

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda date: July 17, 2006
Preparation date: July 10, 2006

Subject: Proposal to process a development application by Caruso Affiliated for the Golden Gate Fields property that would lead to a completed Final Environmental Impact Report, and/or proceeding with a City-initiated waterfront planning process

Resolution: Resolution #06-46

From: Beth Pollard, City Administrator
Robert Zweben, City Attorney
Ann Chaney, Community Development Director

STAFF RECOMMENDATION:

1. If the City Council wishes to endorse a complete processing of the Caruso Affiliated application for Golden Gate Fields, including an Environmental Impact Report (EIR), staff recommends that (rather than adopting the attached Resolution #06-46), Council pass a motion to this effect and direct staff to return on July 24 with an implementing resolution.

Note: If the City Council does not wish to endorse a complete processing of the Caruso Affiliated application, no action is necessary. The applicant continues to have the right to file an application, but understands that the city is not obligated to proceed to a final EIR.

2. Regardless of whether the City Council wishes to commit to processing an EIR, staff would still like direction as to whether the Council desires to proceed with a City initiated waterfront planning process. If that is the case, staff recommends that the Council pass a motion directing staff to proceed with a separate planning process funded by the City, as opposed to being part of the EIR process funded by the applicant, and return on July 24 with an implementing resolution and funding plan.

BACKGROUND

On May 1, 2006, the City Council passed Resolution #06-20, as discussed below, stating “The community would be best served if the City commenced its own planning

process...without pressures created by having to process simultaneously a development application and the initiative.”

Shortly thereafter, staff met with the initiative supporters, as well as the property owner (Magna) and pending applicant (Caruso Affiliated) to explore whether they would participate in a City process that included preparation of an EIR. Initiative supporters initially agreed, but later decided to proceed with their initiative, indicating their concern about filing deadlines to have the initiative on the November ballot.

As of late June, the property owner/applicant was still considering whether to participate in a City initiated process. Based on the direction given in Resolution #06-20, staff prepared a report to the Planning and Zoning Commission recommending that they provide feedback to the Council regarding the preparation of City-initiated waterfront land use alternatives, with the Planning and Zoning Commission sponsoring the process, in close collaboration with the other standing City commission and committees. This report was prepared because staff believes it remains important to start the process, and is prepared to recommend to the Council the use of resources to prepare alternatives for future study.

This item was scheduled for the June 27 Planning and Zoning Commission meeting, but was not heard due to a noticing error. The Commission set a special meeting for July 12 to consider this item. On July 6, the Waterfront Committee also received copies of the P&Z Commission staff report and passed a minute motion requesting that the City Council grant a leadership role for the Waterfront Committee in implementing a waterfront planning process.

On July 7, the property owner/applicant met with staff, indicating that Caruso Affiliated had decided to submit its application and not participate in the proposed city initiated process, but they offered to fund a City-facilitated public visioning process that would produce two additional alternative proposals to be analyzed in the EIR on their project application (see attached letter dated July 7, 2006). At the Council meeting of July 10, Councilmember Jewel Okawachi asked that a resolution, which deals with the processing of a Caruso application, be placed on the July 17 City Council agenda (see attached). Stipulations of this resolution include the City’s agreement to accept and process an application, complete any required CEQA review, consider certification of the Final EIR in compliance with CEQA, and then consider whether to place the project on the ballot for final consideration by the voters in accordance with Measure C.

DISCUSSION

This proposed resolution was drafted primarily by Caruso. Staff cannot recommend its adoption. Due to the short time frame since receiving the resolution, staff has not had the opportunity to analyze and evaluate fully the significance of the Caruso resolution, and to provide the City Council with other options and preferred ways to accomplish what the Council expresses as its desires. Staff is concerned that the Caruso Affiliated resolution could be interpreted in a way that would not serve the interests of the City. Staff has

concerns about the nature and extent of commitment that the Caruso resolution requires of the City, the interrelationship of a City directed general plan process and the Caruso application, and sufficiently defining Caruso's commitment to fund the necessary studies related to the Caruso application. Until these concerns can be appropriately analyzed and evaluated, staff advises that it is premature to adopt the attached resolution.

In reviewing the attached resolution, there appear to be at least two key issues. One is whether to commit to the complete processing of an application, including an EIR. The second is whether development of the two alternatives should be prepared as part of the EIR process (e.g., extended scoping meetings), or as part of a separate City-initiated process.

Issue 1: Whether to commit to the complete processing of an application, including an EIR

A landowner, or representative with signed permission from the landowner, may file an application for a general plan amendment, zoning amendment, or other associated development applications. However, proceeding to the preparation of an EIR is not required under the California Environmental Quality Act (CEQA), if a public agency rejects or disapproves of a project. Specifically, Section 21080 states that:

- (b) *This division [CEQA] does not apply to any of the following activities:*
 - (5) *Projects which a public agency rejects or disapproves.*

Caruso Affiliated has always had the ability to file an application and have it processed. The issue is to what level. It is understandable that the applicant is striving to establish greater certainty in the process before proceeding. However, based on the above, the City is not mandated to carry out the EIR process if it were to decide that the project was not in the City's best interest. For example, if it were determined that one of the City-initiated alternatives was superior, and should be considered "the project," the City (per the attached resolution) would still be committed to proceeding with an EIR on the Caruso Affiliated application. Therefore, if the Council wishes to commit to proceeding toward a final EIR on a Caruso Affiliated application, the Council should be aware that such commitment would preclude any ability by the City to reject the application prior to completion of the EIR.

Issue 2: Whether development of the two alternatives should be prepared as part of the EIR process, or as part of a City-initiated process

City-initiated process

The resolution before the Council states that Caruso Affiliated has agreed to pay for a city planning process that would be conducted by the City of Albany to identify two of the Alternatives to be studied as part of the EIR of the Caruso Affiliated proposal. For example, project alternatives could be developed as part of the Scoping meetings that are part of the normal EIR process.

Regardless of whether the Council wishes to go on record and commit to processing a final EIR for the Caruso application, staff would still like the Council to determine what it wishes to do about a City-initiated process. Per adopted Resolution #06-20, the City Council authorized a City-initiated planning process including the preparation two alternatives prepared by staff in consultation with a planning consultant and with citizen feedback. Thus, these land use alternatives can be developed separate and apart from the EIR process.

Examples of land use goals, within the limits of the law, that could be explored if the City Council wishes to proceed with a City-initiated waterfront planning process, might include the following:

- Open space and community access to the shoreline that is complementary to the Eastshore State Park.
- Sufficient development to replace the loss of revenue should the racetrack cease operations.
- A level of development that compliments an emphasis on open space, shoreline access, and creek and marshland restoration.
- A level of appropriate development and revenue of the Golden Gate Fields property, should the racetrack cease operating.
- A level of appropriate development and revenue generation to the City at this time while emphasizing open space and public access values.

The next steps that would likely be needed would be to:

- Select a planning consultant in consultation with the Planning and Zoning Commission, and other commissions and committees.
- State that during the City initiated process, the City Council would be disinclined to approve changes to the General Plan or the zoning ordinance until it has the benefit of the information generated during the City initiated process.
- Direct the selected planning consultant to configure a community oriented process during which members of the community attend public workshops designed to create community preferred alternatives.
- Retain services of technical experts to provide information for the public process, in consultation with the planning consultant, so preferred alternatives reflect economic, fiscal, legal, and physical land realities and constraints.
- Conduct periodic presentations before the Planning and Zoning Commission and other commissions and committees, seeking their expertise and comments.
- Direct the Planning and Zoning Commission to review the selections generated through the community process and thereafter refer preferred plans to the City Council.
- Study preferred plans under CEQA, after which the City Council would anticipate adoption of General Plan and zoning regulations that would control development at the waterfront.

Lastly, on July 12, the Planning and Zoning Commission discussed the City-initiated planning process, and generally recommends the following (actual wording to appear in the Planning and Zoning Commission minutes):

That the City Council initiate a waterfront land use planning process incorporating:

- Citizen program desires, and
- Necessary technical studies (legal, geological, financial, etc.).

The Planning and Zoning Commission further recommends that:

- It serve as the primary body to sponsor the process, in collaboration with the City Council and pertinent commissions and committees;
- Part of the process should be to study the appropriateness and impacts of applicable General Plan and Zoning Ordinance amendments;
- The process should be set up with the assistance of staff;
- The City Attorney review the viability and liability of placing alternative plans on a ballot subject to instant run-off voting.

Attachments

Resolution introduced by Councilmember Okawachi

Letter from Caruso Affiliated to Councilmember Okawachi dated July 7, 2006

Resolution #06-20