

Grand Jury Report 2011-CD-02

Citizens of Humboldt Question Humboldt County Community Development Department Procedure

Required Responses

Pursuant to California Penal Code §933 to §933.05, responses to the Findings and Recommendations of this report shall be provided as follows.

Humboldt County Board of Supervisors and Humboldt County Community Development Services Department Director shall respond to Findings **A** through **K** and Recommendations **A** through **H**.

Background

The Forster/Gill Development Project (F/G Project) proposes a multi-phased subdivision on approximately 386 acres in the Ridgewood area just south of the Eureka city limits. The project is envisioned to be built in seven phases over 10-25 years. Ultimately, the development would include 1,442 residences and over 325,000 square feet of commercial space. The public has raised many issues concerning this proposed project, which include, but are not limited to, fire access, transportation, transportation infrastructure, the Martin Slough ecosystem, endangered species plants and animals, and a potential negative financial impact on the City of Eureka.

The Humboldt County Grand Jury has received several other complaints concerning this proposed project, including how the Draft Environmental Impact Report (DEIR) was written. Provisions of the California Environmental Quality Act (CEQA), and the Humboldt County General Plan and its updates might have been violated by the Humboldt County Planning Department and the Developer. Questions regarding several statutes and code violations in the F/G project have been brought to the Grand Jury's attention. The complaints addressed issues such as the apparent unwillingness of the Planning Department and its Director and the F/G Developers to include the vital departments, state and local, as well as members of the City of Eureka, to participate in the original planning process.

Discussion

- Planning Commissioners stated they have not received the information that they've needed and requested. As verified through the commissioners that we interviewed.

- Planning Commissioners have not received notice of meetings in a timely fashion, nor have they always received agendas in time to prepare for the scheduled meetings. As verified through the commissioners that we interviewed.

- Staff or Director has refused to provide requested information by the Planning Commissioners on more than one occasion stating, "You don't need this as it is not relevant." As verified through the commissioners that we interviewed.

- Humboldt County Planning Department staff according to the planning Commission is exercising more authority than they should.¹

- The Planning Department and the F/G developers indicated the F/G project was on hold. Then the Planning Department proceeded to prepare a DEIR without involving these entities:
 1. City of Eureka
 2. Caltrans
 3. Humboldt County Fire District #1

¹ This is verified through interviews with persons whom we are prohibited from identifying pursuant to the rule of secrecy mandated by the State.

4. Department of Fish and Game
5. Humboldt County Public Works Department

- The Planning Department or Supervisors have not created a Citizen Advisory Group.
- The threat of eminent domain was used against a property owner to acquire ingress and egress to the F/G project.²
- The estimated assessment for the development of utilities for each parcel appears too low, based on letters from officially interested parties and the DEIR.
- Based on the present assessed cost for utilities, no clear determination has been made as to who will fund the required infrastructure cost. These infrastructure cost should be decided upon before the DEIR is written -see the development agreement.
- Evidence collected indicates that the following statements by the F/G Project Developer and the Humboldt County Planning Department are inaccurate. The Planning Department stated in the original DEIR that the below listed entities agreed with the Humboldt County Planning on their portion of the report:

1. City of Eureka
2. Caltrans

² Stated in newspaper articles, interviews, and public meetings, and both the developer and County Planning Department members have said this could happen.

3. Humboldt County Fire District #1
4. Department of Fish and Game
5. Humboldt County Public Works Department

- Possible violations include but are not limited to the following codes and sections: SEE APPENDIX A

California Code of Regulations (CEQA)

§1510, §1520, §1532, §1541, §1542, §1550,
§15003, §15083, §15086, §15104, §15123,
§15129, §15140, §15143, §15151

California Public Resources Code (CEQA)

§21002.1, §21003

California Government Code

§54950

California Government Code (Development Agreement)

§65864, §65865.2

Humboldt County General Plan

GP-IM5, GP-IM6, GP-P3

- Not adhering to the requisite codes could result in financial harm to the City of Eureka. For instance, there is a concern that the diversion of sales tax revenue from the city of Eureka and the potential future infrastructure cost of the development project could be borne by the city. (Information derived from interviews and public documents.)
- Not enough agencies are participating in the cultivation of the Development Agreement (Government Code §65864).

SEE APPENDIX B page 11

Finding

- A.** The Planning Commission has not been receiving timely information from the Planning Department to prepare for upcoming meeting.
- B.** Failure by Humboldt County Planning Department to provide complete, accurate, and timely information requested by Planning Commissioners. The Commissioners were refused requested information by staff and director saying it's not relevant. In addition, commissioners were frequently not given materials for scheduled meetings until the last moment, thereby preventing the commissioners from having time to research for that night's meeting.
- C.** Inaccurate claims in the DEIR where made concerning agreement on certain aspects of the DEIR. These claims involve the following departments:

- 1 City of Eureka
- 2 Caltrans
- 3 California State Department of Fish and Game
- 4 Humboldt County Fire Department District #1
- 5 Humboldt County Department of Public Work

- D.** Humboldt County Planning Department and the Forster/Gill Developer have excluded concerned parties from involvement in the planning process from the beginning. See above.
- E.** Lack of a Citizen Advisory Group in the planning process, as outlined in CEQA that would aid in assisting the Planning Commissioners in solving issues arising with F/G project.
- F.** Used the threat of Eminent Domain to a homeowner to acquire a portion of that property for ingress and egress to the Forster/Gill project.
- G.** Information obtained indicated that due to economic restraints the project was put on hold in January 2010. Several months later, a DEIR was issued without the participation or notification of concerned agencies.
- H.** Outdated growth calculations from the Eureka City Plan of 1995 were used to determine the assessment value of each parcel for utilities, etc. There is no determination as to who will fund the required infrastructure cost if the particular assessed values are found to be inadequate.
- I.** Concerned agencies were not invited to participate in the cultivation of the Development Agreement.
- J.** Possible violations, including but not limited to those listed: CEQA, Brown Act, and Humboldt County General Plan and Updated Codes:
SEE APPENDIX A

California Code of Regulations (CEQA)

§1510, §1520, §1532, §1541, §1542, §1550,

§15003, §15083, §15086, §15104, §15123,

§15129, §15140, §15143, §15151

California Public Resources Code (CEQA)

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Humboldt County General Plan

GP-IM5, GP-IM6, GP-P3

- K.** The Planning Commission is not given the opportunity to present their reasons as to why a negative decision was made (Planning Commission Role GP-P3) to the Supervisors in a contested decision by the applicant. According to County officials, “This is the way it’s always been done” - only the applicant, the Director and the staff of the Humboldt Planning Department are allowed to speak to or answer questions from the Supervisors.

Recommendations

The Grand Jury has concluded that the excuse “that’s the way we have always done it” is unacceptable. The Planning Commission needs to be brought up to speed to enable them to function at the highest level of effectiveness for the people of Humboldt County and especially the F/G project. The following need to be rectified:

- A. The Receipt of complete, accurate, and timely information to the commissioners by the planning staff or the director.

- B. Give the Commissioners what they need to complete their tasks. Telling the Commissioners they do not need certain information is not the decision of the Planning Department staff or Director. This has been a recurring comment throughout our interviews.

- C. Include local and state agencies concerned with a project and stop the questionable statements when preparing a DEIR. This compromises transparency in government. The Grand Jury strongly urges this be corrected, so the public will have confidence in its local Government.

- D. Institute a Citizen Advisory Group. Because of the substantial public interest in this project, lack of a Citizen Advisory Group with qualified individuals for the Forster/Gill project appears inappropriate and restricts input from the public.

- E. Allow the Planning Commissioners (GP-P3) to present their opinions and decisions to the Supervisors when the Commission says no to a project, instead of limiting the questions and answers to the Planning Department and the applicant.

- F. Use current data to determine the cost of each parcel; calculate the cost and who would pay the infrastructure cost, which could be far more than the current assessment per parcel.

- G. Invite all concerned agencies to participate in the Development Agreement including the public and collaborate openly.

- H. Correct all possible violations that may have occurred including but not limited to: SEE APPENDIX A

California Code of Regulations (CEQA)

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§15003, §15083, §15086, §15104, §15123,
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GP-IM5, GP-IM6, GP-P3

Appendix A

California Code of Regulations

- Section 1510:** The policies of citizen participation
- Section 1520:** Public participation
- Section 1532:** Public education and public input
- Section 1541:** Education and participation of the public.
- Section 1542:** Access to decision makers
- Section 1550:** Creation and standards of community advisory committees, etc.
- Section 15003:** Environmental Impact Report (EIR) and CEQA Policies
- Section 15083:** Early public consultation on the DEIR prior to its completion.
- Section 15086:** Consultation concerning draft EIR with responsible agencies
- Section 15104:** Convening of meetings of responsible agencies
- Section 15123:** Summary of EIR: Use clear and simple language on proposed actions and its consequences.
- Section 15129:** Responsible organizations and persons consulted prior to the writing of the Draft EIR.
- Section 15140:** Wording of the DEIR simplified for decision makers and public understanding
- Section 15143:** Emphasis on significant effects on the environment

Section 15151: Summary of main points of disagreements among the experts.

California Public Resources Code

Section 21002.1: Provide meaningful public disclosure of environmental impact

Section 21003: Create accurate, organized report that would be meaning and useful to the decision makers and public.

California Government Code

Section 54950: The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good to know.

California Government Code (Development Agreement)

Section 65864: Lack of certainty in the approval of development projects and costs to the public...

Section 65865.2: Related to the timelines of Development Agreement (which we have not seen in our investigations).

Humboldt County General Plan

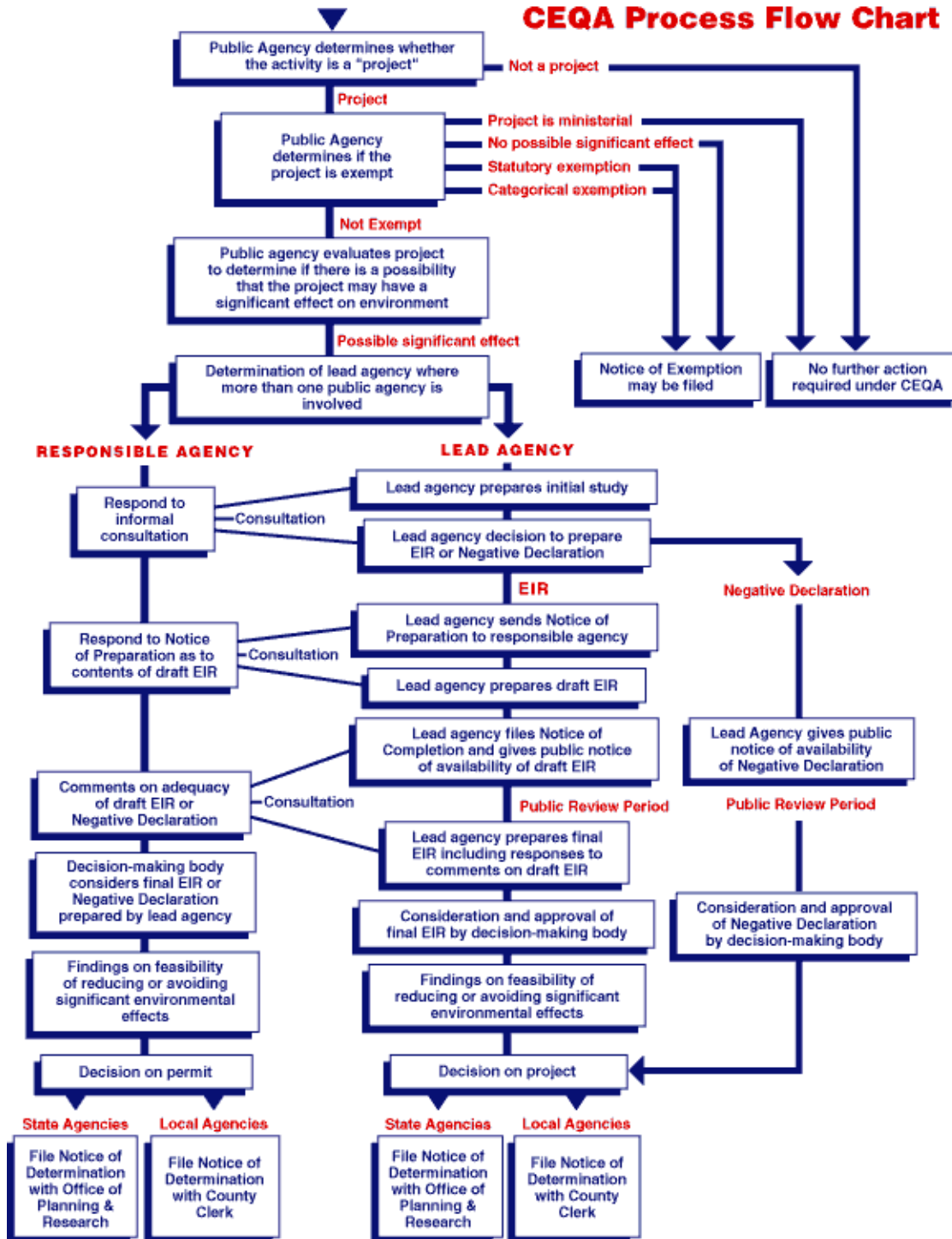
GP-IM5: Provide adequate time, information, and means of input to insure early and meaningful community involvement.

GP-IM6: City, State, and County participation

GP-P3: The Planning Commission shall serve as the primary advisory body to the Board of Supervisors regarding land use.

APPENDIX B PAGE 11

CEQA Process Flow Chart



This file last modified on: Wednesday, May 25, 2005.
 Document URL: <http://ceres.ca.gov/ceqa/flowchart/index.html>
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