT submitted the remaining information requested by the City in its January 28, 2016 memo on March 9, 2016. Thus, as of the date, all of the information requested in the January 28, 2016 memo had been provided to City Staff. As the Application was already complete as of this date, submittal of this information does not legally provide the City with another 30-day review period. Gov. Code §§ 65943(a), 65944(a).

⁶ *See also*, Gov. Code § 65944(b) (an applicant is not required to "submit with his or her initial application the entirety of the information which a public agency may require in order to take final action on the application.").

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Third, the City has not published the information needed to submit a complete application for a Tentative Parcel Map. Pursuant to the PSA, each local agency must compile a list specifying in detail the information that will be required from any applicant for a development project. Gov. Code § 65490(a); *see also*, Gov. Code § 65921 (expressing the legislative purpose of the PSA as “to ensure [a] clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects.”). The City’s Development Application General Submittal Requirements contains no information regarding subdivision maps.⁷ Moreover, the City did not inform IPT at the time the Application was submitted of the information that would subsequently be required in order to complete final action on the Application as required by Government Code Section 65944. In addition, the City did not publish the criteria the City would apply in determining the completeness of the Application as required by Government Code Section 65941. The Application is deemed complete.

In connection with its Application, IPT applied for a Vesting Tentative Parcel Map. Government Code Section 66474.4, a provision within the Subdivision Map Act (“SMA”), freezes in place the ordinances, policies, and standards in effect on the date the local agency determines that an application for a tentative map is complete. Subject to certain exceptions, none of which apply here, a local agency cannot consider any ordinances, policies, or standards other than those in effect on the date the map application was deemed complete in deciding whether to approve, conditionally approve, or deny an application for a subdivision map. *See, e.g., Kaufman & Broad Central Valley, Inc. v. City of Modesto* (1994) 25 Cal.App.4th 1577 (citing Government Code section 66474.2, court rules that city cannot charge development fees in excess of those in effect on the date a tentative map is deemed complete); *see, also*, Curtin & Merritt, *California Subdivision Map Act and the Development Process* (C.E.B. 2015) § 9.9 (observing that the goal of Section 66474.2 is to “insulat[e] the subdivider from changes in the law enacted after the application is deemed complete”).

The SMA prohibits the City from imposing ordinances, policies, or standards other than those in existence on the date the Application was deemed complete. Here, the Application was deemed complete on February 3, 2016, and in no case, later than March 9, 2016. Any planning or zoning regulations that were not in effect on either of those dates, such as the proposed I-205 Overlay Zone, cannot lawfully be applied to the Project. Thus, the City must process and approve the Project in accordance with existing ordinances, policies, and standards.

⁷ *See*, http://www.ci.tracy.ca.us/documents/General_Submittal_Requirements_DES.pdf.

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- 2. Even if the Application were somehow found to be incomplete, the proposed resolution initiating proceedings to adopt an overlay zone would not subject the Project to any subsequently enacted overlay zone.**

The rule regarding completed subdivision applications being processed in accordance with the ordinances, policies, and standards in effect when the application was deemed complete does not apply to proposed planning or zoning actions for which the agency has (1) initiated proceedings by way of ordinance, resolution or motion, and (2) published notice “containing a description sufficient to notify the public of the nature of the proposed change in the applicable general or specific plans, or zoning or subdivision ordinances.” Gov. Code § 66474.2(b).

The above limited exception applies only in “narrowly defined circumstances.” *Bright Development v. City of Tracy* (1993) 20 Cal.App.4th 783, 798, fn 14. Unlike the case here, it is intended for situations where an agency has actually commenced proceedings to change its zoning regulations by, for instance, adopting the first reading of a proposed zoning ordinance. In such situations, subjecting a developer whose application becomes complete between the first reading of the ordinance, where it is introduced, and the second reading of an ordinance, where it is enacted, is entirely reasonable and fair. It is neither reasonable nor fair to subject a developer with no knowledge whatsoever of proposed zoning changes to such regulations, as the City appears to be attempting to accomplish here. Indeed, the draft Resolution Initiating Proceedings to Adopt an I-205 Overlay Zone Into The City’s Zoning Regulations, attached as Attachment B to the Staff Report (the “Proposed Resolution”), merely states that the City intends to undertake “proposed amendments to the Zoning Ordinance” at some point “[w]ithin the next few months.” The City cannot carte blanche subject current developers to future rules that it is not yet identified nor embraced through some formal mechanism.

Moreover, the City’s notice for this hearing simply stated that the City intends to initiate proceedings to adopt an I-205 Overlay Zone to “regulate land use and development standards.” The notice further states that, if adopted, the draft ordinance would “create additional regulations” for property within the Study Area. The Proposed Resolution similarly fails to provide any specificity as to the nature of the proposed zoning changes. Instead, it largely repeats the unsubstantiated findings in the failed Ordinance to extend the Moratorium and merely states that City intends to undertake “proposed amendments to the Zoning Ordinance.” Neither the notice nor the Proposed Resolution contain any substantive information about the nature of the proposed zoning changes and say nothing at all about the proposed general plan and specific plan changes that would be needed in order to effectuate it. The Agenda for the City Council’s April 5th meeting similarly identifies the item as providing “discussion and direction” regarding the potential adoption of an overlay zone.⁸

⁸ In conversations with IPT representatives City Staff similarly characterized the nature of this hearing as a discussion item only, with no decisions being made and direction instead being given on the nature of additional I-205 corridor regulations.

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As such, the “notice” provides no actual or constructive notice of the rules to which the Project may be subject and thus is ineffectual as to the Application.⁹

3. By law, the City is precluded from adopting the Proposed Resolution and/or from applying any overlay zone to the Property.

The City cannot lawfully adopt the Proposed Resolution or apply an overlay zone to the Property for several reasons. Among other legal infirmities, the proposed overlay zone is inconsistent with the City’s General Plan and specific plans, requires prior review by the Planning Commission and environmental review under CEQA, would result in impermissible spot zoning, and would deprive YRC of its constitutionally protected rights. Accordingly, the City may not apply the Proposed Resolution or any subsequently adopted overlay zone to the Property.

The proposed I-205 Overlay Zone is inconsistent with the City’s General Plan and ISP as well as other area specific plans.¹⁰ Those planning documents allow warehouse and distribution uses as principally permitted uses. The proposed overlay zone’s prohibition on warehouse uses within 500 feet from I-205 directly and flatly contradicts the General Plan and ISP. It also violates the uniformity requirement of the Planning & Zoning Law. Gov. Code § 65852 (*requiring zoning regulations to be “uniform for each class or kind of building or use of land throughout each zone . . .”*); *Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997 (court struck down agency’s granting of ad hoc exception to zoning regulations benefitting single property owner). As courts have observed the “tail does not wag the dog,” and lesser land use entitlements like the proposed overlay zone which are inconsistent with a general or specific plan are void *ab initio*. *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 541, 545.

The City Council cannot lawfully commence proceedings to adopt a zoning ordinance until it has first referred the matter to, and received a recommendation from, the City’s Planning Commission. Gov. Code §§ 65853, 65854, 65857; TZO §§ 10.04.040, 10.08.3830, 10.08.3840. Prior Planning Commission review is likewise required for amendments to a general plan or specific

⁹ See, *Bright Development, supra*, 20 Cal.App.4th at 799 (Court of Appeal ruled that a subdivider was not subject to development regulation that was not written or codified at the time the application was deemed complete, reasoning that the subdivider was entitled to prior notice of the rules to which it would be subject and that “[q]uite obviously one cannot rely on what one does not know or cannot reasonably discover.”).

¹⁰ This is in direct contrast to Cordes Ranch, where the use restrictions and setback requirements were directly called for by the General Plan. See, General Plan, Objective LU-2.3, Policies P.2, P3; see also, General Plan, p. 2-72, Policy 6e. Moreover, unlike the 275 acre Study Area, the Cordes Ranch property consists of approximately 1,700 acres of land, *i.e.*, ample land to accommodate the setback restrictions imposed by the Cordes Ranch Specific Plan.

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plan, as would be needed in connection with the proposed overlay zone. Gov. Code §§ 65354, 65453; TZO §§ 10.04.040, 10.20.060. Courts have specifically struck down attempts by a legislative body to short-cut or streamline Planning Commission review of a proposed zoning amendment. *See, e.g., Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877. It is our understanding that neither the proposed planning nor zoning changes have been referred to the Planning Commission for its review and recommendation, as required.

The City cannot lawfully adopt the Proposed Resolution unless and until it complies with CEQA. The adoption of a zoning ordinance is a project subject to CEQA. Public Resources Code § 21065; CEQA Guidelines § 15378(a)(1); *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229. A public agency must initiate CEQA compliance prior to its earliest commitment to a project. CEQA Guidelines §§ 15004, 15352; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116. The City here is purporting to initiate proceedings to adopt a zoning ordinance but has not yet conducted any CEQA review. This is flatly contrary to the requirements of law. In addition to examining the direct environmental impacts associated with its zoning action, the City must also consider the indirect displacement effects likely to ensue from the proposed prohibition on warehouse and distribution uses along the I-205 corridor. *See, e.g., Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n* (2007) 41 Cal.4th 372, 383 (California Supreme Court observes that the impact of development in other areas resulting from a ban on development within one jurisdiction must be considered in the CEQA process.).¹¹

The overlay zone would constitute impermissible spot zoning. The only land with a pending development application for warehouse use that would be adversely affected by the proposed overlay zone is the Property. *Foothill Communities Coalition v. County of Orange* (2014) 222 Cal.App.4th 1302 (court observes that spot zoning occurs where a small parcel of property is subject to more or less restrictive zoning than the surrounding properties); *Ross v. City of Yorba Linda* (1991) 1 Cal.App.4th 954 (denial of rezoning to allow property owner to develop their property at densities similar to those on surrounding parcels, was arbitrary and discriminatory and thus unlawful).

The I-205 Overlay Zone is based on concerns related to the visual and economic importance of the I-205 Corridor. *See, e.g., Resolution*, pp. 1-2. But, the Project is aesthetically pleasing and is expected to generate significant tax dollars for the City. As such, application of the overlay zone to the Project would not be warranted or justified.

¹¹ *Accord, Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 369 (“the purpose of CEQA would be undermined if the appropriate governmental agencies went forward without an awareness of the effects a project will have on areas outside of the boundaries of the project area.”).

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As demonstrated by the Project plans submitted as part of the Application, the Project is more attractive and aesthetically pleasing than certain other developments currently located along the I-205 corridor. Further, if the City were truly concerned with large buildings blocking views from the freeway, the proposed I-205 Overlay Zone would *not* be limited to just warehousing uses. Indeed, there is nothing that differentiates a large, poorly designed warehousing building from a large, poorly designed manufacturing, office, or retail building. I-205 is not a scenic corridor and the City has not identified any scenic resources or views that would be adversely affected by additional warehousing development.

In regard to financial concerns, the Project would result in a \$35 million investment in the City that would generate between 150-500 jobs, depending on the end user. YRC has invested over \$20 million in its facility and currently provides well paid jobs with significant benefits to local residents. Like YRC, IPT would also generate substantial property tax revenues for the City. The City also appears to have hundreds of acres of land available for office, retail, and/or tech/flex development. The Gateway Business Park alone will contain approximately 750,000 square feet of office space at build out, making it the third largest business park in Northern California.

If adopted, the Proposed Resolution would amount to a de facto moratorium on warehouse development along the I-205 corridor. Such a proposal can only lawfully be adopted by a four-fifths vote of the City Council based upon a finding that there is an immediate threat to the public health, safety, and welfare. Gov. Code § 65858. The City Council considered and rejected such a proposal at its February 16, 2016 hearing, thus allowing the 45-day moratorium to expire. As detailed in my February 16th letter to you (at pages 16 to 19), there is no immediate threat to the public health, safety, and welfare that would justify adoption or extension of an urgency ordinance. More fundamentally, State law expressly precludes the City from adopting another moratorium based on the same facts and circumstances that led to adoption of a prior lapsed moratorium. Gov. Code § 65858(f). The Proposed Resolution contains recitals that are verbatim to those included in Ordinance 1205 which enacted the 45-day Moratorium.

Application of the I-205 Overlay Zone to the Property would constitute a compensable taking of the Property for reasons similar to those outlined on pages 20-22 of my February 16, 2016, letter to you opposing the Moratorium extension. Specifically, it would prohibit the only economically viable use of the Sale Property and one to which it is well suited, thus denying YRC of all economically viable use of its land. *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003 (property owner entitled to compensation for regulations precluding development of two beachfront lots, thereby depriving owner of all economic use of his property).¹² Alternatively, the

¹² Courts have recognized that land use regulations that take all economically viable use of only a portion of private property can constitute a taking. *See, e.g., Twain Harte Associates, Ltd. v. County of Tuolumne* (1990) 217 Cal.App.3d 71 and *Jefferson Street Ventures, LLC v. City of Indio* (2015) 236 Cal.App.4th 1175.

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economic impact of the I-205 Overlay Zone, the extent to which it interferes with YRC's distinct investment-backed expectations, and the pre-textual nature of the government action would expose the City to partial takings liability. *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104.

Application of the I-205 Overlay Zone to the Property would likewise result in deprivation of YRC's rights to due process and equal protection rights for reasons similar to those outlined at pages 22-25 of my February 16th letter. *Id.* Specifically, application of the overlay zone to the Property would constitute irrational and arbitrary conduct not based on appropriate planning criteria and for the sole and specific purpose of defeating the Project. *See, e.g., Arnel Development Co. v. City of Costa Mesa* (1981) 126 Cal.App.3d 330, 337; *accord, Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 126, fn. 11 (a change in an ordinance that occurs after the development application is deemed complete is inapplicable if its enactment stemmed from an attempt to frustrate a particular developer's plans).

Further, the Property is designated for warehouse and distribution uses by the General Plan, ISP, and TZO and the City has previously approved a considerable number of industrial and warehouse uses along the I-205 corridor, including most recently the DCT facility located immediately across I-205 from the Sale Property. Approval of any legislation that subjected YRC to different or more burdensome requirements than imposed on similarly situated property owners would deprive YRC of its constitutionally protected right to equal protection under the law. *See, e.g., Herrington v. County of Sonoma* (9th Cir. 1987) 834 F.2d 1488 (denial of proposed subdivision and subsequent downzoning violated property owner's equal protection rights where there was evidence that county had approved sizable residential development projects on three other agricultural properties shortly after it rejected the owner's proposal) and *Ross, supra* (denial of rezoning to allow property owner to develop their property at densities similar to those on surrounding parcels, was arbitrary and discriminatory and thus unlawful).

In addition, application of the overlay zone to the Project would result in an unlawful interference with contractual relations. In September 2015, IPT and YRC entered into a Real Estate Contract pertaining to the sale of Sale Property for the Project. The proposed overlay zone would substantially impair that contractual relationship by precluding the use of the Sale Property for which it is proposed to be sold. For reasons similar to those outlined on pages 25-26 of my February 16, 2016, letter to you, the City would be liable to IPT and YRC for an impairment of contract claim and likewise be exposed to liability for negligent and/or intentional interference with contract or other economic relationship.

The City would also be estopped from applying the overlay zone to the Property or the Project. YRC and IPT reasonably and detrimentally relied on the Property's planning regulations, including the City's stated policy that the Property is an area of the City where warehouse uses are a principally permitted use. To date, YRC has spent tens of millions of dollars in reliance on the

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approved land use designations and planned infrastructure for the Property. IPT has likewise spent substantial sums negotiating the sale of the Sale Property with YRC and preparing Project plans and related studies (to date, IPT has incurred approximately \$150,000-\$200,000 in costs related to the Project). As a result of YRC's and IPT's reliance on the City's plans and policies, the City would be estopped from applying the proposed overlay zone to the Project.¹³

Practical considerations should also give the City pause with respect to the proposed overlay zone. The overlay zone is unnecessary to achieve the City's stated aesthetic and economic goals since the City already has discretionary design review authority over industrial uses in the Study Area, and the City's most desired uses are already permitted along the I-205 corridor. These facts are detailed on pages 10-13 of my February 16th letter to you. Indeed, IPT's Application, with current plans modeled after the approved DCT plans, comports with the controlling ISP Design Guidelines and appears to be in substantial conformance with the draft I-205 Design Guidelines, dated December 2015. It includes building plans reflecting a high-quality urban design, with a wide landscaped buffer along the freeway frontage, and loading docks located out of view on the sides of the building.

If an overlay zone based on the Cordes Ranch Specific Plan were to be enacted, this would make YRC's existing facility and DCT's approved but yet to be constructed facility nonconforming uses. TZO § 10.08.3330. It would also likely make YRC's facility a nonconforming structure. TZO § 10.08.3340. As such, YRC may be precluded from expanding or altering its existing freight facility, including in a manner that the City may find more aesthetically pleasing. TZO §§ 10.08.3370, 10.08.3380.

Further, City Staff proposes to conduct outreach to affected property owners only after commencement of proceedings to adopt the I-205 Overlay Zone. Staff Report, p. 2. This is completely opposite of how important planning policy decisions like this should be made. Input and analysis should come prior to any such decision, including one as momentous as adoption of an overlay zone that would fundamentally change the permitted uses and development standards

¹³ See, e.g., *Hock Investment Co. v. City and County of San Francisco* (1989) 215 Cal.App.3d 438, 448-449 (if property owner reasonably and detrimentally relies upon agency's administrative rule, agency would be estopped from taking subsequent action in contravention of rule); *accord, Pardee Construction Co. v. California Coastal Commission* (1979) 95 Cal.App.3d 471; *Wilson v. City of Laguna Beach* (1992) 6 Cal.App.4th 543; *Kieffer v. Spencer* (1984) 153 Cal.App.3d 954; and *Anderson v. City of La Mesa* (1981) 118 Cal.App.3d 657.

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Honorable Mayor Maciel
and Members of the Tracy City Council
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applicable to property along the I-205 corridor. The Planning & Zoning Law specifically calls for public notice and input in such instances.¹⁴

In sum, because the IPT Application complies with all City plans, codes, and policies, YRC respectfully requests that the City promptly act on and approve the Project. YRC is not opposed to the application of reasonable design guidelines to the Project, but will vigorously contest and oppose as unlawful the application of any overlay zone to the Property. Proceedings to adopt an overlay zone cannot lawfully be commenced until after undertaking the necessary procedures, including environmental review and consideration by the Planning Commission. Any resulting overlay zone cannot be applied to the Project as the Application has already been deemed complete.

Thank you for your consideration of YRC's views on this matter. Representatives of YRC will be in attendance at your April 5th City Council hearing on the Project. In the meantime, please do not hesitate to contact me with any questions concerning this correspondence.

Very truly yours,

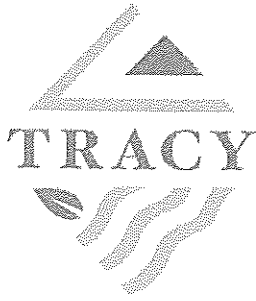
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Stephen K. Cassidy
Attorneys for YRC Inc.

cc: Lance Collins
Christopher Masoner
Gregg Boehm
Troy Brown
Bill Dean

¹⁴ See, e.g., Gov. Code § 65033 (requiring all agencies responsible for overseeing the planning process to “involve the public through public hearings, informative meetings, publicity and other means available to them” and to afford the public “the opportunity to respond to clearly defined alternative objectives, policies, and actions.”).



**Handout - Agenda Item 4
April 5, 2016, Council Meeting**

City of Tracy
Civic Center Plaza
Tracy, CA 95376

Office of the City Clerk
(209) 831-6105

Memorandum

Date: April 5, 2016
To: Honorable Mayor and City Council Members
From: Nora Pimentel, City Clerk
Subject: Revised Condition of Approval to Item 4

Attached is the Revised Condition of Approval No. 18 for Stringer-Bates Rockinghorse Project applications numbers PUD 15-0001 and TSM 15-0001.

Copies will be placed at the dais.

/S/

Nora Pimentel, CMC
City Clerk

Revised Condition of Approval No. 18 for Stringer-Bates Rockinghorse Project applications numbers PUD 15-0001 and TSM 15-0001

18. The applicant shall do one of the following:

a. CFD or other funding mechanism. Before the approval of the first building permit, the applicant shall enter into an agreement with the City, which shall be recorded against the property, which stipulates that no later than 60 days after the applicant seeks the final inspection or certificate of occupancy for the first (1st) residential unit (excluding models), and so long as: (i) the City has established a new development areas Community Facilities District (CFD) (which shall include without limitation this project site and all other residential developments in the City that exceed 20 units as future annexation areas to the CFD, with pending applications as of the approval date for the Project) or another lawful funding mechanism for funding the on-going operational costs of providing police services, Fire Services, Public Works services and other City services, and(ii) the special tax/assessment imposed thereunder is in the same amount for residential units on other properties as is sought to be imposed on the Project Site and under no circumstances exceeds \$325 per residential unit (except for escalators tied to CPI Index), then the applicant shall not object to inclusion of the Project Site in said CFD. Such non-objection to the CFD shall include, but not be limited to, affirmative votes and the recordation of a Notice of Special Tax Lien. Upon the successful inclusion in accordance with this Condition No. 18, the parcels will be subject to the maximum special tax rates as outlined in the Rate and Method of Apportionment. Provided however, that the applicant shall have no obligation to form its own CFD to cover only the Project Site, nor shall the applicant have any obligation to pay any costs associated with the City's formation of the new development areas CFD. If the City has not formed the new development areas CFD within 60 days of when the applicant seeks final inspection or certificate of occupancy of the first (1st) building permit for the project (excluding models), then the applicant shall have no further obligations under this Condition No. 18.

b. Direct Funding. Rather than comply with this Condition No. 18 through compliance with subsection (a) above, the applicant may elect, in its sole discretion, to enter into agreement with the City, which shall be recorded against the property, which stipulates that prior to final inspection or certificate of occupancy, the applicant will fund a fiscal impact study to be conducted and approved by the City to determine the long term on-going operational costs of providing Police services, Fire services, Public Works services and other City services to serve the Project area, and deposit with the City an amount necessary, as reasonably determined by the City, to fund the full costs in perpetuity as identified by the approved study. Provided however, if the City has not formed the new development areas CFD referenced in subsection (a) above within sixty (60) days of time when the applicant seeks final inspection or certificate of occupancy for the Project's first (1st) residential unit (excluding models), then the applicant shall have no further obligations under this Condition No. 18.

18. ~~Before approval of the first building permit,~~ the applicant shall do one of the following:

~~19. Before the approval of the first building permit, the applicant shall do one of the following, subject to the approval of the Administrative Services Director:~~

a. ~~CFD or other funding mechanism. Before the approval of the first building permit, the applicant shall enter into an agreement with the City, which shall be recorded against the property, which stipulates that no later than 60 days after the applicant seeks the prior to final inspection or certificate of occupancy for the first (1st) residential unit (excluding models), and so long as: (i) the City has established a new development areas Community Facilities District (CFD) (which shall include without limitation this project site and all other residential developments in the City that exceed 20 units as future annexation areas to the CFD, with pending applications as of the approval date for the Project) or another lawful funding mechanism the applicant will join a New Development Area Community Facilities District (CFD) for funding the on-going operational costs of providing police services, Fire Services, Public Works services and other City services to serve the project area, and (ii) the special tax/assessment imposed thereunder is in the same amount for residential units on other properties as is sought to be imposed on the Project Site and under no circumstances exceeds \$325 per residential unit (except for escalators tied to CPI Index), then the applicant shall not object to inclusion of the Project Site in said CFD. Such non-objection to~~ Formation of the CFD shall include, but not be limited to, affirmative votes and the recordation of a Notice of Special Tax Lien. Upon the successful inclusion in accordance with this Condition No. 18, of the property in the CFD, the parcels will be subject to the maximum special tax rates as outlined in the Rate and Method of Apportionment. Provided however, that the applicant shall have no obligation to form its own CFD to cover only the Project Site, nor shall the applicant have any obligation to pay any costs associated with the City's formation of the new development areas CFD. The special tax imposed under the CFD is expected to be an amount not exceeding \$325 per residential dwelling unit. The applicant shall have no obligation to form its own CFD to provide for the costs of operational services for the project site. If the City has not formed the new development areas CFD within 60 days of when the applicant seeks prior to the final inspection or certificate of occupancy of the first (1st) building permit for the project (excluding models), then the applicant shall have no further obligations under this Condition No. 18. may request that they City Council rescind the agreement.

b. Direct Funding. Rather than comply with this Condition No. 18 through compliance with subsection (a) above, the applicant shall may elect, in its sole discretion, to enter into agreement with the City, which shall be recorded against the property, which stipulates that prior to final inspection or certificate of occupancy, the applicant will fund a fiscal impact study to be conducted and approved by the City to determine the long term on-going operational costs of providing Police services, Fire services, Public Works services and other City services to serve the Project area, and deposit with the City an amount necessary, as reasonably determined by the City, to fund the full costs in perpetuity as identified by the approved study. Provided however, if the City has not formed the new development areas CFD referenced in subsection (a) above within sixty (60) days of time when the applicant seeks final inspection or certificate of occupancy for the Project's first (1st) residential unit (excluding models), then the applicant shall have no further obligations under this Condition No. 18.