

CITY OF PACIFICA

CITY COUNCIL AGENDA

MAYOR SUE DIGRE
MAYOR PRO TEM PETE DEJARNATT
COUNCILMEMBER CALVIN HINTON
COUNCILMEMBER JAMES VREELAND
COUNCILMEMBER JULIE LANCELLE

CITY COUNCIL CHAMBERS
2212 BEACH BOULEVARD
PACIFICA, CALIFORNIA 94044

AMENDED

March 13, 2006

www.ci.pacifica.ca.us

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6:00 p.m. CLOSED SESSION

1. In accordance with Government Code Section 54956.9(a). Conference with legal counsel-existing litigation. In the Matter of Roy Hewson Davies Revocable Trust, San Mateo County Superior Court Case No. 114347
2. In accordance with Government Code Section 54956.8. Conference with real property negotiator. Discussion concerns price and terms of payment. Agency negotiator attending session: Joseph Tanner. Property: 2212 Beach Boulevard, Pacifica. Negotiating parties: City of Pacifica and Kiwi Properties, LLC

7:00 p.m. REGULAR COUNCIL MEETING

Call to Order
Roll Call
Salute to the Flag led by Councilmember Vreeland
Commission Liaisons: Rick Lee
Chamber of Commerce Liaison: None
Closed Session Report

CONSENT CALENDAR

In a single motion, the City Council will consider and act upon Items 1 through 7.

1. Approval of disbursements:
 - a) Dated 02/03/06 to 02/15/06 in the amount of \$302,521.05 regular and quick checks numbered 81403, 81405, 81407 to 81409, 81415, 81418, 110500 to 110689 (**Proposed action:** approve disbursements)
 - b) Dated 02/17/06 and 02/23/06 in the amount of \$307,950.11, regular and quick checks numbered 81419 to 81421, 110690 to 110815 (**Proposed action:** approve disbursements)
2. Approval of Minutes of regular City Council meeting of February 14, 2006 and February 27, 2006 (**Proposed action:** approve Minutes)
3. Continuation of Local Emergency Status and Authorization of Immediate Expenditure of Public Money to Safeguard Life, Health or Property (**Proposed action:** 1) continue the proclamation for Local Emergency dated January 5, 2006 and the Proclamation Confirming the Existence of Local Emergency ratified by Council on January 9, 2006; 2) Continue Resolution No. 05-2006; 3) direct the City Manager to return with a status update at the next City Council meeting)

4. Adopt a Resolution in Support of Measure to Secure Local Transportation Funding (**Proposed action:** move to adopt resolution next in order)
5. Adoption of a Resolution Amending Resolution No. 04-2006 "A Resolution of the City Council of the City of Pacifica Creating the Palmetto Avenue Business Advisory Committee" (**Proposed action:** move to adopt the resolution next in order)
6. Third Amendment to Agreement for Contract Services with Thomas Reid Associates for Environmental Review Services in Connection with the Proposed "Connemara" Subdivision (**Proposed action:** move to approve Amendment No. 3 to the Agreement with Thomas Reid Associates for environmental review services in connection with the proposed "Connemara" subdivision, subject to legal changes as may be required by the City Attorney, authorize the City Manager to execute the document, and authorize the necessary budget authority)
7. Report on New Program "<21 COAST" (Underage Consumption of Alcohol Suppression Team), and Police Department Request to Adopt Resolution Authorizing Participation of the Project <21 COAST (Underage Consumption of Alcohol Suppression Team) to Obtain Grant Funds for Said Program (**Proposed action:** adopt resolution next in order)

SPECIAL PRESENTATION

Citywide WIFI Internet - Veraloft

COUNCIL COMMUNICATIONS

The purpose of Council Communications is for Councilmembers to inform each other of items of potential interest to other Councilmembers, such as interagency meetings. Each councilmember is allotted three minutes.

ORAL COMMUNICATIONS

This portion of the Agenda is available for the public to address the City Council on any issue that is not on the Agenda. A maximum time of three minutes will be allowed for any speaker.

PUBLIC HEARING

During public hearings, an applicant or their agent and appellants have ten minutes for their opening presentation and three minutes for rebuttal before the public hearing is closed. Members of the public are limited to three minutes.

8. Public Hearing to Consider Appeal of Planning Commission Denial of a New Coastal Development Permit, CDP-262-05, and Second Amendment to Coastal Development Permit, CDP-243-04, and Variance, PV-480-05 to Reconfigure Two Lots on Grand Avenue (APN 023-025-200 & 210) (**Proposed action:** move that the City Council **DENY** the applicant's appeal and uphold the Planning Commission's denial of Second Amendment to CDP-243-04 and PV-480-05; and new CDP-262-05, based on the findings contained in the Planning Commission Agenda Memo dated January 17, 2006 and incorporate all maps and testimony into the record by reference **OR** move that the City Council find that the project is exempt from CEQA, and **APPROVE** the applicant's appeal and application subject to conditions 1 through 6, and overturn the Planning Commission's denial of Second Amendment to CDP-243-04 and PV-480-05; and the new CDP-262-05, based on the findings contained in the City Council Agenda Summary Report dated March 13, 2006, and incorporate all maps and testimony into the record by reference)
9. Introduce Ordinance Regarding Maintenance and Preservation of City Trees (**Proposed action:** read ordinance entitled "An Ordinance of the City Council of the City of Pacifica Amending Title 4 of the Pacifica Municipal Code by Adding Chapter 14, Maintenance and Preservation of Trees" by title only and waive reading beyond the title and introduce ordinance)
10. Appeal of Denial of Heritage Tree Removal Permit Application No. HT-0053-05 (**Proposed action:** based upon the entire record, as well as any oral, documentary or other evidence or testimony presented before the Council, staff requests that the Council make the following findings and orders:

the tree is a Heritage Tree subject to Chapter 4-12; the appeal application was untimely, but to preserve the applicant's right to due process, this technical requirement will be waived in this instance. Such waiver is not to be deemed precedent for future matters. That the applicant did not appear at prior hearings to offer further argument or evidence; the applicant was afforded ample opportunity to submit the required expert evidence to support his request to remove the tree, but failed to do so; that absent the additional evidence requested, it was appropriate for the Parks, Beaches and Recreation Commission to deny the tree removal permit; that the appeal is denied)

11. Introduction of An Ordinance Amending Certain Sections of Article 2 of Chapter 1 of Title 6 of the Pacifica Municipal Code, Relating to Animal Regulations and Dangerous and Vicious Animals (**Proposed action:** read ordinance entitled "An Ordinance of the City Council of the City of Pacifica Amending Certain Sections of Article 2 Chapter 1 of Title 6 of the Pacifica Municipal Code Regarding Animal Regulations" by title only and waive reading beyond title. Introduce the ordinance)

CONSIDERATION

12. Status of Public Works Projects (**Proposed action:** information only)
13. Selection of City Council Liaison and Committee Assignments for 2006 (**Proposed action:** modify listings for liaison committee and assignments for 2006)
14. Appointment of citizens to fill vacancies on the Emergency Preparedness and Safety Commission and the Open Space Committee (**Proposed action:** appoint citizens)

ADJOURNMENT

* * * * *

NOTICE: If you challenge a city's zoning, planning or other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. Judicial review of any city administrative decision may be had only if a petition is filed with the court not later than the 90th day following the date upon which the decision becomes final. Judicial review of environmental determinations may be subject to a shorter time period for litigation, in certain cases 30 days following the date of final decision.

The City of Pacifica will provide assistance for disabled citizens upon at least 24 hours advance notice to the City Manager's Office (650) 738-7301. If you need sign language assistance or written material printed in a larger font or taped, advance notice is necessary. All meeting rooms are accessible to the disabled.

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The Pacifica Municipal Code is available on line at the City's website (www.ci.pacifica.ca.us); at the website, scroll down to find the Link.

HOW TO REACH YOUR LEGISLATORS

- Governor Arnold Schwarzenegger, State Capitol Building, Sacramento CA 95814 (916) 445-2841
- State Senator Jackie Speier, 400 So. El Camino Real, Ste 630, San Mateo CA 94402 (650) 340-8840
- Assemblymember Gene Mullin, 1528 So. El Camino Real, Ste 302, San Mateo CA 94402 (650) 341-4319
- Congressman Tom Lantos, 400 So. El Camino Real, Ste 410, San Mateo CA 94402 (650) 342-0300
- Senator Barbara Boxer, 1700 Montgomery Street, Ste 240, San Francisco CA 94111 (415) 403-0100
- Senator Dianne Feinstein, #1 Post Street, Ste 2450, San Francisco CA 94104 (415) 393-0710

**CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT**

March 13, 2006

AGENDA ITEM NO. 3

SUBJECT:

Continuation of Local Emergency Status and Authorization of Immediate Expenditure of Public Money to Safeguard Life, Health or Property

ORIGINATED BY:

City Manager's Office

DISCUSSION

On January 5, 2006 the City's Director of Emergency Services (City Manager) declared a State of Local Emergency. Council ratified this action on January 9, 2006 and adopted Resolution No. 05-2005 a "Resolution Authorizing Immediate Expenditure of Public Money to Safeguard Life, Health or Property. This allows for repairs to take place without competitive bidding due to the emergency. The Council must review, at least every fourteen days, the need for continuing the local emergency. Due to ongoing risk of debris flows from heavy rains, as well as ongoing difficulties with the leaking sewer forcemain repair, and the flooded Brighton Pump Station, as well as continuing damage to seawalls, and damage to storm drain outfalls from continued high ocean waves, staff recommends that the Council continue the local emergency. Ocean swells have been over fifteen feet high for a month and recently exceeded twenty-two feet. This sustained big surf is continuing to cause damage to City ocean front facilities. Staff recommends that the Council continue the local emergency. This agenda item seeks Council continuation of the emergency status pending completion of disaster recovery work and expenditures.

As a result of the severe winter weather conditions, the City has experienced floods, land failure, falling trees, failing seawalls and damage to public and private property. Heavy rainfall in Mid December 2005 caused failure of the hillside behind some homes on Big Bend Drive, Pacifica to vacate their homes immediately to ensure the safety to the residents. The ground is saturated throughout the City and the City is in the midst of continuing series of winter storms.

On February 27, 2006 severe storm conditions and a city-wide power outage resulted in the City Council cancelling the scheduled City Council meeting.

To date the City has incurred the following costs of clean-up and repair:

Forcemain and Pump Station approximately \$200,000.00 to date. Pipe repairs have been completed. Site repair including paving, sealing, fence repair and landscaping repairs have been completed. The City has entered into a contract with Power Engineering for the excavation and repair to the sewer line, pipe connections and temporary pumping. The City has also entered into a contract with Go-Native Nursery in connection with work cleaning and replanting for the Sharp Park Forcemain.

Clean-up of Various Sites is approximately \$40,000.00 to date which has not changed since the last staff report of January 23, 2006.

Approximately \$30,000.00 for road repairs since the storms in Mid December 2005.

Big Bend Clean-up of Land Slide approximately \$85,000.00. The City has entered into a contract with Cotton, Shires and Associates for geotechnical work and with Go-Native for clearing and brush removal. The geotechnical investigation is continuing with additional soil investigation.

ATTACHMENTS:

FEMA Declaration of Disaster

COUNCIL ACTION REQUESTED:

- 1) Continue the Proclamation for Local Emergency dated January 5, 2006 and the Proclamation Confirming Existence of Local Emergency ratified by Council on January 9, 2006.
- 2) Continue Resolution No. 05-2006.
- 3) Direct the City Manager to return with a status update at the next City Council meeting.

**CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT**

March 13, 2006

AGENDA ITEM NO. 4

SUBJECT:

Adopt a Resolution in Support of Measure to Secure Local Transportation Funding

ORIGINATED BY:

City Manager's Office

DISCUSSION

In 2002, nearly 70% of California voters overwhelmingly passed Proposition 42 – dedicating the existing state sales tax on gasoline to fund transportation projects like congestion relief, road repairs, transit and safety improvements.

However, Prop. 42 includes a provision that allows the legislature and Governor to divert funds to non-transportation expenses. That provision was only intended to be used during fiscal emergencies. Unfortunately, that “Prop. 42 loophole” has been abused repeatedly and the will of the voters is not being upheld.

- Two out of the last three budget years, the sales tax on gasoline has been diverted to fund non-transportation state expenditures in the State General Fund. Nearly \$2.5 billion in these gas taxes has been diverted to non-transportation expenses since 2002.
- As a result, state and local agencies have had to delay or stop many critical safety improvements, congestion relief projects, road repairs and other pressing transportation needs.
- Our roads are crumbling, our highways remain congested, and the most hazardous corridors and intersections are not being improved. In fact, California has the worst roads in the nation, according to a recent report by the Road Information Program. Three out of 10 of the state's overpasses and bridges are structurally deficient or functionally obsolete. And approximately half – 49 percent – of California's urban freeways are considered congested.

This transportation crisis is threatening our economy and the safety and quality of life of every Californian.

- A broad-based coalition of businesses, labor, and local government, and community leaders is collecting signatures to qualify a constitutional amendment for the November 2006 ballot.
- If passed, this measure would close the Prop 42 loophole, uphold the will of the voters, and ensure once and for all that the sales taxes paid at the pump are used for transportation improvements.
 - ✓ This measure would prevent the Governor and Legislature from diverting the sales taxes on gasoline to non-transportation expenses.
 - ✓ The measure also requires the State to reimburse the \$2.5 billion in funds previously diverted. It responsibly allows 10 years for repayment to avoid any immediate fiscal impact.
- By closing the Prop. 42 loophole, this measure would finally provide a stable funding source for state and local agencies responsible for transportation improvements, and allow them to:
 - ✓ Fix the most hazardous intersections and unsafe highways in California.
 - ✓ Relieve traffic congestion through freeway widening, road repairs, overpasses and bridges.
 - ✓ Repair crumbling roads, fill potholes, and improve older roads, overpasses and bridges.

ATTACHMENTS:

Resolution

COUNCIL ACTION REQUESTED:

Move to adopt the resolution next in order.

CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT

March 13, 2006

AGENDA ITEM NO. 5

SUBJECT:

Adoption of Resolution Amending Resolution No. 04-2006 "A Resolution of the City Council of the City of Pacifica Creating the Palmetto Avenue Business Advisory Committee"

ORIGINATED BY:

City Manager's Office

DISCUSSION

The Palmetto Avenue Business Advisory Committee held their first meeting on January 26, 2006. The committee voted unanimously to change the name of the committee to the *West Sharp Park Advisory Committee*.

The purpose of the committee and scope has not changed. The key activities of the committee remain the same.

ATTACHMENTS

Resolution

COUNCIL ACTION REQUESTED

Move to Adopt Resolution next in order.

**CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT
MARCH 13, 2006**

AGENDA ITEM NO. 6

SUBJECT:

Third Amendment to Agreement for Contract Services with Thomas Reid Associates for environmental review services in connection with the proposed "Connemara" subdivision

PROPOSED ACTION:

Approval of Amendment

ORIGINATED BY:

Planning and Economic Development Department

DISCUSSION:

In 2002 the City entered into a contract with Thomas Reid Associates (TRA) for environmental review services in connection with the proposed "Connemara" subdivision (a.k.a. Lower Milagra Ridge). The project required more time than originally anticipated for preparation of the Initial Study/Addendum, and the City approved an amendment to the original contract in May of 2004, and in January of 2005 a second amendment was approved to cover preparation of Supplemental EIR. Since approval of the second amendment, additional environmental issues have arisen relating to traffic, geology, and biology, requiring work not covered under the Original Agreement or the two previous amendments. Preparation of a Second Environmental Addendum will also be necessary. Therefore, TRA has requested, and the project applicant has agreed to, another amendment to the contract totaling \$41,322.00.

RECOMMENDATION:

Staff recommends that the Council approve the third amendment to the contract with Thomas Reid Associates for environmental review services in connection with the proposed "Connemara" subdivision.

FISCAL IMPACT:

None. All costs associated with environmental review services will be paid by the project applicant.

DOCUMENTS ATTACHED: (City Council Only)

a. Amendment No. 3 to Agreement with Thomas Reid Associates

COUNCIL ACTION REQUESTED:

Move to **APPROVE** Amendment No. 3 to the Agreement with Thomas Reid Associates for environmental review services in connection with the proposed "Connemara" subdivision, subject to legal changes as may be required by the City Attorney, authorize the City Manager to execute the document, and authorize necessary budget authority.

**CITY OF PAFICICA
COUNCIL AGENDA SUMMARY REPORT**

March 13, 2006

AGENDA ITEM NO. 7

SUBJECT:

Report on new program, "<21 COAST" (Underage Consumption of Alcohol Suppression Team), and Police Department Request to adopt Resolution to Obtain Grant Funds for Said Program.

ORIGINATED BY:

Police Department

DISCUSSION:

On February 4, 2005 the City of Pacifica suffered the loss of two young people under the age of 21 who were victims of an alcohol-related traffic collision. The purchase of the alcohol consumed by the occupants in the vehicle that night was later traced to a local business. It can be argued that the collision may never have happened if the underage driver had not consumed alcoholic beverages. It can also be argued that the two victims of the collision may not have gotten into the vehicle had their judgment not been marred by the affects of alcohol. Although no program can fully eradicate the presence of alcohol among Pacifica's under 21 population, the Pacifica Police Department is committed to taking the legs out from under the problem by focusing on its root – the availability of alcohol to minors.

The police department has been called upon by a recently formed coalition, "The Partnership for a Safe and Healthy Pacifica," (hereafter referred to as The Partnership) to address the growing problem of underage alcohol consumption. The Partnership is a group consisting of 75+ community members representing students, parents, elected and public officials, substance abuse prevention, treatment and recovery providers, school district leaders, faith communities, local businesses and law enforcement. There is a demonstrated need for emphasis on our underage drinking problem as indicated through community activism and recent peer-to-peer studies conducted in our region, which indicate disproportionate availability of alcohol from licensed establishments compared to what our on-view violations expose¹. To support this effort, the Pacifica Police Department has responded by developing an entirely new program called "<21 COAST" – Underage Consumption of Alcohol Suppression Team.

The Pacifica Police Department formed < 21 COAST in November 2005 with the intent to collaborate with community and youth organizations to limit the availability of alcohol to Pacifica's under 21 population by 1) educating minors about the risks of alcohol consumption, 2) educating licensees about their responsibilities, and 3) conducting tactical operations to ensure compliance from licensees, as well as to identify adults prone to purchase alcohol for minors.

¹ According to a 2005 Asian America Recovery Services/Youth Leadership Institute study, 43.6% of students surveyed stated they obtain alcohol from licensees. 66.2 % of those surveyed added that the clerks do not ask for ID.

The program intends to reduce the accessibility of alcoholic beverages to minors through a variety of police-involved activities including but not limited to: community outreach, school presentations, publicity and special operations using "minor decoys" and plain-clothes officers.

< 21 COAST will be primarily administered and overseen by Pacifica Police Corporal Darci Mix. Cpl. Mix has a B.S. in Criminal Justice Administration and a Masters degree in Education. Prior to joining the Pacifica Police Department in 2002, she managed a division of an urban youth center to meet the needs of young people in Brockton, an under-serviced city of southern Massachusetts. Her application of both practical and theoretical experience, as well as her ability to work with community programs, makes her exceptionally qualified to direct this program. Cpl. Mix has already arranged recruiting and educational seminars at local community colleges to create a strong group of volunteer minor decoys. Further, she has established departmental General Orders to dictate the management of the program. Cpl. Mix has been working with The Partnership for a Safe and Healthy Pacifica, Youth Leadership Institute and Asian America Recovery Services, Inc. who have all shown strong support and expressed the intention of volunteerism, whenever possible. Further, she has established connections with sworn personnel who commonly oversee similar programs at Millbrae Police Department and Daly City Police Department.

In the event funding is achieved, < 21 COAST may also act as a pilot program with the potential goal of expansion into a north San Mateo County tactical unit. A contracted evaluator will be responsible for assessing and reporting how well program objectives are being met.

The Department of Alcoholic Beverage Control (ABC) will be awarding \$3 million in grants for fiscal year 2006/2007 to local law enforcement agencies in the State of California to fight alcohol-related crimes. ABC plans to award between 22-35 agencies a maximum of \$125,000 for their efforts. The Pacifica Police Department plans to apply for such an award and needs a Resolution of the Governing Board of the City of Pacifica to complete the proposal. The Pacifica Police Department seeks the approval of the City Council and requests affirmative votes in support of this program.

FINANCIAL IMPACT:

Upon receiving requested grant monies, the program will be almost completely funded by the Department of Alcoholic Beverage Control. The grant period is one year. Prior to the grant period, some overtime monies may be allocated for officers to recruit minor decoys, host trainings and attend community meetings. Subsequent to the grant period, operational funds will be sought through other potential government or private funding sources. In the event operational funds cannot be obtained, the program will continue, albeit less vigorously. Fiscal needs of the program subsequent to the grant period, such as filling officers to conduct tactical operations, will be subject to approval by the Chief of Police. No additional budget authority is requested, as any expenses will be absorbed by the existing department budget.

ATTACHMENTS:

Resolution

COUNCIL ACTION REQUESTED:

Adopt Resolution

CITY OF PACIFICA
CITY COUNCIL
AGENDA SUMMARY REPORT
March 13, 2006

AGENDA ITEM NO. 8

SUBJECT:

Public Hearing to consider appeal of Planning Commission denial of a New Coastal Development Permit, CDP-262-05, and Second Amendment to Coastal Development Permit, CDP-243-04, and Variance, PV-480-05 to reconfigure two lots on Grand Avenue (APN 023-025-200 & 210).

PROPOSED ACTION:

Deny Appeal

ORIGINATED BY:

Planning and Economic Development Department

DISCUSSION:

Background – On December 20, 2004, David Blackman of Grand Heights, LLC submitted an application for a lot line adjustment (LLA), and a second amendment to Coastal Development Permit, CDP-243-04, (addressed as 1578 Grand Avenue). Staff determined that the information submitted was incomplete and sent a letter so stating to Mr. Blackman on January 18, 2005.

On July 27, 2005, Mr. Blackman submitted a revised application that included a new Coastal Development Permit CDP-262-05 to construct a single-family dwelling behind the project previously approved at 1578 Grand Avenue along with the second Amendment to CDP-243-04 and LLA. Staff sent out a second determination of incompleteness letter on August 26, 2005 based on Engineering Division's determination that certain information was missing from the submittal.

On August 31, 2005, Mr. Blackman submitted a letter appealing Engineering Division's request for information as listed in the second determined incomplete letter from staff dated August 26, 2005. On October 3, 2005, the Planning Commission upheld staff's determination of project incompleteness and denied Mr. Blackman's appeal. One day later, Mr. Blackman submitted the requested information and on October 19, 2005, staff determined the application complete.

Planning Commission Review – On November 21, 2005, the Planning Commission conducted a public hearing to consider Mr. Blackman's application for a Second Amendment to CDP-243-05 and PV-480-05 along with

new CDP-262-05, Parking Exception, PE-134-05, and PV-481-05 (collectively "October 2005 Application"). Staff's recommendation was to deny the October 2005 Application as proposed based on the findings in the attached staff report (see Attachment f). At the November 21, 2005, Planning Commission meeting, the applicant asked the Planning Commission to continue consideration of his October 2005 Application, rather than deny that application based on the need for multiple variances. The Planning Commission continued consideration of Mr. Blackman's October 2005 Application to December 19, 2005 to give Mr. Blackman sufficient time to revise the plans to eliminate the need for some or all of the proposed variances. Mr. Blackman stated his willingness to cooperate with the Planning Commission and staff to redesign the project.

Staff sent a letter to Mr. Blackman on November 30, 2005 establishing a deadline of noon December 7, 2005 for Mr. Blackman to submit the revised plans (see Attachment e). This deadline was established to ensure that staff would have sufficient time to review and analyze the plans before the December 19, 2005 Planning Commission meeting. Mr. Blackman did not meet this deadline. Specifically, the materials he submitted on December 7, 2005 consisted of an incomplete set of plans. As a result, staff was unable to present the project to the Planning Commission on December 19, 2005. On December 12, 2005, Mr. Blackman submitted a new version of his plans (hereafter "December 2005 Application") that differed substantially from his October 2005 application and superceded that earlier application. On December 19, 2005, the Planning Commission continued the item with the public hearing open in response to staff's request. Mr. Blackman did not attend the meeting, nor did he submit anything in writing prior to the meeting to protest staff's continuance request.

On December 27, 2005, however, Mr. Blackman submitted a letter dated December 26, 2005 in which he: (1) gave his opinion that his October 2005 Application should be considered approved as a matter of law as of December 16, 2005 and (2) expressed his desire to appeal the Planning Commission's December 19, 2005 decision to continue consideration of his project to January 17, 2006. Osa Wolff, special counsel to the City of Pacifica on land use matters, responded to Mr. Blackman in a letter dated January 6, 2006, explaining that his application was not approved as a matter of law and that the City could not process his appeal of the Planning Commission's continuance decision. This January 6, 2006 letter is attached to the Agenda Memo for the January 17, 2006 Planning Commission Meeting (see Attachment d).

On January 17, 2006, the Planning Commission considered Mr. Blackman's December 2005 Application. Staff's recommendation was to deny the application based on the analysis in the attached Agenda Memo (see Attachment d). At the Planning Commission meeting, Mr. Blackman argued for approval of his December 2005 Application, but also expressed his willingness to amend that application to comport with "Version 7", another proposed lot configuration depicted in a schematic drawing that he handed out at the Planning Commission meeting (see Attachment c). As clearly shown in the attached minutes (see Attachment d), several members of the Planning Commission indicated a willingness to approve Mr. Blackman's December 2005 Application, especially if it were made consistent with the Version 7 drawing. Mr. Blackman was informed that the Planning Commission could that evening indicate its intent to approve the project and direct staff to prepare findings for approval for the next Planning Commission meeting (February 6, 2006). Mr. Blackman disagreed with that assessment, stated repeatedly that he would not accept another continuance and indicated that he would prefer to have his project denied so that he could immediately appeal that decision to the City Council.

On February 27, 2006, the City Council meeting was continued due to a citywide power outage; and therefore, the Council was unable to take action on this item. The project was continued to the next City Council meeting

on March 13, 2006 and the applicant notified by staff in a letter sent out the next day (see Attachment g). The City Council must take action on this item to satisfy the 60-day deadline to resolve the applicant's appeal.

Appeal – On January 18, 2006 Mr. Blackman submitted the attached letter appealing the Planning Commission's denial of his project. Below is staff's response to each of the issues raised in Mr. Blackman's letter in order.

1. Mr. Blackman states: "On December 26, 2005 I appealed the December 19, 2005 Planning Commission decision in writing to the Planning Department. Please consider this letter my second appeal of my project to City Council. Per Pacifica's Municipal Code I may appeal any decision of the Planning Commission to City Council. Any decision certainly includes the Planning Commission's decision to continue or deny a project. I would like to appear at the next available City Council meeting but not later than the 60 days from my initial appeal. The last possible regularly scheduled hearing within sixty days from my initial appeal is February 20, 2006."

Staff's response: As discussed previously, the appeal by Mr. Blackman of the Planning Commission's continuance was not valid, as explained in the January 6, 2006 letter written by Osa Wolff, which was attached to the January 17, 2006 Planning Commission Agenda Memo (see Attachment d). By contrast, the Planning Commission's January 17, 2006 denial of Mr. Blackman's application is clearly subject to appeal. Staff therefore scheduled review of Mr. Blackman's appeal for the next available City Council meeting, February 27, 2006. Mr. Blackman inaccurately states in his appeal letter that the City Council has a meeting on February 20, 2006. The sixty day deadline for the City Council to take action on the appeal is calculated from the date of Mr. Blackman's appeal, January 18, 2006, not December 26, 2005 as stated in Mr. Blackman's appeal letter.

2. Mr. Blackman states: "It was very clear at the November 21, 2005 Planning Commission hearing that 2 Commissioners would not entertain a single variance and the other 5 Commissioners would consider 1 variance."

Staff's response: The Planning Commission did not take a vote with respect to Mr. Blackman's project at its November 21, 2005 meeting. As such, it is difficult to know how many variances each of the various Planning Commissioners would ultimately be willing to accept in connection with Mr. Blackman's proposed project. The minutes of the Planning Commission's November 21, 2005 meeting are attached hereto (see Attachment f).

3. Mr. Blackman states: "On December 7, 2005; I submitted a new set of plans that altered the property line and moved the house 1 foot. Staff made preliminary analysis that only one variance was needed and that my submission was complete for the December 19, 2005 hearing."

Staff's response: Staff cannot and does not make any determination or complete any analysis during the brief interaction that occurs over the counter when an applicant submits plans. Staff certainly did not make any determination in this case regarding completeness or how many variances might be involved when Mr. Blackman submitted his plans on December 7, 2005.

4. Mr. Blackman states: "On December 8, 2005: Staff called and said that they changed their interpretation of set back rules (their unwritten sliding circle theory) and that my project would require 2 variances. I

explained that the Planning Commission was adamant about not approving two variances. Within two hours of the phone call, I provided Versions 3, 4, 5, & 6. Staff made another preliminary assessment and stated that they liked Version 6 and that only one variance was needed. I said great and requested that version 6 be considered at the December 19, 2005 hearing. Staff said they would not give the Planning Commission the option to approve my project at the December 19, 2005 but would give the Planning Commission the option to approve my project in January.

Staff's response: Staff cannot and does not make any oral determinations prior to issuance of the staff report. Staff certainly did not make any oral determination on December 8, 2005 regarding how many variances might be involved or how the setback rules might apply. Moreover, the Planning Commission (and ultimately the City Council), not staff, makes the final decision on these issues based on input from staff, the applicant and any other interested party. Staff did send out a letter dated December 8, 2005 (see Attachment e) clarifying the status of his project.

5. Mr. Blackman states: "On December 12, 2005 I requested in writing that I be given a fair hearing on December 19, 2005 with version 6 of my plans and that the Planning Commission be given the option to approve my project."

Staff's response: Staff believes Mr. Blackman is mistaken when he states that he submitted a written request regarding the hearing on December 19, 2005. Staff did not receive any letter or other written request from Mr. Blackman regarding the December 19, 2005 hearing on December 12, 2005 or any other day. As noted above, on December 12, 2005, Mr. Blackman did submit a new version of his plans (his December 2005 Application) that differed substantially from his October 2005 application and superceded that earlier application.

6. Mr. Blackman states: "On December 16, 2005 the staff sent out an agenda stating they did not have adequate time to review the proposed change in the property line (Dec. 9- Dec. 19 = 10 days). The Planning Commission was again denied the ability to approve my project and took the default decision to continue to January 17, 2006."

Staff's response: This statement appears to contain some inaccuracies. Mr. Blackman submitted his revised plans on December 12, 2005, not December 9, 2005. In addition, the Agenda Memo for the December 19, 2005 Planning Commission meeting was distributed to the Planning Commissioners on December 15, 2005, not December 16, 2005. Furthermore, staff reviewed Mr. Blackman's December 12, 2005 submittal promptly and presented the project to the Planning Commission on January 17, 2006 in a timely manner.

7. Mr. Blackman states: "On January 13, 2006 the Friday before the Planning Commission (1 working day before the hearing and 32 days of reviewing the plans), staff declared they found another variance resulting in two variances. Staff and I knew very well that the Planning Commission stated they would not consider two variances. The second variance stated I did not comply with flag lot standards. I was surprised since Pacifica has no flag lot ordinances, codes or standards that I am aware of to comply with. Staff recently allowed other similar lot line arrangements. I have submitted a written request that the flag lot standards and ordinances be made available to Council and me."

Staff's response: Mr. Blackman is mistaken when he states that the Agenda Memo regarding his project was not available until January 13, 2006. Mr. Blackman personally picked up his copy at the counter on January 12, 2006, just after the Planning Commissioner's received their packets of information. The Planning Department standard policy is to release staff reports and agenda memos only after delivering the information to the Planning Commission.

As explained in the January 17, 2006 Agenda Memo, staff's interpretation was that: (1) Mr. Blackman's proposal resulted in the need for a variance to allow less than the 50 foot lot width for one of the proposed parcels and (2) the proposed parcel reconfiguration did not involve a flag shaped parcel. However, the Planning Commission (and ultimately the City Council), not staff, makes the final decision on these issues based on input from staff, the applicant and any other interested party.

Staff received a letter dated January 18, 2006 from Mr. Blackman requesting information regarding flag shaped lot ordinances, codes or standards. Staff responded to Mr. Blackman via letter on January 27, 2006 that no ordinances, codes or standards existed regarding flag shaped lots (see Attachment a).

8. Mr. Blackman states "On January 19, 2006 the Planning Commission was very receptive of my project. I asked them repeatedly to approve my project and stated that I did not want another continuance. The Planning Commission stated at the hearing they were barred by staff to approve my project. The Planning Commission verified again with staff, Pacifica's City Attorney, and outside land attorney that they could not approve the project at the hearing. The only remaining choice was taken – denial."

Staff's response: As explained to Mr. Blackman repeatedly during the Planning Commission meeting on January 17, 2006, the Planning Commission could have indicated their intent to approve the project and directed staff to prepare findings for approval for the next meeting on February 6, 2006. Mr. Blackman indicated that he would prefer to have his project denied so that he could appeal that decision to the City Council.

9. Mr. Blackman states: "At the upcoming City Council meeting it will be clearly apparent my project is the absolute best solution for two difficult existing residential lots. It is the best solution for future property owners, best solution for neighbors, and best solution for the City of Pacifica."

Staff's response: The City Council will review the project and the related information in order to make a decision as to whether to approve, deny or continue the project for further review.

10. Mr. Blackman states: "Pacifica's Planning Department is clearly responsible for denying me due process. At the January 17, 2006: December 19, 2005; & November 21, 2005 Planning Commission hearings the Commissioners were barred from having the option to approve my project by the Planning Department. Not allowing the Commissioners to approve a project is clearly not a fair hearing and a denial of due process."

Staff's response: Staff disagrees with Mr. Blackman's statements that he has been denied due process for his planning applications. Staff has reviewed Mr. Blackman's submittals in a timely manner, analyzed each version of the project and presented all information to the Planning Commission in a timely manner.

11. Mr. Blackman states: "The Planning Department had clearly denied my rights that are entitled under the Permit Streamlining Act. The Planning Department has taken an erroneous position that they have never determined my project exempt from CEQA even though they declared my project exempt from CEQA in the Pacifica Tribune, posted the statement on my job site, and posted a statement on the library wall, and repeatedly stated my project was exempt from CEQA in staff reports! This had resulted in the current civil litigation between Pacifica and me again."

Staff's response: Mr. Blackman has filed a lawsuit in San Mateo County Superior Court in which he argues that the City violated the Permit Streamlining Act in this case. The City strongly disagrees with Mr. Blackman's argument.

Discussion – Staff recommends that the City Council deny the appeal and the project based on the analysis in the attached Agenda Summary Report for the Planning Commission meeting on January 17, 2006. However, given that some Planning Commissioners were apparently willing to consider approving Mr. Blackman's project if amended to comport with Version 7 (see Attachment c), findings and conditions of approval have been included in this Agenda Summary for the City Council. The findings for denial are included in the Agenda Memo dated January 17, 2006 (see Attachment d) submitted to the Planning Commission. By providing findings and conditions of approval, staff is giving the City Council the opportunity to approve the project if the Council believes the project warrants approval.

FINDINGS:

1. **Findings for Approval of the Variance:** The City Council finds that special circumstances do apply to the subject property in that the rear property line for Lot C abuts an open space area and would not impact any future dwellings. Furthermore, the Commission finds that the strict application of the zoning standards would deprive the property owner of privileges enjoyed by other properties in the area and under the same zoning classification in that the proposed property lines allow construction of the proposed dwelling with access already provided; thus, avoiding the need to extend Grand Avenue, which would require large retaining walls due to the steep hillside.
2. **Findings for Approval of the Coastal Development Permit:** The City Council finds that the proposed CDP amendment and new CDP are consistent with the City's certified Local Coastal Program in that the lot reconfiguration and development proposed are compatible with the existing hillside. The lot reconfiguration and proposed development result in the need for one variance to allow a smaller rear yard setback but most of the development standards are met. Thus, the proposed lot line adjustment and proposed dwelling are consistent with the other dwellings and lots already established in the neighborhood.

CONDITIONS OF APPROVAL:

Planning Department:

1. Development shall be substantially in accord with the plans entitled "Grand Heights 1578 Grand Ave.," consisting of four full-size sheets (4) dated December 11, 2005 and one reduced sheet (1) of Version 7

revising the property lines submitted by the applicant to the Planning Commission January 17, 2006, except as modified by the following conditions.

2. The applicant shall provide a fence along the north side of the property between the private property and the adjacent open space to the Planning Director's satisfaction in order to ensure that the open space is not utilized for private purposes.
3. Prior to the issuance of a building permit, the applicant shall submit information on exterior finishes, including colors and materials, subject to approval of the Planning Director. The exterior finishes shall be attractive, complement the structure and compatible with the neighborhood.
4. The applicant shall submit a final landscape plan for approval by the Planning Director prior to the issuance of a building permit. The landscape plan shall show each type, size, and location of plant materials. Landscaping materials included on the plan shall be coastal compatible and appropriate to site specific characteristics such as soil type, topography, climate, amount of timing of sunlight, prevailing winds, rainfall, air movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment. Native drought resistant plants will be incorporated whenever possible. All landscaping shall be completed consistent with the final landscape plans prior to occupancy. In addition, the landscaping shall be maintained and shall be designed to incorporate efficient irrigation to reduce runoff, promote surface filtration, and minimize the use of fertilizers, herbicides, and pesticides. Landscaping on the site shall be adequately maintained and replaced when necessary as determined by the Planning Director. The landscaping shall be consistent with the approved landscape plan on record in the Planning Department.

Public Works/Engineering:

5. Prior to building permit issuance, the applicant shall submit and obtain City Engineer approval of a drainage plan that includes all existing and proposed drainage improvements at the project site. The drainage improvements shown in the drainage plan shall include, without limitation, swales, concrete gutters, pipes, inlets, headwalls and the ultimate site drainage discharge point. If the drainage plan involves significant changes to the project, the applicant will be required to apply for a CDP amendment.

Building Department:

6. Construction shall be in conformance with the San Mateo Countywide Storm Water Pollution Prevention Program. Best Management Practices shall be implemented.

Council Action – The Council may deny, conditionally approve, or continue the appeal tonight. Staff has provided the necessary motions to uphold the appeal by conditionally approving the project or deny the appeal.

RECOMMENDATION:

Staff recommends that the City Council deny the appeal, and uphold the Planning Commission's denial of the second amendment to the Coastal Development Permit, new Coastal Development Permit and Variance.

FISCAL IMPACTS:

None

DOCUMENTS ATTACHED:

- a. Staff's Response Letter to Mr. Blackman Dated January 27, 2006 (Previously Distributed)
- b. Mr. Blackman's Appeal Letter Dated January 18, 2006 (Previously Distributed)
- c. Drawings of "Versions 6 and 7" handed out by Mr. Blackman at January 17, 2006 Planning Commission Meeting (Previously Distributed)
- d. Agenda Memo to Planning Commission on January 17, 2006, Attachments and Meeting Minutes (Previously Distributed)
- e. Agenda Memo to Planning Commission on December 19, 2005, Attachments and Meeting Minutes (Previously Distributed)
- f. Staff Report to Planning Commission on November 21, 2005, Attachments and Meeting Minutes (Previously Distributed)
- g. Staff's Letter to Mr. Blackman Regarding City Council Meeting Continuance Dated February 28, 2006
- h. Full Size Plans – 4 Pages (Previously Distributed)

COUNCIL ACTION REQUESTED:

Motion to Deny Appeal

Move that the City Council DENY the applicant's appeal and uphold the Planning Commission's denial of Second Amendment to CDP-243-04 and PV-480-05; and the new CDP-262-05, based on the findings contained in the Planning Commission Agenda Memo dated January 17, 2006, and incorporate all maps and testimony into the record by reference.

OR

Motion to Approve Appeal

Move that the City Council find that the project is exempt from CEQA, and APPROVE the applicant's appeal and application subject to conditions 1 through 6, and overturn the Planning Commission's denial of Second Amendment to CDP-243-04 and PV-480-05; and the new CDP-262-05, based on the findings contained in the City Council Agenda Summary Report dated March 13, 2006, and incorporate all maps and testimony into the record by reference.



PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

CITY HALL • 170 Santa Maria Avenue • Pacifica, CA 94044 • (650) 738-7341 • Fax (650) 359-5807

Scenic Pacifica

Via Certified U.S. Mail and Fax (650) 239-3636

February 28, 2006

City Council Meeting Postponed to March 13th


David Blackman
David Blackman Construction, Inc.
Grand Heights, LLC
1091 Banyan Way
Pacifica, CA 94044

Re: Application for a Second Amendment to Coastal Development Permit CDP-243-04 and New Coastal Development Permit CDP-262-05 for the Proposed Dwelling

Dear Mr. Blackman:

Due to storm conditions causing a citywide power outage, your project was continued to the next regularly scheduled City Council meeting on March 13, 2006.

Sincerely,


Kathryn Farbstein, Assistant Planner

C: Michael Crabtree, Planning Director
Cecilia Quick, City Attorney

Osa L. Wolff, Attorney at Law
Shute, Mihaly & Weinberger, LLP
396 Hayes St.
San Francisco, CA 94102

Jonathon Farmer
Managing Member, Grand Heights, LLC
508 Manor Dr.
Pacifica, Ca 94044

Kent Colwell and Parthenon Properties, LLC
Managing Members, Grand Heights, LLC
15 Wolfe Glen Way
Kentfield, CA 94904

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
CDP 243-04, 262-05 Hearing Postponement	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
RECEIVED	
FEB 28 2006	
Postmark Here	
Sent To David Blackman	
Grand Heights, LLC	
Street, Apt. No., or PO Box No. 1091 Banyan Way	
City, State, Pacifica, CA 94044	
PS Form 3800, May 2000	
See Reverse for Instructions	

ATTACHMENT



**CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT**

March 13, 2006

AGENDA ITEM NO. 9

SUBJECT:

Introduce ordinance regarding maintenance and preservation of City trees.

ORIGINATED BY:

Public Works Department

DISCUSSION:

At the City Council meeting of February 14, 2006, the City Council adopted its Strategic Plan. Goal #1 of the Plan is to "[p]reserve and enhance Pacifica's natural resources and open space to ensure an ecologically vibrant community." Objective 1H is to "[e]stablish standards for tree preservation and management." Goal #3 is to "maintain, modernize and beautify the City's infrastructure and facilities." Objective 3A is to "[a]dopt a Landscape and Urban Forestry Master Plan to integrate urban forestry practices and incorporate best management practices for urban forests...."

The City is self insured through the Association of Bay Area Governments ("ABAG"). ABAG has developed a Risk Control Program, and has set forth a series of effectiveness measures for each of its member cities to adopt. Some of these measures include the adoption of a written urban forest management plan, which includes various factors. The attached ordinance is the first step in implementing both the Strategic Plan goals and objectives regarding urban forestry, and ABAG's risk management measures.

Although the Pacifica Municipal Code contains important provisions relating to tree care and preservation in special circumstances [example: Chapter 4-12, "Heritage Trees"], it does not contain any procedures or information to assist staff or the public regarding the day-to-day care and maintenance of ALL City Trees, nor does it contain any mechanism for the preparation and ongoing modification of a written procedure manual relating to urban forest management.

Notwithstanding the above, staff has for many years been able to preserve and maintain City Trees using informal (unwritten) practices and procedures, but has found this method can create confusion and result in inconsistent application of guidelines-- for staff and the public. As such, staff believes it would be of great benefit to codify the informal practices which have been used in the past, and to provide the authority for ongoing tree procedures and practices guidelines to be reviewed and modified from

time-to-time. This approach would comply with both ABAG's and the City's own Strategic Plan's recommendations.

Specifically, staff has the following goals:

(A) Professional oversight of urban forest management; (B) A means of prioritizing inspections, monitoring and maintenance frequency of City Trees; (C) The ability to review and respond to emergency tree maintenance requests; (D) Maintain City trees to minimize hazards, hardscape damage and maintenance costs, while protecting and encouraging healthy urban forestry. (E) Practical field procedures and measuring guidelines to determine whether any tree will be maintained by the City as a City Tree.

As a result, this ordinance proposes: (i) the codification of general best practices and guidelines for current and future tree maintenance and preservation programs; and (ii) authority for Department of Public Works to prepare, maintain and modify ongoing, written tree preservation and maintenance policies and procedures.

Staff has met with the Vallemar Conservators and provided them with a copy of the draft ordinance, and they indicated that they supported it.

DOCUMENTS ATTACHED:

Ordinance

COUNCIL ACTION REQUESTED:

Read ordinance entitled "An Ordinance of the City Council of the City of Pacifica Amending Title 4 of the Pacifica Municipal Code by Adding Chapter 14, Maintenance and Preservation of Trees" by title only and waive reading beyond the title.

Introduce the Ordinance.

CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT

March 13, 2006

AGENDA ITEM NO. 10

SUBJECT:

Appeal of denial of Heritage Tree Removal Permit Application No. HT-0053-05

ORIGINATED BY:

Public Works Department
Parks, Beaches and Recreation Department

BACKGROUND:

This matter concerns a final administrative appeal of a DENIAL of a permit application seeking REMOVAL a Heritage Tree. The operative regulations are set forth in Chapter 4-12 of the Pacifica Municipal Code ["Preservation of Heritage Trees"].

On June 15, 2005, an application was submitted by Antonio Baltazar, owner of the property located at 126 Arcadia Drive, to remove one Monterey Cypress Heritage Tree [Ex. "A"]. After proper notification to surrounding property owners on June 17, 2005 [Ex. "B"], an appeal (seeking to instead preserve the tree) was submitted by Sue Blaszyk, a neighbor living at 128 Arcadia Court [Ex. "C"].

Upon staff review of these materials, as well as informal discussions with the applicant, Mr. Baltazar was sent a written notice on June 30, 2005, advising that in order to complete his application, he should submit report from a certified arborist documenting the proposed reasons for removal of the tree [Ex. "D"]. No such report was ever supplied.

On October 26, 2005, the matter came before the Parks, Beaches and Recreation Commission [Staff Report, dated October 14, 2005, attached as Ex. "E"]. Ms. Blaszyk was present and spoke in support of saving the tree. The applicant, Mr. Baltazar, was not present, and no new materials or reports were submitted in his absence. After discussion, a motion was made requesting, again, that professional reports be provided to substantiate the justification to remove the Heritage Tree and to allow additional time for the applicant to present evidence of his claims that the tree was damaging his roof, gutters and foundation in such a way as to compel removal. The motion was granted and the matter was continued to the December 14, 2005, meeting of the Parks, Beaches and Recreation Commission.

On December 14, 2005, the matter again came before the Parks, Beaches and Recreation Commission [Staff Report, dated December 05, 2005, attached as Ex. "F"]. Neither the

applicant nor the appellant were present. No new reports or documents were submitted by either party. The Commission APPROVED THE APPEAL and DENIED THE PERMIT by a vote of 6-0 [Minutes of meeting, dated December 14, 2005, attached as Ex. "G"].

On February 3, 2006, Mr. Baltazar submitted an appeal form seeking a review of the denial of the permit before the City Council [Ex. "H"].

APPLICABLE LAWS:

Chapter 4-12 ["Preservation of Heritage Trees"] applies to ALL Heritage Trees in the City—irrespective as to whether they are located on private property [PMC 4-12.02(c)]. A Heritage Tree may NOT be removed without a permit [PMC Sec. 4-12.04]. The criteria for granting a permit are set forth in PMC Sec. 4-12.05(c)(1-5), and include factors such as "... *the proximity to existing structures...*" and whether the requested removal is "...*necessary for the economically viable use of the property.*"

When appropriate, the City may require an applicant (as in this case) "... *to furnish a written report from a qualified horticulturist, arborist, or licensed landscape architect...*" prior to making a final decision [PMC Sec. 4-12.05(d)].

Appeals of decisions may be made within seven (7) days—first to the Parks, Beaches and Recreation Commission [PMC Sec. 4-12.09(b)], and thereafter, to the City Council [PMC Sec. 4-12.09(d)].

DISCUSSION:

The Heritage Tree ordinance favors the preservation of such trees whenever appropriate [PMC 4-12.01], but allows for removal when a legitimate justification is presented.

Technically speaking, the appeal filed by Mr. Baltazar seeking this review before the City Council is untimely, as it was filed well after the seven (7) days required for such appeals [PMC Sec. 4-12.09(d)]. In such circumstances, staff would normally recommend denial on that basis, however, in this instance, there were informal discussions with the applicant advising him that he had up to sixty (60) days to file such appeal. As such, in order to preserve the applicant's rights to due process, and to ensure a full and fair discussion and hearing on the issues, staff recommends that the Council waive the timeliness defect and proceed accordingly. In doing so, however, staff would request a statement that this decision shall not become precedent and that all future appeals must be timely unless a proper waiver or extension is granted.

In this matter, the original staff assessment [Ex. "E"] noted that the tree is in fact a Heritage Tree (based upon the size and variety of tree), and pointed out that there was evidence that the tree was beginning to lift the sidewalk. Nothing, however, was presented to verify the impact, if any, on the applicant's property concerns [which he listed only as: "*Damage roof & gate & destroy my foundation*" – see Ex. "A"]. Staff

concluded was that "... *the tree is currently healthy and appears to be sound, however, it would need to be trimmed and diligently maintained in order to prevent it from becoming a safety hazard in the future...*," noting that removal and re-planting may be the "long term" solution [Ex. "E"].

In this regard staff sought, appropriately, additional reports from the applicant to verify his position. The reports were never submitted, despite additional time having been extended to do so (over seven months to date). Moreover, the applicant has not attended any of the hearings to offer additional evidence or further support his position.

The only information offered by the appellant in support of this appeal to the Council, in fact, is his brief statement written on the appeal form:

"Best to my judgment, the denial from my previous request is impractical and unjustifiable. The tree is located within my property and has created damages based on its swollen roots as it appears on the surface of the ground."

Given the above facts, as well as the entire record and file in this matter, the Parks, Beaches and Recreation Commission concluded, unanimously, that the permit should be denied. Absent the professional/expert certification information requested, staff believes that there is no basis to overturn this decision, and simply cannot recommend removal of the tree.

ATTACHMENTS:

- A. Application for Heritage Tree Permit (June 15, 2005)
- B. Notice of Application (June 17, 2005)
- C. Appeal of Application (Sue Blaszyk)
- D. City Request for Expert Reports Supporting Application (June 30, 2005)
- E. Staff Report (October 14, 2005, for Meeting October 26, 2005)
- F. Staff Report (December 05, 2005, for Meeting December 14, 2005)
- G. Minutes – Parks Beaches and Recreation Commission (December 14, 2005)
- H. Appeal Form (for City Council Review, dated February 03, 2006)
- I. Letter to Antonio Baltazar, January 18, 2006
- J. Letter to Antonio Baltazar, January 24, 2006
- K. Letter to Antonio Baltazar, March 1, 2006

COUNCIL ACTION REQUESTED:

Based upon the entire record, as well as any oral, documentary or other evidence or testimony presented before the Council, staff requests that the Council make the following findings and orders:

- The tree is a Heritage Tree subject to Chapter 4-12;

-- The appeal application was untimely, but to preserve the applicant's right to due process, this technical requirement will be waived in this instance. Such waiver is not to be deemed precedent for future matters.

-- That the applicant did not appear at prior hearings to offer further argument or evidence;

-- The applicant was afforded ample opportunity to submit the required expert evidence to support his request to remove the tree, but failed to do so;

-- That absent the additional evidence requested, it was appropriate for the Parks, Beaches and Recreation Commission to deny the tree removal permit;

-- That the appeal is denied.

CITY OF PAFICICA
COUNCIL AGENDA SUMMARY REPORT
March 13, 2006

AGENDA ITEM NO. 11

SUBJECT

To introduce an ordinance amending certain sections of Article 2 of Chapter 1 of Title 6 of the Pacifica Municipal Code, relating to *Animal Regulations and Dangerous and Vicious Animals*.

ORIGINATED BY:

Police Department

DISCUSSION:

The City of Pacifica (hereinafter "City") has historically contracted with the County of San Mateo (hereinafter "County"), as do all twenty cities from the County, for animal control services. The County, in turn, subcontracts with the Peninsula Humane Society (hereinafter "PHS"), who has provided said animal control services for over 45 years.

On September 20, 2005, the County adopted Ordinance No. 04278, regarding Animal Control and Dangerous Animal Proceedings. The County's purpose for amending certain sections of the animal control ordinance was to seemingly improve existing regulations relating to dangerous and vicious animals that posed a threat to public safety. The final version of the County ordinance is a result of a series of meetings with the Animal Control Task Force, which included representatives from all cities and the PHS.

Pursuant to the contract between the City and the County with respect to animal control services, the City is responsible for adopting and maintaining a "substantially same animal control ordinance as the County." The City has a right to make changes to the County ordinance, but if a City's ordinance differs substantially from the County's, which as a result requires additional enforcement services from PHS, then the City is required to pay for the increased costs associated with said additional services. Staff believes, however, that the changes it is proposing to the County's ordinance do not require additional enforcement services from PHS, but instead serve to more vigorously regulate dangerous and vicious animals.

The proposed ordinance is the result of the City's required consideration of the County of San Mateo's recent adoption of an ordinance to regulate dangerous and vicious animals, and substantial revisions made thereto which staff believes more effectively protects the residents of Pacifica.

Revisions to the County Ordinance are Needed to Protect Public Safety:

Although the objectives of the County ordinance were to better regulate dangerous animals and to distinguish them from vicious animals, as well as to clarify other provisions, such as those that pertain to hearing procedures, staff believes the County's ordinance did not adequately accomplish some of these objectives.

For example, one of the major deficiencies of the County's ordinance is that it allows an owner to maintain a "dangerous" animal "which demonstrates ... behavior ... that results in an injury to a person or property." The owner must obtain a permit to keep said animal and comply with specific conditions.

Additionally, the County's ordinance defines a vicious animal, among other things, as one that "inflicts *severe* injury on or *kills* a human being or another animal." "Severe" is defined as "physical injury directly caused by an animal attack that consists of muscle tears, multiple punctures, broken bones or disfiguring lacerations, or which requires multiple sutures or corrective or cosmetic surgery." Adopting said County provisions without making any modifications puts the public's safety in jeopardy when residents of Pacifica must first wait for an animal to kill or "severely" injure a human being before said animal can be designated as vicious, and therefore be banned from the City.

As a result, and as discussed below, in order to better protect the public from these type of attacks, staff proposes to designate an animal that has caused ANY injury upon another animal or person not as dangerous, as the County does, but as vicious, which will require the owner of said animal to surrender it to Animal Control for appropriate disposition.

Nonetheless, staff also proposes, as does the County, to allow an animal control or hearing officer to consider mitigating factors surrounding an alleged incident involving the animal before it is designated dangerous or vicious. The consideration of these factors allows for a careful and thorough investigation before an animal is designated as dangerous or vicious.

Revisions to the County Ordinance that Protect and Promote Public Safety:

Below is a summary highlighting the **major provisions** of the ordinance that were revised by staff, and a rationale for said modifications. In addition to the changes highlighted below, staff also substantially cleaned up the language of the County's ordinance so that its provisions throughout were more precise, definite, and internally consistent.

•Dangerous Animal:

As previously discussed, the County's ordinance allows an owner to keep a "dangerous" animal with a permit, even if the animal, by its own definition, has inflicted an injury to a person or animal in the past. As a result, staff proposes to define a "dangerous" animal, among other things, as one that attacks and shows aggressive behavior. If its behavior results in physical injury, unlike the County, staff proposes that said animal be considered for a "vicious animal" designation. However, if an animal is declared dangerous instead, the owner must obtain a permit and comply with required conditions in order to keep said animal in the

City. As noted, animal control or hearing officers have discretion to consider mitigating factors before an animal is declared dangerous.

•**Vicious Animal:**

The County's definition of a vicious animal includes one that inflicts "severe" injury on, or kills, a human being or another animal. On the contrary, staff proposes the deletion of "severe" from said definition, and defines a vicious animal, among other things, as one that has inflicted a physical injury, irrespective as to the degree or severity of the injury. A vicious animal will be impounded for appropriate disposition, unless, as discussed above, mitigating factors exist surrounding an alleged incident involving the animal, such as provocation, assault and abuse by the injured person or animal.

•**Physical Injury vs. Severe Injury:**

Staff proposes to delete "severe injury" from the list of definitions for the reasons mentioned above. Moreover, to wait for an animal to cause a severe injury, such as disfiguring lacerations or multiple punctures, does not promote public safety. The focus for regulating a vicious animal should instead be placed on whether it has inflicted *any* physical injury. Staff, therefore, added the definition of "physical injury" to the ordinance.

•**Hearing Procedures and Due Process:**

The County added new hearing procedures regulating dangerous and vicious animal proceedings; however, staff undertook substantial clean up of all provisions to this section. For example, in consideration that an animal may be humanely destroyed if declared vicious, staff believes it was imperative to add all due process safeguards warranted to the owner of said animal. Specifically, staff proposes to add the following provisions to said hearing provisions since they are absent from the County ordinance: notice requirements; timelines and deadlines; manner of service of notices and letters; and designating who is entitled to notification of hearing and administrative decisions. This grants said individuals an opportunity to testify before an independent hearing officer.

•**Impoundment and Redemption of Dangerous and Vicious Animals:**

Staff proposes the addition of a provision indicating that it is mandatory to impound an animal that is subject to vicious animal proceedings. A staff revision also clarifies that there may be instances where the County should have discretion to keep an animal longer than the allotted fifteen (15) days by the County, if circumstances surrounding an incident involving the animal deem it necessary in order to observe, examine and determine whether an animal is dangerous or vicious.

Clarifications are also being proposed to state that if a dangerous animal is impounded pursuant to dangerous animal proceedings, the owner may redeem said impounded *dangerous* animal only *after* compliance with permit and licensing requirements, and paying the related fees. On the other hand, an owner may not redeem an animal that has already been designated as vicious by a hearing or animal control officer. The County failed to make this distinction.

•**Misdemeanor Violations:**

Unlike the County's ordinance, staff proposes that all violations of this ordinance be classified as misdemeanors **unless** the City Attorney or City Prosecutor charges the violation as an infraction. Classifying the violations as misdemeanors is consistent with a policy that regulates dangerous and vicious animals in a stringent manner, yet allowing for discretion to charge violations as infractions when circumstances surrounding an alleged incident are warranted.

FINANCIAL IMPACT:

None is anticipated

ATTACHMENTS:

Proposed Ordinance

COUNCIL ACTION REQUESTED:

Read ordinance entitled "An ordinance of the City Council of the City of Pacifica amending certain sections of Article 2 Chapter 1 of Title 6 of the Pacifica Municipal Code regarding animal regulations" by title only and waive reading beyond the title.

Introduce the ordinance.

**CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT**

March 13, 2006

SUBJECT:

Status of Public Works Projects

AGENDA ITEM NO. 12

ORIGINATED BY:

Department of Public Works

DISCUSSION:

The City is actively pursuing alternative energy sources. There are a number of funding opportunities that will assist the City in meeting its energy needs.

Photo Voltaic Power Generation

The City is currently in the process of installing a 350 kw photo voltaic power system at the wastewater plant. The current plans are to have the system online in early April. We are planning additional systems for the proposed City Hall, the Community Center and the fire stations. PG&E has had a 50% rebate program for commercial users. The Governor is proposing grants for solar systems. We have qualified for the Grant for the new City Hall PV system and will be preparing the design shortly.

Biodiesel

Staff has been working closely with Jim Vreeland and CCAG in the development of the biodiesel program. The City is currently preparing plans and specifications for 200,000 gallon per year biodiesel production system. The proposed plant will produce biodiesel from waste vegetable oil. The proposal will require a contractor to install the facility and operate it. The City will bid the project based on the reductions in fuel costs. The contractors will not charge the City for construction but will offer the City a benefit for the use of its facilities. Contract award will go to the contractor that offers the City the lowest fuel prices. The advantages to the City are that we will not have to capitalize the facilities and we will get the benefit of the contract availability of an alternative fuel. This alternative fuel will have lower levels of pollutants and potentially provide the City with a lower fuel price. It will also offer an emergency on site fuel source to power generators and vehicles during an emergency such as a large earthquake. We anticipate that we will complete the plans and specifications by the end of February and award the contract by the end of March. We will advertise nationally for a contractor to construct and operate the biodiesel production facility. We are working with CCAG and their consultants in exploring grants and other incentives that will further provide reductions in fuel costs.

We are also proceeding developing the permit process for operating the treatment plant standby generators on biodiesel. We anticipate that we receive the permits in about 12 months. Operating the standby diesels for peak shaving in the summer months will save approximately \$60,000 per year in power costs.

Skate Park

The Skate Park is essentially complete. Some cleanup work in the fence, gate, gate automation, landscaping and lighting is required. We will also be installing the donor tiles. The City has budgeted for a rest room and will be going out to bid shortly.

Esplanade Property Purchase

The Regional Board will be meeting to approve the \$200,000 SEP grant for the purchase of the property. Part of the grant requirements will be for the property to serve some water quality benefit. We will be

proposing a storm water treatment swale designed to eliminate drainage similar to that used at the Great Highway in San Francisco.

RV Park Access and Esplanade Trail

We have awarded the design contract for the design of the RV Park access and the Engineering Department is preparing the plans and specifications for the trail design. Final approval of the easement is required from the RV Park owners and the Coastal Conservancy before the project can be advertised for bid. The first phase of the design is to prepare schematic representation and plot plan of the stair access for the Coastal Permit. We are currently in this phase. We hope to submit the application within 60 days. Once we receive the Coastal Permit we will advertise the stairs and the trail for bids.

San Pedro Creek

This summer we plan to finish fish passage and water quality projects along Flores, and Peralta that includes bank layback and stabilization similar to the Capistrano Project. We will be replacing the Convalescent Home sewer and the sewerline along Flores to prevent sewage overflows. We will also be diverting the Crespi Storm Drain from the Creek to the treatment swales along Highway 1. We are in the process of applying for grants for the replacement of the Adobe Bridge and for the widening and bank restoration from Peralta to Oddstad. The Highway 1 Bridge Replacement will be completed in 2008. By 2008, the creek will be protect from the 200 year flood. Local drainage will be designed for the 25 year flood.

Parking Payment for Pacifica State Beach

We are applying for the Coastal Permit to charge for parking at the State Beach.

Bike Trails

The San Pedro Terrace Trail and the San Pedro Headlands trail are progressing nicely.

Other Projects

We are actively involved in approximately 20 additional public works projects and over 30 FEMA disaster projects. Along with regular maintenance we are in a very busy mode.

FISCAL IMPACTS:

None from this action.

ATTACHMENTS:

None.

COUNCIL ACTION REQUESTED:

Information only.

**CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT**

March 13, 2006

AGENDA ITEM NO. 13

SUBJECT:

Selection of City Council Liaison and Committee Assignments for 2006

ORIGINATED BY:

City Manager's Office

DISCUSSION

There are several regional agencies and Joint Powers Agencies that meet on a regular basis to discuss matters of interest to cities. Typically, a councilmember attends as the City's representative and follows up with a verbal report to Council. The councilmember assigned acts on behalf of the Council and represents the majority viewpoint on matters that directly impact Pacifica. Due to Council reorganization, it is appropriate to modify the liaison and committee assignments.

ATTACHMENTS:

Listing – City Council Liaison and Committee Assignments for 2006.

COUNCIL ACTION REQUESTED:

Modify listings for liaison committees and assignments for 2006.

**CITY OF PACIFICA
COUNCIL AGENDA SUMMARY REPORT
March 13, 2006**

AGENDA ITEM NO. 14

SUBJECT:

Appointment of citizens to fill vacancies on the Emergency Preparedness and Safety Commission and the Open Space Committee (Proposed action: appoint citizens)

ORIGINATED BY:

City Manager's Office

DISCUSSION:

Vacancies exist on the Emergency Preparedness and Safety Commission and the Open Space Committee. Vacancies were advertised three times in the Pacifica Tribune. Interviews were scheduled for those who responded and were held on March 6, 2006. Should Council wish to do so, appointments can be made at this time .

EMERGENCY PREPAREDNESS AND SAFETY COMMISSION: NEED 7

	Digre	DeJarnatt	Hinton	Lancelle	Vreeland
Balestreri, Peter					
Blackburn, Gregor					
Chiechi, Patrick					
Erbacher, Frank					
Johnson, Debra					
Salisbury, Jeanne					

OPEN SPACE APPLICANTS: NEED 4

	Digre	DeJarnatt	Hinton	Lancelle	Vreeland
Blincoe, Noel					
Simons, Ferd					
Whitley, James					

COUNCIL ACTION REQUESTED:

Move to appoint 1) _____; 2) _____;
3) _____; 4) _____; 5) _____; 6) _____;
to serve on the Emergency Preparedness and Safety Commission

Move to appoint 1) _____; 2) _____;
3) _____; to serve on the Open Space Committee.