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Orinda Settles Housing Element Lawsuit

By Laurie Snyder

"In the matter of Advocates for Lawful Environmental Review Today vs. the City of Orinda, the council unanimously approved a settlement of this litigation brought under the California Environmental Quality Act challenging the city's 2013 adoption of its Fourth Cycle Housing Element." That announcement was made by Orinda mayor Sue Severson at the May 20 Orinda City Council meeting, and came as Orinda ramps up for its next housing element review. Advocates for Lawful Environmental Review Today, often referred to by the acronym ALERT, agreed to dismiss all claims against the city while the city "agreed to various things related to preparing an Environmental Impact Report for the Fifth Cycle Housing Element" and also to pay \$19,756 of ALERT's attorney fees.

The agreement document shows that San Diego attorney, Craig A. Sherman, filed a Writ on Dec. 19 for ALERT and its president, Maria Protti, challenging a Mitigated Negative Declaration approved by the city council in November - part of adopting Orinda's "State-mandated 4th cycle housing element to plan for its Regional Housing Needs Allocation ('RHNA') for the years 2007 to 2014."

While disputing the merits of ALERT's claims, the city affirmed that all normally-applicable laws will apply when it prepares its fifth element EIR and said this EIR will "include site-specific environmental impacts consistent and compliant with the level of detail required by CEQA." Plus, even though Orinda "decided to rely on the 3.2 acre Santa Maria site to help meet its RHNA for lower income households" in cycle four, the city will reconsider inclusion of that acreage for cycle five and won't assume eventual development of those acres in its EIR baseline.

Despite selecting PMC (Pacific Municipal Consultants) as fifth cycle advisors on April 22 after concluding Orinda's standard Request for Proposal process, under the settlement agreement that states, "following consultation with Petitioner," the city will issue an RFP to AECOM, Diana Elrod, Dyett & Bhatia, ESA, Mintier Harnish, PMC, The Planning Center/DC&E, Veronica Tam Associates, Lamphier Gregory, LSA, and Geier & Geier Consulting.

Staff received just three responses to 10 Requests for Proposal issued prior to April 22 - from PMC, RBF Consulting, and Diana R. Elrod, the advisor who helped Lafayette complete its fourth cycle element and is now working to help prepare its fifth.

As to the city council's April 22 choice, Planning Director Emmanuel Ursu said all three firms were very well qualified and that serious consideration was given to Elrod. However, there was a perceived weakness with her firm on the CEQA side. "We will need to go through a CEQA process that will be a little more rigorous than I think it was the last time Both PMC and the other consulting firm have more experience in that respect." Elrod's estimate - roughly \$9,000 above PMC's bid of \$37,965 - projected the need for only 25 hours of CEQA-related time versus PMC's estimated 58 hours.

RBF submitted the low bid, but was ruled out due to potential difficulty in accessing consultants and travel costs that might arise with a Southern California-based firm. Timing was also considered. PMC aimed for element adoption by January 2015; both RBF and Elrod needed another month. "Under new state law ... if we do not adopt a housing element by within 120 days of the deadline [May 31, 2015]," said Ursu, "then rather than being on an eight-year cycle to update the housing element, we would be required to update the housing element four years after that, and then another four years after that, and then yet again four years after that." And that would cost the city significantly more, observed Councilmember Amy Worth.

Finally, the city agreed that the fifth element and related CEQA document will, when adopted by the city, supersede the fourth element and its CEQA document. Nothing in the settlement limits how the city will plan for its Regional Housing Needs Allocation or other fifth element matters nor does it limit ALERT's ability to participate in the fifth cycle housing element process - "including possible CEQA litigation over the EIR adopted for the 5th cycle housing element."

Orinda's Mounting Legal Costs

At its Feb. 18 meeting, the Orinda City Council learned from staff during a mid-year budget review that city General Fund expenditures would surpass original budget projections by \$129,995 largely due to:

"Unusually high demand for legal services associated with the Housing Element, including responses to voluminous Public Records Act requests."

A lawsuit brought by Advocates for Lawful Environmental Review Today.

Litigation threatened by the owners of 81 Moraga Way challenging the council's Jan. 14 decision not to rezone their downtown property.

A new suit (Painter v. City of Orinda) brought by the owners of 34 Broadview Terrace challenging the city's denial of their design review application.

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