

Open Space and Habitat Commission Minutes
Monday, April 6, 2020
Remote Audio and Video Meeting Participation, 6:30 p.m.

Commissioners Present: Garrett Allen, Patrick Huber (Vice Chair), Joy Klineberg, Roberta Millstein (Chair), Carrie Shaw, Marc Vayssieres

Vacant Positions: Two (Regular and Alternate)

Commissioners Absent: None

Assigned Staff: Tracie Reynolds, Manager, Open Space Program (Present)

Council Liaison: Brett Lee (Regular) (Present), Lucas Frerichs (Alternate)

1. Call to Order & Roll Call

Commissioner Millstein opened the meeting after a quorum was achieved and called roll call. Commissioner Shaw joined the meeting during Approval of Agenda.

2. Approval of Agenda

On a motion by Commissioner Vayssieres, seconded by Commissioner Huber, the Commission voted 6-0-0-0 to approve the April 2020 regular meeting agenda (Ayes – Allen, Huber, Klineberg, Millstein, Shaw, Vayssieres; Noes – None; Absent – None; Abstentions – None).

3. Brief Announcements from Staff, Commissioners, and City Council Liaisons

Mayor Brett Lee asked the Commission for its flexibility and understanding as the City tests a new format for its remote public meetings. He said he appreciated the Commissioners’ flexibility during the shelter-in-place order and that he welcomed any feedback from the public and/or Commissioners on the new format.

4. Public Comment

Colin Walsh said he was deeply concerned that the City was carrying on regular business during the shelter-in-place order and that the agenda items were not emergencies. He said given that a major item was on the agenda it was no time to try a new format for remote public meetings. He said a more pressing matter was burrowing owls on the City’s Mace 25 parcel and he hoped that issue would be put on a future agenda soon. A woman who identified herself as Dorothy said she was concerned that the City was giving away open space to the Aggie Research Campus developer and that the City should be paid for this land. Alan Pryor said the Aggie Research Campus developer was trying to use nine acres of the City’s Mace 25 parcel for his project’s agricultural buffer and this land was supposed to be open space in perpetuity. He said the agricultural buffer will include landscaped areas, walking paths, and benches and will preclude using the rest of the site as open space or a working farm. He said it was an unfair commercial advantage to gift the developer land worth \$2.25 million. He asked the Commission to recommend that the agricultural buffer be entirely within the project site and not encroach onto the City’s Mace 25 parcel.

5. Consent Calendar

There was only one item on the consent calendar: approval of the March 2, 2020 regular meeting minutes. On a motion by Commissioner Allen, seconded by Commissioner Klineberg, the Commission voted 6-0-0-0 to approve the March 2, 2020 regular meeting minutes. (Ayes – Allen, Huber, Klineberg, Millstein, Shaw, Vayssieres; Noes – None; Absent – None; Abstentions – None).

6. Regular Items

Action Item – Provide Commission comments on the Draft Subsequent Environmental Impact Report for the proposed Aggie Research Campus development

Several Commissioners said they did not have enough time to review the Draft Subsequent Environmental Impact Report (“SEIR”) for the Aggie Research Campus (“ARC”) development proposal and that they would like more time to review it. Commissioner Millstein then took public comment on this item.

Todd Edelman said that we were in an unprecedented situation with the coronavirus pandemic and that the Aggie Research Campus development proposal should be postponed so that the public review process can be done properly. He also said he couldn't focus on the project while existential things are going on, like people dying. Colin Walsh said he was concerned that a portion of the City's Mace 25 parcel might fall under the control of the developer in the future and that it would then be lost to the City. He also said the frequency and scope of the biological surveys done to date were inadequate. Josh Jones said he was concerned that land purchased with Measure O money might be converted into something else. He said that seemed dishonest and a bait-and-switch on Davis taxpayers and he didn't think it was right.

The Commission then considered the first recommendation from Commissioner Millstein. The recommendation was that the City should, at a minimum, extend the comment period for the ARC SEIR to allow a sufficient amount of time for the Commission and other commissions to hold a second meeting to complete their reviews. She said the Commission was not informed that it would even be meeting, much less meeting to discuss the ARC SEIR, until the Friday afternoon before its Monday meeting. She said the Commission and members of the public who are interested in open space and habitat issues are undoubtedly facing a variety of challenges due to the coronavirus pandemic. She said the SEIR is almost 500 pages and many of the attachments and appendixes are also relevant to the Commission.

Several Commissioners agreed that they did not feel they had enough time to review the ARC SEIR and that they would like more time to review it. Mayor Lee stated that if they wanted more time to review the ARC SEIR then they should request it. He said he did not know whether his colleagues on the City Council would vote to extend the comment period. Given that uncertainty, several Commissioners said it was important that they comment during the current 45-day comment period. Mayor Lee stated that perhaps they could schedule a second special meeting two weeks from now.

After some additional discussion on this topic, and on a motion by Commissioner Vayssieres, which was seconded by Commissioner Huber, the Commission voted 6-0-0-0 to approve the following motion (Ayes – Allen, Huber, Klineberg, Millstein, Shaw, Vayssieres; Noes – None; Absent – None; Abstentions – None):

“The Open Space and Habitat Commission requests an extension of time from the City Council that allows the relevant commissions a second regularly scheduled meeting to complete their reviews of the ARC SEIR and allows enough time for staff to collect and submit comments. If the City Council does not approve an extension of time, the Commission requests another special meeting in two weeks.”

The Commission then considered a second recommendation from Commissioner Millstein. The recommendation was that the ARC SEIR needs to clearly state that the proposal to use a portion of the City's land to satisfy the City's agricultural buffer ordinance might violate the ordinance itself. She said it is not clear that this proposal to use the City's land satisfies the spirit or the letter of the City's agricultural buffer ordinance. If the proposal is found to be in violation of the City's agricultural buffer ordinance, then the developer must use his own land to satisfy the requirements of this ordinance.

Several Commissioners said they needed more information to discuss this topic. Several Commissioners said they would like to know if the City was going to be compensated for the land that might be used for part of the project's agricultural buffer. Several Commissioners expressed concern that land that was purchased with Measure O funds might be used for part of a development proposal. Commissioner Klineberg noted that it might help the discussion to reiterate the Commission's desires for the City's Mace 25 site that the Commission approved in January 2019.

After some additional discussion on this topic, Commissioner Huber offered a motion, which was seconded by Commissioner Shaw. The Commission then voted 6-0-0-0 to approve the following motion (Ayes – Allen, Huber, Klineberg, Millstein, Shaw, Vayssieres; Noes – None; Absent – None; Abstentions – None):

“As the Open Space and Habitat Commission stated in its January 2019 motion, the Commission requests information from the City and/or the developer about what the compensation will be for the portion of the ag buffer proposed to be located on the City's Mace 25. Also, the Commission would like to know more details about what the developer is going to do in the ag buffer.”

Commissioner Shaw then offered a second related motion, which was seconded by Commissioner Huber. The Commission then voted 6-0-0-0 to approve the following motion (Ayes – Allen, Huber, Klineberg, Millstein, Shaw, Vayssieres; Noes – None; Absent – None; Abstentions – None):

“The Open Space and Habitat Commission requests a review by the City’s legal counsel to determine whether the proposed ag buffer in the Aggie Research Campus project lives up to the spirit and intent of Ordinance 40A.01.050.”

The Commission then considered a third recommendation from Commissioner Millstein. The recommendation was that the environmental impacts of the “Replacement Storage Alternative” in the ARC SEIR need to be studied and described for each of the three proposed City-owned areas (formerly known as the Howatt-Clayton Ranch properties), as separate EIRs or as part of the main EIR (with alternative uses considered). She said to provide a stormwater detention basin for the ARC project during major storm events, topsoil would be removed and stockpiled, the selected area excavated to the design depth, and the topsoil then spread back over the lowered field. She said excavated materials, not including the temporarily removed topsoil, would be imported to the ARC site. She said the impact of the excavation, the impact on the ability to farm or have viable habitat on the chosen site, and other possible impacts are not discussed in the SEIR.

Several Commissioners agreed that this issue should be studied further, but also expressed an interest in viewing this project as an opportunity to get habitat enhancements in this area that the Commission has wanted for a long time, such as seasonal wetlands, at the developer’s expense. Commissioner Millstein proposed that before the next meeting Commissioners should determine for themselves (1) whether the SEIR adequately investigated this issue and (2) whether there is an opportunity to provide something better than lake-like habitat.

The Commission then considered a fourth recommendation from Commissioner Millstein. The recommendation was that the SEIR should consider the loss of burrowing owl habitat in the Davis area and acknowledge that the ARC project would result in significant and unavoidable impacts to the burrowing owl. She said since the Mixed-Use Alternative was evaluated in the EIR, a number of factors have changed or been recognized. She said there is much more burrowing owl activity on the ARC site and vicinity, as the SEIR and related documents describe. She said other Davis sites where burrowing owls can be found are now seen as being flawed for burrowing owls (e.g., because of an orchard adjacent to the Wildhorse Ag Buffer). She said the City now has a policy of preventing the owls from using the Mace 25 site (e.g., by not mowing and by leaving the vegetation as tall and dense as possible). She said the limited burrowing owl habitat in the Davis area makes the situation for burrowing owls all the more precarious. She said the loss of burrowing owl habitat is not “less than significant” as the SEIR states, but significant and unavoidable.

Commissioner Huber said he was fine with the analysis in the SEIR since it included mitigation measures consistent with statewide guidelines for burrowing owls. Commissioner Millstein said she was fine with the mitigation measures as well but disagreed with the conclusion that the loss would be less than significant after mitigation. Commissioner Vayssieres said he was not convinced the actual construction would take that much habitat. He said on the one hand the project might create good burrowing owl habitat but on the other hand the owls might not live there. Commissioner Allen said he wasn’t sure why labeling the loss significant and unavoidable would matter much since the SEIR already requires the developer to adhere to the best known mitigation measures. Commissioner Vayssieres said perhaps there was an opportunity here to get better owl habitat on the rest of the Mace 25 site. Commissioner Millstein asked Commissioners to think about this topic some more and come prepared to discuss it more thoroughly in two weeks.

Commissioner Millstein said she had further recommendations on the substantial adverse effect on a scenic vista, the value of farmland under climate change, errors in the description of project size, errors in conclusions based on project size comparisons, and errors in total green space, but she would leave those to the next meeting.

Tracie Reynolds, staff to the Commission, said she would get back to the Commission on the special meeting date to be held within two weeks. She said she would also provide a deadline for submitting comments to her on the ARC SEIR and the ARC project in general. She said she would compile the Commissioners’ SEIR comments in a matrix ahead of time so Commissioners can review them easily before the next meeting.

Discussion Item – Receive an update from staff about a possible agricultural conservation easement located less than a mile from the city limits, northeast of the Wildhorse residential development (APN 042-120-022)

Staff updated the Commission on how conservation easement negotiations are going with the property owner of 153 acres of farmland less than a mile from the city limits, northeast of the Wildhorse residential development. Staff said the property owner had increased his offer to about 120 acres for the agricultural conservation easement. Staff said the property owner was not willing to discuss a public access easement at this time. Several Commissioners said they were still interested in the agricultural conservation easement but wanted to make sure the easement was protecting the wildlife corridor along the stormwater conveyance channel. The Commission asked staff to bring a map to the next meeting that showed both the easement area and the area outside the easement. There was no public comment on this item.

7. Commission and Staff Communications

Commission Work Plan

Due to the coronavirus pandemic, working groups were not able to meet to discuss updating the annual work plan.

Upcoming Meeting Date, Time, Items

Ms. Reynolds said she would try and schedule a special meeting within the next two weeks to discuss the ARC SEIR. The Commission's next regular meeting is May 4. Possible agenda items discussed include (1) the ARC SEIR, (2) the draft land management plan for the Wildhorse Agricultural Buffer, (3) burrowing owls at the Mace 25 site, (4) the tentative map and proposed agricultural buffer design for the Bretton Woods project, (5) the agricultural land mitigation proposal associated with the Bretton Woods project, and (6) the renewal of Measure J.

Upcoming Events

Commissioner Millstein mentioned the City Council meeting on Tuesday, April 7, during which she planned on asking the City Council for more time to review the ARC SEIR, pursuant to the motion the Commission approved this evening. She also mentioned a meeting of the Bicycling, Transportation and Street Safety Commission on Thursday, April 9, during which they were going to discuss the ARC project.

Working Groups

1. *Acquisitions*. No updates were reported.
2. *Habitat Restoration and Enhancement*. No updates were reported.
3. *Land and Resource Management*. No updates were reported.
4. *Public Access and Recreation*. No updates were reported.
5. *Financial and Program Accountability*. No updates were reported.
6. *Public Engagement and Partnerships*. No updates were reported.

8. Adjourn

The meeting was adjourned at approximately 9:35 p.m.