AGENDA
RIO DELL CITY COUNCIL
CLOSED SESSION – 5:30 P.M.
REGULAR MEETING – 6:30 P.M.
TUESDAY, MAY 20, 2014
CITY COUNCIL CHAMBERS
675 WILDWOOD AVENUE, RIO DELL

WELCOME . . . By your presence in the City Council Chambers, you are participating in the process of representative government. Copies of this agenda, staff reports and other material available to the City Council are available at the City Clerk's office in City Hall, 675 Wildwood Avenue. Your City Government welcomes your interest and hopes you will attend and participate in Rio Dell City Council meetings often.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (707) 764-3532. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.

THE TYPE OF COUNCIL BUSINESS IS IDENTIFIED IMMEDIATELY AFTER EACH TITLE IN BOLD CAPITAL LETTERS

A. CALL TO ORDER

B. ROLL CALL

C. ANNOUNCEMENT OF ITEMS TO BE DISCUSSED IN CLOSED SESSION AS FOLLOWS:

1) 2014/0520.01 - **CONFERENCE WITH LEGAL COUNSEL– PENDING LITIGATION**
Name of Case: City of Rio Dell v. SHN Consulting Engineers & Geologists, Inc. a California Corp. - Case No. DR130745
Pursuant to Government Code Section 54956.9(a)

2) 2014/0520.02 - **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Consider initiation of litigation pursuant to paragraph (4) of Subdivision (d) of Section 54956.9: (One potential case, facts and circumstances known to adverse parties): Access dispute, quiet title and prescriptive easement related to waterline maintenance and vehicular access along Old Ranch Road to City of Rio Dell Monument Springs Parcel (APN: 205-041-014). Potential adverse property owners along Old Ranch Road, include, without limitation, Cidoni, Coleman, Lewis and Humboldt Redwood Company.

D. PUBLIC COMMENT REGARDING CLOSED SESSION

E. RECESS INTO CLOSED SESSION

F. RECONVENUE INTO OPEN SESSION – 6:30 P.M.

G. ORAL ANNOUNCEMENTS

H. PLEDGE OF ALLEGIANCE

I. CEREMONIAL MATTERS

J. PUBLIC PRESENTATIONS

This time is for persons who wish to address the Council on any matter not on this agenda and over which the Council has jurisdiction. As such, a dialogue with the Council or staff is not intended. Items requiring Council action not listed on this agenda may be placed on the next regular agenda for consideration if the Council directs, unless a finding is made by at least 2/3rds of the Councilmembers present that the item came up after the agenda was posted and is of an urgency nature requiring immediate action. Please limit comments to a maximum of 3 minutes.

K. CONSENT CALENDAR

The Consent Calendar adopting the printed recommended Council action will be enacted with one vote. The Mayor will first ask the staff, the public, and the Council members if there is anyone who wishes to address any matter on the Consent Calendar. The matters removed from the Consent Calendar will be considered individually in the next section, "SPECIAL CALL ITEMS".

1) 2014/0520.03 - Approve Minutes of the April 15, 2014 Regular Meeting **(ACTION)** **1**

2) 2014/0520.04 – Approve Minutes of the May 9, 2014 Special Meeting **(ACTION)** **22**

3) 2014/0520.05 - Approve Amendment to Agreement with Freshwater Environmental Services to include support services for update of the City of Rio Dell Water Shortage Contingency Plan **(ACTION)** **29**

4) 2014/0520.06- Update on Parking Enforcement Program **(RECEIVE & FILE)** **30**

5) 2014/0520.07 - Defer consideration of the Residential High Energy User Tax until Spring 2015 **(ACTION)** **31**

L. SPECIAL PRESENTATIONS

1) 2014/0520.08 - Presentation by Michael O'Connor, CPA, R.J. Ricciardi, Inc. FY 2012-2013 Audit

2) 2014/0520.09 - Presentation from Bartle Wells Associates Regarding Wastewater Rate and Capacity Fee Study Final Draft, Conduct Public Hearing and Approve Resolution 1222-2014 Establishing Wastewater Fees and Charges (Adjusting Rates from a Flat Rate to a 70% Fixed and 30% Volume Rate Schedule) **(ACTION)** **33**

M. SPECIAL CALL ITEMS/COMMUNITY AFFAIRS

1) "SPECIAL CALL ITEMS" from Consent Calendar

2) 2014/0520.10 - Release Old Ranch Road Water Users City Council Subcommittee and provide City Manager direction **(ACTION)** 55

N. ORDINANCES/SPECIAL RESOLUTIONS/PUBLIC HEARINGS

1) 2014/0520.11 - Conduct second reading (by title only) and adopt Ordinance No. 316-2014 amending Commercial and Industrial Regulations by replacing the language "such as" with "similar to and including but not limited to" and to allow uses not compatible with the uses permitted in the zone with a Conditional Use Permit **(ACTION)** 57

2) 2014/0520.12 - Introduce and conduct first reading (by title only) of Ordinance No. 318-2014 Establishing Density Bonus Regulations, Section 17.30.073 of the Rio Dell Municipal Code **(ACTION)** 65

O. REPORTS/STAFF COMMUNICATIONS

1. City Manager
2. Chief of Police
3. Finance Director – **Monthly Check Register for April** 106
4. Community Development Director

P. COUNCIL REPORTS/COMMUNICATIONS

Q. ADJOURNMENT

The next regular meeting will be on June 3, 2014
at 6:30 p.m. in City Hall Council Chambers

RIO DELL CITY COUNCIL
CLOSED SESSION
REGULAR MEETING
APRIL 15, 2014
MINUTES

The closed session/regular meeting of the Rio Dell City Council was called to order at 6:00 p.m. by Mayor Thompson.

ROLL CALL: Present: Mayor Thompson, Councilmembers Johnson, Marks, Wilson and Woodall

Others Present: Closed Session: City Manager Stretch and City Attorney Gans

Regular Meeting: City Manager Stretch, Chief of Police Hill, Finance Director Woodcox, Wastewater Superintendent Chicora, City Attorney Gans and City Clerk Dunham

Absent: Water/Roadways Superintendent Jensen and Community Development Director Caldwell (excused)

ANNOUNCEMENT OF ITEMS TO BE DISCUSSED IN CLOSED SESSION AS FOLLOWS:

CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION
Name of Case: City of Rio Dell v. SHN Consulting Engineers & Geologists, Inc. a California Corp. – Case No. DR130745 pursuant to Subdivision (a) of Section 54956.9

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Consider initiation of litigation pursuant to paragraph (4) of Subdivision (d) of Section 54956.9 One potential case, facts and circumstances know to adverse party – Roger Barisdale, 555 Painter Street, Rio Dell, Encroachments to Public Right-of-Way

Mayor Thompson announced the Council would be recessing into closed session to discuss the above matters. There was no public present to comment on the closed session.

The Council reconvened into open session at 6:30 p.m.

ORAL ANNOUNCEMENTS

City Attorney Gans announced with regard to Closed Session Item C (2) the City Council voted unanimously, with a motion by Councilmember Marks and second by Councilmember Woodall to initiate litigation to abate nuisances at 555 Painter Street as identified on the agenda.

Councilmember Johnson announced he would be requesting the addition of two (2) unlisted items to the agenda at the conclusion of the public hearing on wastewater rates related to HCAOG and the study for the rail service. He said these items just became known to him yesterday so were not able to be placed on the agenda.

CEREMONIAL MATTERS

Proclamation in Recognition of National Bike Month May 2014
Mayor Thompson read the proclamation in recognition of National Bike Month, May 2014 encouraging citizens to support and participate in activities that contribute to the health of the community and the environment. There was no one present to receive the proclamation.

PUBLIC PRESENTATIONS

Michael Chase commented that we talk about preserving the environment by riding bikes but don't do anything to protect the river bar by keeping it open.

Nick Angeloff thanked Councilmember Wilson for coming out to the opening day for the Little League Minors; reported that the Business Incubator Program is doing well and they received their first check from the Headwaters grant; provided a brief update on the east-west rail and said the Upstate Rail Committee met and talked about the submittal of a TIGER Planning Grant. He said a private individual stated that he acquired enough of a feasibility study that shows it is feasible for co-location of gas and fiber as well as investments up to $2 billion. He was asked to make a presentation at the next meeting and verify this information so they don't waste their time in the future. He commented that the committee is moving forward without depending on that information as fact until it can be confirmed.

Sharon Ehrlich addressed the Council regarding an article in the City of Rio Dell Spring Newsletter related to Davis Street River Bar Access which stated that the Fire Department had difficulty accessing the river bar through the existing gate at the River's Edge R.V. Park. She said she was not informed of this happening and that the newsletter said that committee members are recommending creating public access at Davis St. managed by the city of Rio Dell. She stated that there currently is access for emergency vehicles and she has provided the gate code to all officials who have requested it. She said the park does not interfere with access by emergency vehicles and there is also public access to the river by foot. She said there is not access for vehicles (other than emergency vehicles) and that the property has been designated as a Certified Wildlife Habitat by the National Wildlife Federation and is recognized by the National Resources Defense Council. She indicated that the Department of Fish & Game and Friends of the Eel River is also supportive of limited vehicle access to the river bar. She said she would like to see taxpayer's money spent on a double lock or daisy-chain lock that supports the needs of all emergency vehicles that may need to access the river bar area. She said the natural

habitat that exists on the beautiful Eel River should be respected and cared for. She presented the City Manager with catalog from *Knox*, a supplier of daisy-chain locks.

Lee Kessler addressed the Council regarding the same issue and said he spoke with the Fortuna Fire Chief and that he found it odd that the City of Rio Dell would want the river bar at Davis St. open to vehicle traffic. He said since it is a Certified Wildlife Habitat, it should be isolated from vehicle traffic. He commented that Scott Grayson from Friends of the Eel River is highly interested in the outcome related to vehicle access. He said he spoke to the Fire Chief who expressed concern and there was a vehicle upside down on the river bar that was apparently not even investigated to see why.

Mayor Thompson asked Mr. Kessler if he had spoken to the Rio Dell Fire Chief. When he responded that he hadn't he informed him that Fortuna Fire Department does not cover Rio Dell and suggested he contact Rio Dell Fire Department with questions or concerns.

Ranada Laughlin stated that she is a Wildlife Biologist and a member of the Friends of the Eel River but she likes to drive on the river bar and does not understand why she can't. She pointed out that there are people with mobility problems and people who simply want to fish or recreate at the river; they use it responsibly and should not be prohibited from accessing it by vehicle.

Karen Chase said it is good to see others speak up and suggested everyone get together and come up with a solution. She said she supports access if people are responsible. She said there is access to the river from Edwards Dr. and suggested people park at the end of Edwards and walk to the river bar. She said there are tire tracks going in and out of there all night when there is no fishing going on. She expressed concern that the vehicles are tearing up the river bar and digging up rocks which cannot be good for the river bar. She said we all need to enjoy the river bar and need to get everyone together to talk about how to address the problems.

Michael Chase commented that we live in an eco-system but all of the insects, frogs, snakes and lizards need to be protected stating they are the end of the food chain.

City Manager Stretch introduced the City's new Finance Director, Brooke Woodcox and said we are very pleased to have her on board. He said there were a great field of candidates and she scored at the top of the list. She is currently working toward obtaining her CPA license and lives in Rio Dell. She received a warm welcome of applause.

Adam Dias addressed the Council regarding river access and said everyone needs to come to some sort of agreement. He said the law can't block access to the river but it can be limited to foot traffic only if it can be proven that vehicle access is harmful to the environment. He said a tourist stopped by and wanted to take his dog to the river and he directed him to Edwards Dr. He encouraged the Council to keep level heads and remember that Rio Dell has a population of 3,400; not 20,000.

Sharon Wolff stated for clarification that there are really two issues; the access to the river bar at Edwards Dr. and access to the river bar at the end of Davis St. which has private property. She said the access at that location has a private gate with a public right-of-way next to it, whereas Edwards Dr. is not private. She said she wanted to make sure everyone is clear about the access.

Lee Kessler stated that plants and animals can be uprooted but also understands that people want to be able to use the river bar. He said Department of Fish & Game and some property owners might not want to allow vehicle access but he asked that the Council consider one thing; it seems it would be less expensive for the City to buy some locks and have a daisy-chain system than pay for lawyers to take legal action against another property owner.

CONSENT CALENDAR

Councilmember Marks asked that Item No. 4 be removed from the Consent Calendar and placed under *Special Call Items* for separate discussion.

Motion was made by Wilson/Johnson to approve the consent calendar including the approval of minutes of the April 1, 2014 regular meeting; approval of new contract with Access Humboldt to manage the Community Media Center and provide Peg Access Programming and Community Media Services; and approval of Internal Finance Department Transfer of $14,790 to cover unanticipated cost of 2012-2013 Audit and additional Auditor's cost for 2013-2014. Motion carried 5-0.

SPECIAL CALL ITEMS
(From Consent Calendar)

Correction to April 1, 2014 Staff Report and March 27, 2014 letter to Arnie Kemp regarding Termination of Services Agreement

Councilmember Marks stated that this item was pulled from the consent calendar at the request of Adam Dias.

City Manager Stretch explained the Council took action on this item on April 1, 2014 ratifying the City Manager's action to terminate Arnie Kemp's building inspection and plan check services contract for cause. He said the matter came up too late on March 27, 2014 to be included in the agenda packet so was added to the agenda as an urgency matter. He said the dates on Mr. Kemp's letter and the staff report to the Council incorrectly read March 20, 2014 rather than March 27, 2014. As such, the dates were corrected on both documents and presented at this time for the purpose of the public record.

Adam Dias addressed the Council and said it is his understanding that Arnie Kemp was terminated as Building Inspector and that the City is contracting with the City of Fortuna for building inspection services and possibly with the County, with the Community Development Director, Kevin Caldwell eventually taking over that responsibility.

He said he's not sure what caused Arnie's termination but said as a homeowner in the City, Arnie has come to his home on a weekend to help him with a project and expressed concern about the new arrangement. He said this comes at a time with increased utility connection fees which contractors are still trying to get used to and feels this change will result in a pretty good blow to development. He said he has nothing against Kevin but he's already difficult to get ahold of on
Fridays and is pretty sure he won't be willing to come out on a Saturday or Sunday like Arnie has done. He asked the Council to take into consideration that with not only consolidation of power to the person who permits building but to have him also inspect and reject building might not be the best idea. He commented that he is already very busy and it may be difficult to get inspections when they are needed.

City Manager Stretch explained that a new contract with Arnie Kemp for plan check and building inspection services was approved by the Council at their February 18, 2014 meeting. He said the new contract contained several new requirements including the acquisition of appropriate insurance coverage which the City agreed to reimburse him for. He was also asked to provide copies of current Plan Check and Building Inspection Certificates to the City. He said as of March 20, 2014 he was still unable to provide those documents, so the City had no choice but to terminate his contract.

Joe Enes expressed concern that using outside inspectors will create delays with regard to scheduling inspections. He said the new arrangement won't work well for him but he will do his best to make it work.

SPECIAL PRESENTATIONS

Presentation from Bartle Wells Associates Regarding Wastewater Rate and Capacity Fee Study Final Draft, conduct Public Hearing and Approve Resolution No. 1222-2014 Establishing Wastewater Fees and Charges (Adjusting Rates from a Flat Rate to a 70% Fixed and 30% Volume Rate Schedule)
Mayor Thompson began by welcoming everyone to the Prop 218 public hearing on the wastewater rate and capacity fee study. He said the residents received a notice of this public hearing approximately 35 days ago and that the notice contained a summary of the proposed equity adjustments that the Council will be discussing this evening. He commented that citizens were given the opportunity to present written protests on the proposed wastewater rate adjustments. He reviewed the process for the public hearing and explained that under the Prop 218 provisions, if 50% plus 1 written protest votes are received, the City Council cannot move forward with the wastewater rate adjustment. He asked the City Clerk to report on the number of protest votes received at this time.

City Clerk Dunham announced that there were a total of 31 written protest votes received related to the proposed wastewater rate adjustment out of approximately 1,300 notices sent out to residents.

Alison Lechowicz, Financial Analyst from Bartle Wells Associates (BWA) was introduced. She stated that BWA was engaged by the City to develop a new wastewater rate structure and to update the City's wastewater capacity fee.

She proceeded with a power point presentation on the *Final Draft of the City of Rio Dell Wastewater Rate and Capacity Fee Study* dated January 3, 2014. The report presented their approach for changing the City's current flat rate wastewater rate to a flat rate volumetric rate structure. The report also recommended a new capacity fee for the wastewater system. She explained the wastewater rates and charges proposed are based on the cost of service, follow generally accepted rate design criteria, and adhere to the substantive requirements of Proposition 218.

She said the current wastewater rate is a fixed monthly charge of $76.16 per residence or EDU (equivalent dwelling unit), and commercial customers are assigned multiple EDU's based on their wastewater flows. The recommended rate structure includes a fixed monthly charge plus a volume rate based on estimated wastewater flows. Wastewater rate alternatives were developed by allocating the current system revenues of $1.17 million to fixed and variable categories.

She further explained that the benefit of implementing a volume rate is equitability; lower wastewater users would pay a lower monthly bill than high wastewater users.

Two wastewater rate alternatives were presented. Option 1 (the alternative recommended by BWA) allocated 70% of costs to the fixed charge and 30% of the costs to the volume charge. The fixed monthly charge would be $52.68 per EDU plus a volume rate based on customer class ranging from $3.63 per ccf for the low strength to $7.95 per ccf for high strength users. With the average residential customer having a wastewater flow of 5 hundred cubic feet (5 units), the monthly bill would be $75.38 which is a slight decrease of the current monthly bill of $76.16.

Option 2 allocates 50% of the costs to the fixed charge and 50% of costs to the volume charge with the fixed monthly charge of $37.62 per EDU and volume rates ranging from $6.06 per ccf to $13.25 per ccf. The average residential monthly bill under this option would be $75.47; a decrease of $0.69 from the current bill.

Ms. Lechowicz further explained that wastewater flows are often estimated using winter water consumption as customers typically don't use water for outdoor irrigation during the winter. As such, it was suggested that the months of December, January and February be used to estimate wastewater flows. Also, she said currently accounts that are deactivated are not charged the monthly rate; under the proposed rate structure deactivated accounts will be charged the monthly fixed rate charge.

She said BWA was also asked to do an analysis of the City's wastewater capacity fee (buy-in to the collection system) and recommended an increase of the current $950 to $5,220 per EDU.

She indicated the fee reflects the recent upgrades to the wastewater treatment plant and is moderate in comparison to other agencies in the region.

In reviewing the rate comparisons with other agencies, the proposed wastewater monthly bill for Rio Dell represented the highest bill out of the 12 agencies surveyed although the proposed wastewater capacity fee of $5,220 was competitive with the other agencies.

Councilmember Johnson pointed out that the reason the capacity fees for some of the other local jurisdictions such as Eureka, Manila and Scotia are so much lower is because they have not upgraded their wastewater treatment facilities and that the City's fee reflects the $12 million upgrade.

Councilmember Marks said another factor is that the City of Rio Dell has a small customer base so the economy of scale comes into play.

A public hearing was opened at 7:25 p.m. to receive public comment on the proposed wastewater rate structure as set forth in Resolution No. 1222-2014.

Ruth Allen, asked how the base charge of $52.68 is calculated and said she doesn't understand how wastewater flows are registered.

Ms. Lechowicz explained the monthly fixed charge of $52.68 is based on each customer's equivalent dwelling unit (EDU) count. The volume rate is based on wastewater flow and strength characteristics using the average water usage for the months of December, January and February since typically all of the water during those months are used inside the home.

Ranada Laughlin asked when the study was done; if there are any other agencies that use this type of rate structure and if so, if there were any complaints; if the water meters detect usage below 2 units; if customers can verify their usage; and why the usage is capped at 15 units as it seems by doing that it doesn't encourage water conservation. She also noted that it seems that the school should not be classified as low strength.

Ms. Lechowicz commented that both fixed and volume rate schedules are common and she wasn't aware of any complaints regarding this type of rate structure.

Mayor Thompson stated that the water meters do detect usage as low as 1 unit and also have leak detectors to detect leaks.

City Manager Stretch stated that when Doug Dove from Bartle Wells Associates was here he indicated most agencies set a cap and the City Council determined that 15 units for the cap is reasonable. He said this is however, somewhat arbitrary.

Mayor Thompson pointed out that the ultimate goal is to redistribute the charges to make them more equitable so that each user class only pays its proportionate share. He said the overall revenue to the City will remain the same.

Councilmember Woodall questioned why the school is in the category of low strength and said she would think it would be at least in the same category as residential.

Ms. Lechowicz commented that typically schools have lunches brought in and no cooking is done on site. If they do have a cafeteria where they do a lot of cooking then the strength would be higher.

Councilmember Johnson also pointed out that schools are only in operation 5 days per week and 9 months out of the year.

Linda Freitas commented that she has a 4-plex apartment unit on one meter and asked if there will be a fixed rate for those units and if she will start getting four individual bills.

City Manager Stretch responded that she will continue to get one bill.

Keith Baldwin spoke on behalf of his 96-year old mother-in-law and said she received a notice from the owner of Riverside Estates that her bill was going up $120.00 per month.

City Manager Stretch explained the average water usage in Riverside Estates for the period from December-February is 4.6 units per household for a total of 171 units of water per month. With this in mind, the bills for the 37 park residents would go down. The master meter in the park however registers usage in excess of 500 units because of a leak. He said the property owner is aware of the leak and has indicated that he has the legal right to pass on any charges to the residents. Since each resident has its own private meter installed by the owner he said he doesn't see how the excess usage as a result of the leak can be passed on to the park residents. He said at a time when we need to conserve water, 68% of the water going through the meter is not being used and is lost.

Councilmember Wilson pointed out that the water that is a result of the leak is comparable to normal usage for 73 residents. He said with the City going into a potential water crisis and the owner knowingly letting the leak to continue is reprehensible and not any fault of the City. He said the City doesn't have any authority at this time to demand that the owner repair the leak but that could change.

Penny Prior stated that she has lived in the park since July 2010 and the park space rent has been increased 4 times. She said the park owner indicated the utility bill will be going up $120.00 per month. She said she does not like the idea of paying almost as much for park space rent as her mortgage. She expressed disappointment that more residents from the park were not in attendance.

Ruth Allen stated in January the park owner tore up one of the patios and fixed a leak and asked if it will make a difference in the bill.

City Manager Stretch commented that it could make a slight difference but there are obviously other leaks that need to be repaired. He said there is a provision for adjustments to the bill when there is a leak and the leak is repaired however it must meet the criteria. He commented that what the park owner charges the tenants is out of the City's hands even though there are private individual meters read monthly. He said at an average usage of 4.6 units, the tenants bills should go down; not increase as indicated by the owner. He said one option would be for the park residents to go to the State agency that governs mobile home parks (Department of Housing and Community Development (HCD) and see what their rights are.

Ruth Allen commented that they did take their concerns regarding the rates to the park owner and they were told to mind their own business.

There being no further public comment, the public hearing closed at 7:52 p.m.

City Manager Stretch asked for a consensus from the Council on the proposed wastewater rate structure and said with regard to the variation in the numbers, Bartle Wells Associates is working on recalculating the numbers to make sure the overall rates are revenue neutral to the City. He said the initial figures presented by Bartle Wells differ from the City's figures. He recommended the public hearing be continued to May 20, 2014.

Councilmember Johnson asked where the discrepancy is.

City Manager Stretch explained the new figures provided three weeks ago show there will be an increase in revenue.

Councilmember Marks asked what will happen if after three months there is actually an increase in usage and if there is a provision for adjustment to the rates.

Ms. Lechowicz explained that under the Prop 218 regulations, the rate adopted is the maximum rate you can charge so it cannot go up; it can however go down.

Attorney Gans stated that if the City Council wants to adopt an amendment to raise the rates, it would have to go through the Prop 218 process again. He commented that there are limitations but there is the 3% annual increase already built in to the rate structure.

Councilmember Wilson said he is not comfortable with the inconsistency in the numbers and if there is a discrepancy, it needs to be found.

Councilmember Marks asked if the rates can be adjusted down if the 3% annual increase pushes the rates too high; City Attorney Gans reiterated the rates can be reduced; not increased.

City Manager Stretch explained approximately 1 ½ years ago staff sent BWA the data to complete the wastewater rate analysis but when the current staff attempted to locate a copy of the data that was sent; they weren't able to locate it. As a result, staff re-created the data from the same period but for some unknown reason, the numbers don't match. He suggested the finance staff do the reconciliation to make sure the numbers are absolutely correct. He indicated that it may take a few weeks for staff to complete the reconciliation.

Mayor Thompson commented that households in the category of 5 units or less will be getting a reduction on their bill whereas those in the category of 6-9 units who may still be in the same bracket financially with a family of 5 or 6 will see an increase. He pointed out there are 315 customers in that category representing a total increase in annual revenue of $37,000. He said the next category of 10-14 units shows an overall increase of $39,000. He questioned the cap at 15 units and if this is truly what the Council wants to accomplish. He pointed out that part of the rate restructuring is to encourage water conservation and if the rate is capped at 15 units what incentive will those higher users have to conserve. He noted that there are between 40-50 customers that use over 15 units of water per month.

Councilmember Wilson said in looking at the rate comparisons of other agencies, some of them all up to 5 units under the base charge and asked if BWA looked at that as an option.

Ms. Lechowicz commented that there are many different types of rate structures that could be considered.

Councilmember Marks asked if the idea is to pay BWA to audit the data or have staff do it.

City Manager Stretch commented that although BWA did a very good analysis he is confident staff can reconcile the data and run the numbers by BWA.

Mayor Thompson said the Council still needs to come to a consensus on the 15 unit cap.

City Manager Stretch restated that the number of customers using over 15 units is between 40-50.

Councilmember Wilson said there is only so much that is going to flush down the sewer and the goal is to balance the rates to make them more equitable for low users. He said he believes water usage needs to occur in another discussion and feels the cap at 15 units is acceptable.

Councilmember Woodall provided the scenario of everyone becoming more conservative and the City not collecting enough revenue.

City Manager Stretch pointed out that it would be easy for customers to be on their best behavior for 1 month but probably not for 3 months so the water average over the 3 month period would probably not change.

Mayor Thompson asked what happens if someone is traveling and has no water usage during the months used for the average.

City Manager Stretch said there is flexibility built into the rate schedule whereby the City reserves the right to adjust bills under certain circumstances. He directed their attention to the draft Resolution (No. 1222-2014).

Mayor Thompson commented that there are a few things that occur during winter months with customers living normal lives such as washing vehicles, washing their fishing boat, or cleaning fish, all of which does not go into the sewer. He said he has always been of the opinion that it is a benefit to the City to encourage citizens to keep their lawns green no matter what time of year which leads to mowing grass more often and cleaning up. He expressed concern that if the rate structure is so rigid, people won't water their lawns, wash their vehicles or maintain their property.

Councilmember Marks stated that the point of restructuring the rates is to help low users and suggested the data be recalculated and if needed, put the school in a different category.

Councilmember Wilson asked if there was any further discussion on billing the property owners rather than the tenants, and if the base rate for vacant accounts was calculated into the rates.

City Manager Stretch said he believed the option would be up to the property owner but the bills could continue to go to the rate payers unless the property is vacant; then the bill for the base rate would go to the landlord. Also, the rate for the vacant accounts was calculated into the rates.

Motion was made by Wilson/Woodall to continue the public hearing to May 20, 2014 and direct staff to reconcile the data and bring it back to the Council at that time. Motion carried 5-0.

A brief recess was called at this time, 8:25 p.m.

Attorney Gans left the meeting at this time.

The meeting reconvened at 8:34 p.m.

SPECIAL CALL ITEMS

Motion was made by Johnson/Wilson to add an unlisted item to the agenda titled **Recommendation that the HCAOG Board Approve Letters of Support for the North Coast Railroad Authority's Humboldt Bay Rehabilitation Study** pursuant to Government Code Section 54954.2(b.2) because the need to take action arose subsequent to the agenda having been posted. Motion carried 5-0.

Councilmember Marks questioned the urgency of this item.

Mayor Thompson stated as the City's representative on the HCAOG Board, Councilmember Johnson needs direction from the Council before the next meeting which is Thursday, April 17th.

Councilmember Johnson shared his concerns and said HCAOG has an agenda item (7(a.) scheduled for the Thursday meeting which in part calls for support letters for a TIGER Grant Application for the North Coast Railroad Authority's (NCRA) Humboldt Bay Rehabilitation Study. He said the study is a 2-part study; $.5 million for the NCRA's Humboldt Bay Rehabilitation Study and another $300,000 or so for the East-West Rail Feasibility Study.

He said he would like a consensus of the Council before he votes on the agenda item.

City Engineer Perry explained the matter came to the TAC meeting and the recommendation by TAC is to take a broader approach, not support the proposal and have the Upstate Rail Committee come back with an individual request. Also, he said there are very limited funds that come to HCAOG and those funds are needed by the Cities for local transportation needs.

He said the question is whether this is an appropriate use of local transportation funds and when an agency starts applying for grants it starts the process for further project planning which is why Councilmember Johnson needs clarification from the Council.

He further stated that if the City Council supports the feasibility study but not necessarily with the use of local transportation funds, it could be stated so in the letter of support. The HCAOG Board and NCRA would then understand the City's position on the issue. He said the proposal also requested that NCRA be included in the Regional Transportation Plan (RTP) and identified as an alternative transportation method however; it is already included in the RTP. He commented that the NCRA Humboldt Bay Rehabilitation Project was determined to be a high risk and high cost project and the question is whether the City should support it.

Engineer Perry further stated that with regard to the TIGER Grant for the NCRA Humboldt Bay Rehabilitation Study, several entities are associated with NCRA which is one of the benefits but there is a risk to local infrastructure and the railroad in this area is the last stop to protect. He said it may be worthwhile to consider support of the grant to take a closer look at the proposal and work with the County to come up with a plan to protect the infrastructure.

Councilmember Johnson stated that the City Council approved Resolution No. 1129-2011 in support of restoring rail service from Humboldt Bay to the National Rail Network and opposing the efforts to rail bank the North Coast Railroad and North Coast Railroad Authority's right-of-way but there was no commitment of local funds.

Engineer Perry commented that there are a number of projects being considered between F. Street, Eureka and Arcata and those are being looked at for potential up- rail wood trails or trails adjacent to the rail right-of-way. He said there are no proposals to take trails out of that area but he believes the community has recognized the need to have both of those options. He said those visions are alive and rails and trails are generally supported by the NCRA. He added that no one to his knowledge has talked about a rail with trails in Humboldt County but there are a number of projects that will connect Arcata all the way around to the Eureka waterfront and are in various stages of planning. He reported that the County has received $2 million to pay for the planning, design and permitting of a portion between Bracut to the south side of the Eureka slough.

City Manager Stretch pointed out that the City Council approved Resolutions 1129-2011 and 1139-2011 which basically support restoration of rail service both north and south and east and west. He said nowhere is there anything about limitations of not spending local monies; they simply say the City supports restoration of the railroad.

Nick Angeloff addressed the Council and said he has been working with NCRA and forwarded a letter to the City Manager requesting the City Council approve signing a letter of support for the grant which encompasses a comprehensive planning study from Fairhaven to South Fork what is referred to as the Humboldt Division of the NCRA. He said if the grant is awarded they will do a cost benefit analysis of which portions of the rail are most beneficial to open. He said they are coordinating with just about everyone who is along the proposed route.

Councilmember Johnson asked if this is the same type of grant and said what he just said is totally different than what the Executive Director of HCAOG (Marcella Clem) reported to him this morning.

Nick Angeloff said that was interesting because the letter was drafted by Marcella for NCRA. He said he drafted different versions, with the permission of NCRA for the various agencies to reflect a more appropriate fit for each agency including Rio Dell.

Councilmember Johnson commented that what is interesting is that it addresses it as the *Humboldt Bay Master Plan* and now what he is hearing is that it will extend all the way down to South Fork.

Nick Angeloff stated that he changed the subject line at the request of NCRA's Land Specialist to include Humboldt Bay Division and Comprehensive Planning Study.

Councilmember Johnson stated that this is certainly not the agenda item that is being discussed.

Nick Angeloff stated that it absolutely is the same item which is support for the NCRA TIGER Planning Grant.

City Engineer Perry commented that he doesn't know the date it went through and is not clear on what the project title was at the time it went to TAC so changes could have been made.

Nick Angeloff then reviewed the changes in the letter.

Councilmember Johnson asked Engineer Perry what the discussion was at the TAC meeting with regard to how far the study would encompass.

Engineer Perry said based on conversations at the TAC meeting he understood the study would encompass the area along Humboldt Bay.

City Manager Stretch stated in all due respect this whole issue has become complicated and to place an urgency item on the agenda before the City Council and have the City's representative on the HCAOG Board with this kind of pressure to understand the topic that involves various points of view is unfair. He said he thinks HCAOG should take the item off of the agenda.

Nick Angeloff stated that it is not a controversial issue in any way, shape or form.

City Manager Stretch said Councilmember Johnson can certainly speak for himself but obviously he was taken by surprise so this item was placed on the agenda as an urgency item because he is being asked to vote on the matter in two days. He said it is simply not good public policy. He said he doesn't know who is at fault, but it's just not right.

Councilmember Johnson commented that it is very confusing because when he talked to Marcella this morning he asked her what area encompassed Humboldt Bay and she wasn't sure if it ended at Eureka or Fields Landing and said she would have to get back to him.

Nick said that explains the email that was forwarded to him clarifying that the comprehensive study encompassed everybody within the Humboldt Bay area including Fields Landing including trails, rails, freight rails, tourism, cruise ship industry and anybody else that wants to participate in the study. For clarification he said he is helping with the grant and the direction from NCRA is to get collaboration with the County, Arcata, the Harbor District, Fortuna and hopefully Rio Dell.

Mayor Thompson stated the issue of the railroad is an extreme challenge and he feels the Council should leave the decision in Councilmember Johnson's hands. He commented that HWMA just approved a $48 million garbage disposal contract with Willits and 68% is for transportation. He said dredging the Harbor is of little use if the only means of traffic out of the County is truck traffic.

Mayor Thompson reiterated that he would like to leave the decision with Councilmember Johnson.

Councilmember Johnson said he is not comfortable with that and would like a consensus of the Council stating that we know that the Council is in support of the railroad but questioned whether the Council is in support of going after Federal dollars for this purpose

Councilmember Wilson stated that he doesn't want to take money out of Rio Dell's General Fund or HCAOG's money that funds local roads but if there is Federal money that can be used to get the rail study going then he is in favor of going for Federal money.

Councilmember Johnson said if the railroad is going to be successful it needs to stand alone and be supported by private funding and should not rely on the government for funding. He said it is estimated it will cost a minimum of $800 million to restore the tracks.

Councilmember Wilson stated that he sees creation of jobs with restoration of the railroad and is excited to think about the railroad coming back. He said when he thinks of all the things the government spends funding on he thinks restoring the railroad is worth a shot.

Mayor Thompson said he is on board with going out for Federal money and that there has not been enough research done to say that it won't work. He said shipping gravel to the Bay Area alone is huge and stated that they are out of gravel and are always searching for ways to get more.

Councilmember Marks said she supports Councilmember Wilson's recommendation.

Councilmember Woodall stated that she thinks private industry could do it cheaper and better than the Federal Government and that she supports Councilmember Johnson's recommendation.

Councilmember Johnson said with the consensus of 3-2 he will vote with the majority.

Motion was made by Wilson/Marks to recommend that the HCAOG Board approve letters of support for the North Coast Railroad Authority's Humboldt Bay Rehabilitation Study with use of public funds. Motion carried 3-2; Councilmember Johnson and Woodall cast the dissenting votes.

Motion was made by Johnson/Woodall to place an unlisted item on the agenda titled **Recommendation for the HCAOG Board's Support for the Upstate California Rail Connect Feasibility Study** pursuant to Government Code Section 54954.2 (b.2) because the need to take action arose subsequent to having the agenda been posted. Motion carried 4-0; 1 abstain (Marks).

Councilmember Johnson provided some background and stated in December 2011 the Council passed Resolution No. 1139-2011 supporting the Humboldt Bay Alternative Route Feasibility Study and one of the basis for support was that the rail was estimated to be 125 miles long. He said under the study done by the Humboldt Bay Recreation and Conservation District received last week is talking about 241 miles stating that 67 miles is existing line from Eureka to Fort Seward and 174 miles of new line going over to Gerber. He said the estimated cost is $1.2 Billion and is interesting that the assumption is that it could be built in 3 years. He said as a CalTrans Engineer he knows that it took 9 years to build 12 miles of the Redwood Park By-Pass Project. He said there is no money budgeted for clearing the park or for environmental mitigation. All of the additional costs will likely be 2 plus billions of dollars. He said he feels the study is good but not great. He said the study dwells on what products can be exported but not imported into Humboldt Bay. He said the bottom line is that it is very risky and very expensive. He said there are various routes but one that corresponds closely to the Resolution is what he spoke to.

Engineer Perry said it has been characterized as a huge risk and huge cost and one of the questions he asked at the NCRA meeting was if there is another route that would be less expensive; the answer was that it was a busier route and would be better used. He said the question is what the next feasibility study will do that this doesn't and whether it is worth funding it or not.

Councilmember Johnson pointed out that Resolution No. 1139-2011 supports a feasibility study to analyze an east-west alternative rail route connecting Humboldt Bay to the National Rail Network and if we say that Resolution is complete

Councilmember Wilson pointed out that the game changer for the economic future of this County is to get the railroad back in operation to get things moving in and out of this County.

Councilmember Johnson said in part what the feasibility study is asking for is the use of HCAOG planning dollars which is money that could be spent here locally.

Engineer Perry continued with review of TAC's recommendations which was:

1) Direct staff to write letters supporting the Alternative Rail Route Feasibility Study.

2) To support future grant applications and bring them back on a case by case basis.

3) Consider HCAOG funding for an alternative route feasibility study. (He said this is the one that troubled him because of limited HCAOG funding). TAC does not support this proposal.

4) With regard to the Super Region, by supporting the feasibility study we are telling the Super Region that we are supporting the feasibility study.

5) Putting status into Regional Transportation Plan (RTP). (He said if the status is in there it will continue to be in there)

He said for further clarification, the question is whether the City Council wants to use city, local, regional, state or federal monies to fund the feasibility study.

Councilmember Wilson commented that there are a lot of politics with regard to this issue and also a lot at stake. He said he prefers to hear more than "this could be." He said it does disturb him that private funding is not supporting this venture. He said there needs to be a better way to move cargo in and out but for this amount of money for a feasibility study he hopes it will be more than a 40 page study. He questioned the need for federal money to do a complete study.

Mayor Thompson asked what the funding amount is. Engineer Perry said $300,000 was mentioned.

Councilmember Wilson stated that he likes the idea of working toward restoration of the railroad but it hits too close to home. He asked about the possibility of HCAOG applying for grant funding.

Engineer Perry said it is possible however but typically there are not enough grant opportunities to get $300,000. He asked the Council for a consensus of whether they support the feasibility study and if so, what level of funds are they willing to support (ie: Federal, State or Local). He clarified that the request is for a letter of support for a feasibility study but they are silent on the funding source. He asked if the City Council supports the TAC recommendation.

Councilmember Wilson said he does not want to take a bucket of money from HCAOG.

Councilmember questioned the scenario of the HCAOG Board wanting something else such as the use of HCAOG's Planning funds.

Councilmember Woodall suggested he vote "No."

City Manager Stretch said if the Council wants to state a policy position, they need to have their representative take that position to the HCAOG Board.

Councilmember Johnson said another possibility is that the Board will want to apply for Federal funding and since those funds trickle down to the City, asked for input from the Council.

City Engineer Perry explained TAC's recommendation is to come back on a case by case basis.

City Manager Stretch stated that larger agencies can vote to use local monies and the Council needs to be clear and lay out the City's position.

Consensus of the Council was to support TAC's recommendation and that no local monies be used to fund the feasibility study.

Nick Angeloff thanked Engineer Perry and stated that he took the recommendation of TAC and made the recommendation viable everyone and that he feels the Upstate Rail Committee feels good about the recommendation although they would like to use HCAOG money. He said he does see the logic in not using local funding but what they are asking for is a small in-kind contribution from HCAOG. He added that he is a big advocate of securing private investors but also supports public funding for the feasibility study as it is necessary to air the feeling and support of the public to attract private investors.

Motion was made by Woodall/Wilson to support TAC's recommendation to support the Upstate California Rail Connect Feasibility Study with no use of HCAOG local funds. Motion carried 5-0.

Authorize the City Manager to Execute a one-year Merchant Agreement with GovTeller to to Provide Credit Card Processing Services for the City

Councilmember Marks stated that she is in favor of implementing this service but during the recess she pointed out some missing information in the staff report such as the rate for the users, how to forecast the point of sale, the cost to integrate it into the current accounting system, what happens if a payment is returned and if there are any other hidden costs associated with the service.

Councilmember Johnson asked if it will be integrated into AccuFund.

Finance Director Woodcox stated that initially it will not be integrated since there is a pretty in-depth process to interface with the company. She agreed it would be a good idea to do further research and bring the matter back at the next meeting.

Motion was made by Marks/Woodall to continue this item to the May 6, 2014 regular meeting. Motion carried 5-0.

ORDINANCES/SPECIAL RESOLUTIONS/PUBLIC HEARINGS

Conduct Second Reading (by title only) and adopt Ordinance No. 320-2014 to amend Rio Dell Municipal Code Sections 13.10.231 Establishing a Penalty for Non-Payment of Delinquent Sewer Bills for Customers that do not Subscribe to Water Service, and a Means of Collecting the Delinquency on the Property Tax Bill

City Manager Stretch provided a staff report and said the ordinance was introduced at the April 1, 2014 regular meeting and explained under the current Rio Dell Municipal Code, there are provisions that provide the City the right to discontinue water service if a customer is delinquent in the payment of their water bill. However, in the event that a sewer customer that does not receive City water service is delinquent in the payment of their sewer bill, there is little or no

recourse for collecting the bill. He said there is currently (1) sewer customer that is habitually delinquent and does not respond to the City's demand for payment.

City Manager Stretch said the proposed amendment establishes a penalty as allowed by Government Code Section 54348, similar to the water utility. If the rates and charges are not paid on or before the date of delinquency, a 10% penalty of each month's charges for the first month delinquent is assessed and thereafter an additional 10% for each additional month of delinquency. In addition to the basic penalty is an additional penalty of one-half percent (.50%) per month for nonpayment of the delinquent charges and penalty.

He further explained that City may initiate proceedings to have the delinquent bill and penalties assessed against the real property where the service is provided to become a lien against the property. The lien is turned over to the County Assessor who will enter the lien on the assessment rolls as a special assessment to be collected at the same time and in the same manner as ordinary property taxes which is subject to the same penalties.

A public hearing was opened to receive public comment on the proposed ordinance amendment; there being no public comment, the public hearing closed.

Motion was made by Johnson/Marks to conduct the second reading (by title only) and adopt *Ordinance No. 320-2014 Regarding the Addition of Section 13.10.231 Concerning the Establishment of a Penalty for Nonpayment of Delinquent Sewer Bills for Customers that do not Subscribe to Water Service, and a Means of Collecting the Delinquency on the Property Tax Bill.* Motion carried 5-0.

REPORTS/STAFF COMMUNICATIONS

City Manager Stretch reported on recent activities and events and said the Redwood Coast Energy Authority (RCEA) grant for electric vehicle charging stations was approved with the location for Rio Dell at the Downtown Parking Lot; and said he was moving along with acquisition of the school property and had approached the school regarding the possibility of acquiring an additional 1.5 acres to facilitate a 12 years and under soccer but they denied the request. He said the next step will be to attempt to lease the additional land for $1.00.

Wastewater Superintendent Chicora reported on recent activities in the wastewater department and said the bio-solids giveaway was a big success and had already given away one-half of the bio-solids he had available for giveaway.

Moving on to the finance department, Councilmember Johnson referred to the check register and the $8,400 check to HDR Engineering and said he assumed their services to the City were almost complete.

City Manager Stretch said the last issue had to do with the easement issue with the State Lands Commission and in order to facilitate closure of the project and get the City's reimbursements from the State we had to pay the $2,500 to modify the application. He said he spoke to the contractor and he said he is not willing to absorb the additional cost. He said Brett Rhinhart is working on the application and the State Lands Commission has said they will approve the modification from a 20 foot easement to a 50 foot easement as needed. He indicated that the City is still holding $15,000 in retention for Wahlund Construction.

Councilmember Johnson then questioned the check to Thomas & Associates in the amount of $4,572.07 for a sewer pump.

Wastewater Superintendent Chicora stated that it was for parts to repair the Painter Street lift station pump and that he will do the repair.

COUNCIL REPORTS/COMMUNICATIONS

Councilmember Wilson asked about the repairs to the Council chambers sound system.

City Manager Stretch stated that staff will attempt to have the current problem fixed tomorrow and suggested staff come back to the Council in July with a new proposal for addressing the overall sound system.

Councilmember Johnson thanked the Council for direction with regard to HCAOG and complimented staff on the recent City Newsletter.

Councilmember Marks said after the last meeting John Coleman asked to meet with her regarding the Old Ranch Road water system and reported that she did not meet with him for fear of a potential Brown Act violation.

Mayor Thompson reported that he and Councilmember Johnson as the appointed subcommittee met on April 8th with the Old Ranch Road water customers and they would like the Council to defer any action with regard to relocation of the water meters for 6 weeks to allow them time to consult with legal counsel.

City Manager Stretch said he informed the residents that the issue would be back on the May 6, 2014 City Council agenda and if they had any information they would like to submit to get it to the City no later than May 1, 2014 for inclusion in the Council packet. He said he thinks the group has an understanding of what they need to do. They were going to get together and report back to the City Manager on what they want to do with regard to repair of the water line and the issue with easements. He said he will report on any progress on May 6th.

Councilmember Marks suggested a deadline be set so the issue can get resolved.

Mayor Thompson said at the upcoming June Primary Election there are 4 or 5 candidates running for District Attorney and asked if the Council has any desire to invite them to come and speak at a community forum.

Councilmember Johnson commented that he would like to hear the candidate's philosophies on law related matters.

The City Clerk was directed to contact the League of Women's Voters to see if a community forum can be arranged.

ADJOURNMENT

There being no further business to discuss, the meeting adjourned at 9:54 p.m. to the May 6, 2014 regular meeting.

_____
Jack Thompson, Mayor

Attest:

_____
Karen Dunham, CMC

RIO DELL CITY COUNCIL
SPECIAL MEETING
MAY 9, 2014
MINUTES

A special meeting of the Rio Dell City Council was called to order at 3:30 p.m. by Mayor Thompson.

ROLL CALL: Present: Mayor Thompson, Councilmembers Johnson, Marks and Wilson

Absent: Councilmember Woodall (excused)

Others Present: City Manager Stretch, Finance Director Woodcox and City Clerk Dunham

Absent: Chief of Police Hill, Community Development Director Caldwell, Water/Roadways Superintendent Jensen, and Wastewater Superintendent Chicora (excused)

SPECIAL MEETING MATTERS

Preliminary Budget Review FY 2014-2015 (Provide Staff Direction)
City Manager Stretch began by passing out the following (5) spreadsheets representing options for balancing the budget:

1) Normal Staffing
2) Normal Staff at 4 Days/Week
3) Staff Reductions – 2 Positions
4) Staff Reductions – 2 ½ Positions
5) Staff Reductions – 2 Positions at 4 Days/Week

Beginning with Sheet No. 1, City Manager Stretch explained the estimated beginning fund balance for 2014-2015 is $1,140,262; total projected revenue is $752,238, and total expenditures are $908,468 leaving the estimated ending fund balance of $984,032. He said this puts the General Fund in a negative position by $156,230 which is a serious problem.

He said another fund in a negative position of almost $48,000 is the Gas Tax Fund. He stated the only budgeted items worthy of mention is the $60,000 paving project and some striping which will have to be pulled to balance this year's budget unless money is taken out of Reserves to fund the program. He stated that we have a minimal amount of staff for roads so the only thing you can do is not mow the center median or water the grass or you basically have people being able to respond to emergencies and patch a few pot holes but by in large there is really not enough Gas Tax money to fund the program. He noted that unless a new gas station comes to town, we can expect to see a spiraling of Gas Tax funds over the next few years.

Mayor Thompson commented that the City attempted twice to get a measure passed on the ballot for street improvements and both times it failed miserably. He said we might want to consider implementation of a ¼ percent local sales tax such as Arcata, Eureka and Fortuna.

City Manager Stretch continued the discussion with the escalation as to what has happened and why this year's budget looks so bleak when the prior year we were fairly comfortable. He said there were some one-time expenditure for special projects last year but doesn't explain what is happening now. He said the question is what are the differences between last year and this year.

Finance Director Woodcox continued with review of General Fund revenue and expenditure comparisons between last year and this year. She said in general what happened is that staff started looking at what employees were actually doing within the various departments and applied those costs to the correct funds. As a result, there was a big jump in General Fund expenditures. She said also, approximately $36,000 is being redirected from the General Fund into a Building Fund because we are going to be offering those services in-house; that revenue is not lost, just redirected. She said the second item contributing to what appears as a decline in General Fund revenue is a one-time payment of $30,544 that was budgeted and received in the 2012-2013 budget and somehow ended up in the 2013-2014 budget by mistake so will not be included in this year's budget.

City Manager Stretch stated that initially staff thought that sales tax revenue was going to be way down but apparently there is a very late payment that comes in June so that should put sales tax revenue close to where it should be. He said what staff found out from the Board of Equalization is that sales tax is not a sites tax like gas tax and apparently goes into a County pot and distributed to Cities based on population. He noted the City is also experiencing a reduction in gas tax revenue likely because of Renner Petroleum going into Scotia which also has an impact on sales tax because with less gas purchases at the Shell there are also less people buying snacks at the shell.

Finance Director Woodcox explained the reason the City Manager Department shows an increase in expenditures of $27,201 is because there were one-time City Manager recruitment costs and specific studies and also in 2013-2014, the City Manager position was budgeted on the assumption that the position was part-time. The net affect from a part-time position to a full-time position is around $50,000.

City Manager Stretch said the City Council approved the transfer of $25,000 from Reserves to fund the cost of Avery Associates to do the City Manager recruitment however; the transfer was not done so the money came out of Professional Services Account 5115 in the City Manager's department.

Finance Director Woodcox continued with an analysis of the Finance Department and reported that expenditures totaling $37,225 were reallocated to the General Fund to better reflect finance staff's work activities.

She said the Police Department costs for the upcoming year represent an increase of $25,638 largely due to Worker's Comp costs which had been understated in the current budget. She noted the increase in Worker's Comp is $16,381. She said the additional expenditures are due to the trend of increasing employee benefits.

Finance Director Woodcox reported that in the past Building and Grounds have been budgeted to the Street Fund and by removing these costs from the Street Fund, the General Fund has to absorb the full cost of $71,774.

Councilmember Wilson asked how long this format has been in place.

City Manager Stretch explained the Building and Grounds has been included in the Street Fund for a long time and the fact is that you cannot spend Streets money on the tennis courts or on maintaining City Hall grounds. He said the Street Fund has been subsidizing this activity for several years and it has to be corrected.

He said in talking with the Water/Roadways Superintendent Jensen he said time cards for public works employees reflect the actual time spent on the various activities and the budget line item for grounds maintenance must have reflected a negative balance at the end of the year. He said he thinks funds were transferred from other funds to offset those costs.

City Manager Stretch said it is a real problem when you subsidize the General Fund with utility funds.

Councilmember Marks said she understood auditors checked all journal entries.

Staff explained there is a threshold and auditors take samples of everything and can't possibly look at every transaction.

City Manager Stretch said in explaining how this came to view, we had the position of Finance Director vacant since December and Joanne Farley assumed the Accountant position and basically dug in and got answers. He said there was no one here to backstop things and things got dealt with straight up and it became clear that some scenarios were not accurate.

Councilmember Johnson said the good news is that we are going to fix the errors and won't have to have this same conversation next year.

City Manager Stretch explained if you take the $71,774 for Building and Grounds and the increase in Worker's Comp for the Police Department which was budgeted at 4.9% of salaries rather than 17% or 18% like it should have been, you can see why there is a shortfall in the General Fund.

Councilmember Wilson questioned where the numbers come from for Worker's Comp projections.

Finance Director Woodcox stated the numbers come from the City's insurance pool, SCORE (Small Organized Risk Effort).

City Manager Stretch commented that the Finance Director was the City's representative on the SCORE Board of Directors and she put together the spreadsheets for salaries so the numbers should have been correct. He stated that you would think that if we're not generating enough premiums for Police based on our actual exposure that our insurance pool would catch it.

Finance Director Woodcox said what did happen is that at the end of the year the City received a check back as an adjustment to the liability insurance premium which was approximately $30,000 and it should have been allocated back to reduce the liability expense account but instead it was allocated back to Worker's Comp reducing that expense account.

City Manager Stretch said the Finance Department salaries were spread to those departments that had money rather than actual staff time spent in those various departments.

Discussion continued with review of the *General Fund Budgeted Revenue Comparison* between FY 2013-2014 and 2014-2015.

Finance Director Woodcox directed the Council's attention to page 3 and 4 of her handout and explained this provides a more specific look at the General Fund revenue comparisons and that it was to highlight why there is a decrease this year in General Fund revenues. She noted that several of the highlighted items are actually being redirected to the Building Fund so the revenue is not lost. She noted that the misc. revenue of $30,554 that was received from the PTAF settlement was budgeted 2 years in a row when it was actually received the first year it was budgeted so shouldn't have been included in the 2013-2014 budget.

City Manager Stretch pointed out that we know that the other funds can pretty much balance to the revenue and General Fund can make a contribution to any of them but none of them can make a contribution to the General Fund because they are restricted funds.

Next was review of the various scenarios for balancing the budget. Sheet No. 2 reducing the work week to 4 days which is about a 20% reduction still showed a deficit in the General Fund of about $27,000.

The third scenario with the reduction of 2 full time positions showed a General Fund deficit of almost $24,000.

City Manager Stretch said under the fourth scenario he took it even further with the reduction of 2.5 positions taking the deficit down to $8,840 which almost makes it work.

Councilmember Marks stated that she can't believe that the reduction of 2 positions with benefits doesn't reduce expenses more than the projected amount.

City Manager Stretch explained that some of the savings comes from the utility funds which have no effect on the General Fund. He commented that he also took out items such as League of California Cities dues, training and mileage expense.

The last scenario combined a 4/day work week with the reduction of 2 full time positions which showed a positive reserve balance of $83,646. He pointed out there are all kinds of different levels of adjustments to consider other than the 5 scenarios presented here.

Mayor Thompson stated that it seems like a drastic step to cut positions and said he would rather see other expenses cut.

City Manager Stretch then presented a written recommendation for direction by the City Council to staff on how to proceed with regard to the 2014-2015 FY Budget. He said the City is fortunate to have 100% set aside in Reserves and as such, he presented the recommendation that would include:

- The preparation of a budget for 2014-2015 that is tight, but does not impact the present level of public services.
- Contains a General Fund that is balanced using reserves.
- Explores as an urgent matter the possibility of submitting a local revenue enhancement proposition to the voters on the November 2014 ballot as a funding mechanism for police services in the form of a local sales tax or a utility users tax.
- Explore whether the City needs to employ the services of specialty consultants to prepare and evaluate a ballot measure.
- Prepare a Master Fee Schedule for the purpose of adjusting user fees to actual cost.
- Explore with the City's insurance broker, in concert with the employee organizations, cost saving measures for health, dental, vision and life insurance benefits.

- If it is not possible to prepare a revenue ballot measure for the November 2014 election or a measure is submitted and is not approved by the voters to direct the City Manager to prepare a budget for City Council consideration in January 2015 for the last 5 months of the fiscal year, to be balanced by July 1, 2015 and to include options for staff and public service reductions by funds.

City Manager Stretch stated the goal of a revenue ballot measure is to generate $200,000 in annual revenue for the General Fund. He noted that $150.00 per year on property tax bills will generate approximately $210,000.

Councilmember Johnson stated that at one of the symposiums at the League of California Cities conference was a cost sharing program and a Chief of Police came up with the idea of sharing dispatch services with 3 other cities and it was implemented and is working well.

Councilmember Johnson questioned the percentage of voter approval to pass a measure.

City Manager Stretch said 2/3rd voter approval is required to pass a tax measure to only support police services whereas only 50% + 1 is needed to pass a tax measure that supports Citywide services. He indicated that there is not much time to get a ballot measure on the November ballot but that the City of Blue Lake is putting together a ballot measure and he will get in contact with their City Manager to talk about the specifics.

Discussion continued regarding the potential loss of COPS funding; health savings plans; utility rate adjustments; sales tax revenue distribution; adjustments to current distribution spreads; percentage for reserve funds, and a high energy use tax.

City Manager Stretch asked for direction from the Council on how to proceed.

Councilmember Wilson said he likes the City Manager's recommendation and does not want to take a reactionary approach or make drastic actions until absolutely necessary.

Motion was made by Wilson/Johnson to direct staff to proceed with preparation of the 2014-2015 FY Budget as recommended by the City Manager under Items 1-6 as presented. Motion carried 4-0.

ADJOURNMENT

There being no further business to discuss, the meeting adjourned at 5:15 p.m. to the May 13, 2014 Special meeting.

_____
Jack Thompson, Mayor

ATTEST:

_____
Karen Dunham, City Clerk

675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532

May 20 2014

TO: Honorable Mayor and City Council

THROUGH: Jim Stretch, City Manager

FROM: Randy Jensen, Water & Roadways Sup.

SUBJECT: Approval of Amended Agreement with Freshwater Environmental Services

IT IS RECOMMENDED THAT THE CITY COUNCIL:

Approve the attached amended agreement with Freshwater Environmental Services for the additional amount of $1,900.00 to provide support services to update the City of Rio Dell Water Shortage Contingency Plan.

BACKGROUND AND DISCUSSION:

On May 6, 2014, City Council approved the agreement with Freshwater Environmental Services for the services related to the Rio Dell Cross-connection Control Program and Water Supply. Within the list of tasks, the Section of Updating the City of Rio Dell's Water Conservation Program was overlooked. Tasks 1 thru Tasks 4 all are part in the methods of updating the Program which will require some additional effort to complete.

TASK 5
Freshwater Environmental Services will review and update Rio Dell Water Shortage Contingency plan. The update will include new triggers for implementing the emergency action stages along with a financial impact report on the various stages of required conservation and evaluate an excess use penalty for times during a declared water shortage.

Funds are available in the Water Operations Fund for this additional amended agreement, leaving a Fund Balance of $189,579 as of 6-30-2014.

675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532

To: Honorable Mayor and Members of the City Council

Through: Jim Stretch, City Manager

From: Graham Hill, Chief of Police

Date: May 20, 2014

Subject: Parking enforcement

Action

Receive and File

Summary

In December I approached the City Council regarding the retention of the Phoenix Information Services Group for the purpose of processing parking citations including the collection of fees. $3,337.00 was allocated at that time for that purpose. For various reasons including staffing this project was stalled and upon revisiting I was presented with budget concerns for the 2014-2015 fiscal year. For this reason I will not be pursuing this avenue regarding the enforcement of parking violations at this time.

I have already started the process of working with the California DMV to obtain the proper designation number to have our parking fines linked to California vehicle registration process for non-payment. We will be moving forward without the use of an outside contractor. This will certainly delay the process, however the risk of having costs that are not recovered due to compliance (lack of citations) will be eliminated.

I realize parking issues are a high priority for the community and the department will allocate the necessary time and resources to this issue.

Rio Dell City hall
675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532
riodellcity.com

May 20, 2104

TO: Rio Dell City Council

FROM: Jim Stretch, City Manager

SUBJECT: High Energy User Tax

IT IS RECOMMENDED THAT THE CITY COUNCIL:

Defer consideration of the Residential High Energy User Tax until spring 2015

BACKGROUND AND DISCUSSION

As the Council may recall, on February 18, 2014 Alison Talbott, PG&E- Government Relations, made a report to the Council about the Excessive Energy Users Tax (EEUT) implemented by the City of Arcata. The program developed by Arcata with the assistance of PG&E identified high energy residential users with PG&E usage in excess of 600% of baseline and placed a 45% high energy user tax on the excess amount.

PG&E charged Arcata $650,000 to develop the software and the City expected to recoup its cost quickly from the new revenue source. However, they reportedly experienced an 85% drop in the number of residents that exceeded the 600% baseline, thereby extending the time for them to recoup their cost.

At the meeting, PG&E was asked to supply the data for the City of Rio Dell so that the Council could consider whether to pursue the program, which would require the adoption of an Ordinance and the preparation of a ballot measure. Attached is the data PG&E provided for Rio Dell.

On April 22, 2014 PG&E advised that the next public agency in the County to implement the EEUT would be charged $485,000 and after that each jurisdiction would be charged $310,000.

If the City's experience would be similar to Arcata's and the current revenue of $418,015 were to drop 85%, the City would realize $62,700/yr., which would likely take almost 7 years to recoup the initial investment ($310,000).

It is recommended that the City Council table consideration of this measure until the spring of 2015, at which time the experience of Arcata and perhaps other agencies proves whether it is a program that the City wants to pursue.

Dear Mr. Stretch:

Please find the data you requested concerning residential PG&E customers, in the City of Rio Dell, whose electric usage exceeds 600% of baseline.
As you review this information, please keep in mind the following points:

- SA (Service Agreement) counts above 600% baseline represent the total number of service agreements that have experienced one or more months where the electrical usage was over 600% baseline during the twelve month period. That is, a customer who exceeded 600% of baseline in January and June will only be counted once.
- CARE distinction represents those service agreements where CARE was triggered in at least one month during the twelve month period. That is, a customer who was a CARE customer in January and no longer CARE throughout the year is counted once.
- Columns L and M represent the expected tax revenue from a 45% Excessive Energy Use Tax. This estimate is derived from revenues on only the months where electrical usage exceeded 600% of baseline.
- Multiple factors influence the customers' usage and revenues. Revenues may be affected by various customer behaviors, the time of day usage is consumed, rate increases and decreases or seasonal variations in baseline quantities. Weather and other environmental conditions can also impact usage and revenues.

PG&E Rate Design & Analytics: DR 5188 - Usage, Revenue and Count by SA

			Above 600% Baseline (at least one month)			Below 600% Baseline (all months)			Above 600% Baseline (for effective months)								
			SA Count	SA Count	Total Number Above	Revenue		Total Number of Customer			Projected EEUT @45%		Projected EEUT @45%	Total Revenues		Total Usage (KWH)	
TOT County	*TOT City*	*Year*	*CARE*	*Non-CARE*		*CARE*	*Non-CARE*		*CARE*	*Non-CARE*	*CARE*	*Non-CARE*		*CARE*	*Non-CARE*	*CARE*	*Non-CARE*
HUMBOLDT	RIO DELL	2011	170	59	229	722	691	1642	405,337	421,382	182,401	189,622	372,023	840,560	954,243	8,061,993	4,397,844
HUMBOLDT	RIO DELL	2012	147	65	212	762	724	1698	448,875	417,492	201,993	187,871	389,864	930,457	985,916	7,885,938	4,670,702
HUMBOLDT	RIO DELL	2013	111	78	189	742	748	1679	416,146	512,776	187,266	230,749	418,015	919,208	1,163,710	6,822,575	5,166,636

I will call you to schedule a time to go over this data. I'd like to conference in a colleague who helped gather the information so that we can address any questions you may have.

Thank you,

Alison Talbott
Government Relations
Pacific Gas & Electric Company
2555 Myrtle Avenue
Eureka, CA 95501
Cell (707) 502-5769
Email alison.talbott@pge.com

City of Rio Dell

Wastewater Rate and Capacity Fee Study

DRAFT

May 14, 2014

BARTLE WELLS ASSOCIATES
INDEPENDENT PUBLIC FINANCE ADVISORS

BARTLE WELLS ASSOCIATES
INDEPENDENT PUBLIC FINANCE ADVISORS

1889 Alcatraz Avenue
Berkeley, CA 94703
T: 510-653-3399
www.bartlewells.com

May 14, 2014
Jim Stretch, City Manager
City of Rio Dell
675 Wildwood Avenue
Rio Dell, CA 95562

Re: Wastewater Rate Study

Bartle Wells Associates (BWA) is pleased to submit to the City of Rio Dell the attached Wastewater Rate and Capacity Fee Study. The report presents BWA's recommended approach for changing the City's current flat wastewater rate to a flat plus volumetric rate structure. This report also recommends a new capacity fee for the wastewater system.

BWA finds that the wastewater rates and charges proposed in our report to be based on the cost of service, follow generally accepted rate design criteria, and adhere to the substantive requirements of Proposition 218. BWA believes that the proposed rates are fair and reasonable to the City's customers.

We enjoyed working with you on the rate study and appreciate the assistance and cooperation of City staff throughout the project. Please contact us if you ever have any future questions about this study and the rate recommendation.

Yours truly,

Doug Dove, CIPFA
Principal

Alison Lechowicz
Financial Analyst

TABLE OF CONTENTS

Executive Summary

Bartle Wells Associates (BWA) was engaged by the City of Rio Dell to develop a new wastewater rate structure and to update the City's wastewater capacity fee.

Monthly Wastewater Rate

The current wastewater rate is a fixed monthly charge of $76.16 per residence, also referred to as an equivalent dwelling unit (EDU). Commercial customers are assigned multiple EDUs based on their wastewater flow and pollutant loading relative to a single family residential customer.

BWA's recommended alternative wastewater rate structure includes a fixed monthly charge ($/EDU) plus a volume rate ($/hundred cubic feet) based on estimated wastewater flow. BWA developed wastewater rate alternatives by allocating the current wastewater cost of service of $1.17 million to fixed and volume cost categories. The fixed monthly charge is based on each customer's EDU count and the volume rates are based on wastewater flow and strength characteristics.

The benefit of implementing a volume rate is equitability. Lower wastewater users pay a lower monthly bill than high wastewater users. Each customer pays a wastewater bill more closely proportional to how he or she uses the wastewater system.

BWA's Recommended Rate Structure: 70% Fixed and 30% Volume

BWA's recommendation allocates 70% of costs to the fixed charge and 30% of costs to the volume (variable) charge.

Table ES-1
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Recommended Rate Structure: 70% Fixed and 30% Volume

Fixed Monthly Charge	$47.01	per EDU
Volume Rate		
Customer Class		
Low	$3.29	per ccf
Domestic Strength	$4.11	per ccf
Medium	$6.17	per ccf
High	$7.19	per ccf

ccf = hundred cubic feet

The average residential customer has a monthly wastewater flow of 5 hundred cubic feet (ccf) and would have a monthly bill of $67.56 under the recommended rates, a decrease from the current monthly bill of $76.16.

Fixed Charge			Volume Rate		Winter Water Use			Total Monthly Bill
$47.01	+	(	$4.11 $/ccf	x	5 ccf	)	=	$67.56

Billing Procedures

BWA proposes changes to the City's billing procedures such that only property owners can hold sewer accounts. Renters should no longer be permitted to open new sewer accounts. The property owner would be the ultimate party responsible for paying the sewer bill. If the property owner does not pay the sewer bill, the delinquency would become a lien against the property. Moreover, BWA recommends that all properties including vacant or inactive accounts be charged the fixed, EDU-based charge.

BWA also recommends that the City cap the billed volume at 15 hundred cubic feet of sewer flow for residential customers to account for high water use that may be due to outdoor irrigation, i.e. water use that does not flow into the sewer system. Commercial customers are not proposed to be capped.

Capacity Fee

BWA conducted an analysis of the City's wastewater capacity fee and recommends increasing the current fee of $950 to $5,220 per equivalent dwelling unit. The recommended fee is a buy-in to the collection system and reflects the recently completed upgrades to the wastewater treatment plant. The recommended fee is moderate in comparison to other agencies in the region.

Rate Setting Legislation and Principles

In conducting this wastewater rate study, BWA adheres to the Proposition 218 requirements as described in this section. Subsequent sections provide the detailed, cost of service basis for BWA's rate recommendation.

Proposition 218

Proposition 218, the "Right to Vote on Taxes Act", was approved by California voters in November 1996 and is codified as Articles XIIIC and XIIID of the California Constitution. Proposition 218 establishes requirements for imposing or increasing property related taxes, assessments, fees and charges. For many years, there was no legal consensus on whether water and wastewater rates met the definition of "property related fees". In July 2006, the California Supreme Court essentially confirmed that Proposition 218 applies to water and wastewater rates.

BWA recommends that the City follow the procedural requirements of Proposition 218 for all wastewater rate changes. These requirements include:

- **Noticing Requirement:** - The City must mail a notice of proposed rate changes to all affected property owners. The notice must specify the basis of the fee, the reason for the fee, and the date/time/location of a public rate hearing at which the proposed rates will be considered/adopted.
- **Public Hearing:** - The City must hold a public hearing prior to adopting the proposed rate changes. The public hearing must be held not less than 45 days after the required notices are mailed.
- **Rate Increases Subject to Majority Protest:** - At the public hearing, the proposed rates are subject to majority protest. If more than 50% of affected property owners submit written protests against the proposed rates, the rates cannot be adopted.

Proposition 218 also established a number of substantive requirements that apply to water rates and charges, including:

- **Cost of Service:** - Revenues derived from the fee or charge cannot exceed the funds required to provide the service. In essence, fees cannot exceed the "cost of service".
- **Intended Purpose** - Revenues derived from the fee or charge can only be used for the purpose for which the fee was imposed.
- **Proportional Cost Recovery** - The amount of the fee or charge levied on any customer shall not exceed the proportional cost of service attributable to that customer.
- **Availability of Service** - No fee or charge may be imposed for a service unless that service is used by, or immediately available to, the owner of the property.
- **General Government Services** - No fee or charge may be imposed for general governmental services where the service is available to the public at large.

Charges for water, wastewater, and refuse collection are exempt from additional voting requirements of Proposition 218, provided the charges do not exceed the cost of providing service and are adopted pursuant to procedural requirements of Proposition 218.

Rate Development Principles

In reviewing the City's current wastewater rates and finances, BWA used the following criteria in developing our recommendations:

1. *Revenue Sufficiency:* Rates should recover the annual cost of service and provide revenue stability.

2. *Rate Impact:* While rates are calculated to generate sufficient revenue to cover operating and capital costs, they should be designed to minimize, as much as possible, the impacts on ratepayers.

3. *Equitable:* Rates should be proportionately allocated among all customer classes based on their estimated demand characteristics. Each user class only pays its proportionate share.

4. *Practical:* Rates should be simple in form and, therefore, adaptable to changing conditions, easy to administer and easy to understand.

5. *Provide Incentive:* Rates provide price signals which serve as indicators to conserve water, reduce wastewater flow, and to use water efficiently.

Background

The City of Rio Dell (City) is located in Humboldt County and provides water and wastewater service to over 1,400 customers. The City currently charges all customers a fixed wastewater charge based on an equivalent dwelling unit (EDU) basis. Sometime ago, the City determined the wastewater flow and pollutant strength loading (loads) of the average residential customer. The average residential flow and loads is set as one EDU. Each commercial customer was assigned an EDU count based on the customer's flow and loads relative to a residential unit. The City engaged BWA to develop a new rate structure that includes a flat or fixed charge based on EDU count and a rate based on volume of wastewater discharged.

The City also engaged BWA to develop a new wastewater capacity fee. The City was successful in securing a Clean Water State Revolving Fund Grant and Loan for the upgrade of the wastewater treatment plant. The total cost of the improvement is $10.7 million and the City received a grant (principal forgiveness) for $6 million. Existing ratepayers and new connections will fund $4.7 million in construction costs which will significantly affect the calculation of the capacity fee.

Wastewater Flow and Customer Projections

Customer Base

The City has approximately 1,400 residential and commercial wastewater customers recorded in the City's billing software. At any given time, some of the customers may have deactivated accounts. BWA analyzed the City's billing records and determined that the City's service area includes a number of rental units that have high turnover and revenues from these units may not be stable. Deactivated accounts are not currently charged the monthly rate.

Billing Procedures

BWA recommends that the City adjust its billing procedures to minimize delinquencies and lost revenue. The City has observed a trend of renters making their last month's rent payment and moving out of the City while neglecting to close their sewer account and pay their final sewer bill. These delinquencies result in lost revenue that is funded out of the sewer fund reserves.

BWA recommends that the City allow only property owners to hold sewer accounts. Renters should no longer be permitted to open new sewer accounts. The property owner would be the ultimate party responsible for paying the sewer bill. If the property owner does not pay the sewer bill, the delinquency would become a lien against the property. BWA recommends that as part of each renter's security deposit, the landlord/property owner collect funds for the payment of the renter's final sewer bill.

If the City implements BWA's new fixed plus volume sewer rate structure, BWA recommends that the City collect the fixed portion of the charge from all properties including those that have their water service shutoff or may be vacant. Sewer service is a capital-intensive utility with a high percentage of fixed costs. Vacant properties benefit from the City operating and maintaining the sewer system in good working condition such that properties can connect and receive service at any time. All properties, including vacant properties, should pay the fixed charge.

The billing records of December 2013, January 2014, and February 2014 were used to determine the EDU count and sewer flow of the City's service area. With the proposed changes to the billing procedures, the City can rely on revenues from all properties, including vacant properties, within the City. This change results in the EDU count increasing from about 1,300 EDUs under the old billing procedure (i.e. not charging vacant or disconnected accounts) to 1,433 EDUs under the new billing procedure.

Under the current (FY2013/14) monthly rate of $76.16 per EDU and a customer base of 1,433 EDUs, the City could collect as high as $1.31M in wastewater service charge revenue. To operate and maintain the sewer system and provide a high level of service, the sewer system revenue requirement is $1,167,000. Under the new billing system with the current rate of $76.16 per EDU, the City would collect revenues in excess of the cost of service.

Recommended Customer Classes

BWA reviewed the City's commercial customers and assigned customers to wastewater strength categories based on BWA's prior rate study experience, industry standard practice, and the wastewater strengths described in the Revenue Program Guidelines developed by the State Water Resources Control Board, see Table 1 and Appendix A.

Table 1
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Customer Classifications

Customer Class	BWA Recommended Strength Factor	Example Customers
Low	0.80	Car wash, office, retail store, school w/o cafeteria, laundromat
Domestic	1.00	Single family residential, multifamily residential, hotel, school with cafeteria, motel, mobile home park, churches, auto shop, gas station, bars without dining
Medium	1.50	Beauty shop, medical office, dental office
High	1.75	Restaurant, market with food prep, bakery

BWA calculated the new EDU count of commercial customers by allocating 60% of the cost of service to flow and 40% to strength. This allocation is commonly used by small wastewater agencies that do not have detailed cost information or engineering studies available. The calculation for each commercial customer's EDU count is:

EDU count = (avg winter water use/5 ccf) x (60% + 40% x strength factor)

The average residential winter water use and assumed wastewater flow is 5 hundred cubic feet (ccf) per month. Wastewater flows are often estimated using winter water consumption. During the winter, customers typically do not use water for outdoor irrigation. The flow of each commercial customer is scaled in comparison to the 5 ccf wastewater flow of the average residential customer.

The City's current EDU count was compared with the BWA recommended EDU count based on the equation above. Some customers received a decrease in their EDU count and some received an increase. The BWA recommended EDU count results in a net gain of 15 EDUs. Under the BWA EDU count with no rate structure changes, the wastewater service charge would be $67.16 to collect the revenue requirement of $1.17M, see Table 2.

Table 2
City of Rio Dell
Wastewater Rate and Capacity Fee Study
EDU Count

Customer Class	Current EDU Count	BWA Recommended EDU Count	Net Change
Low	17	15	(2)
Domestic	1,402	1,414	12
Medium	3	4	1
High	11	15	4
	1,433	1,448	15
Cost of Service (determined by City)	$1,310,000	$1,167,000	
Annual Cost per EDU	$913.92	$805.94	
Monthly Cost per EDU	$76.16	$67.16	

Rate Structure Alternative

In addition to updating the EDU count, BWA developed a rate structure alternative that adequately recovers the cost of providing service, is fair to the ratepayers, and includes a volumetric rate based on estimated wastewater flow. BWA developed a rate alternative in which revenues are allocated to fixed and volume rate components. Based on our experience with smaller wastewater systems, like the City's, fixed costs typically make up 50% to 90% of total costs and variable costs make up 10% to 50% of total costs. The fixed rate component is based on the EDU count described in the previous section and the volume rate is calculated based on an estimate of winter water use. Winter water use is based on

the average monthly water use during December 2013, January 2014, and February 2014. The average monthly winter water use is multiplied by twelve to estimate yearly wastewater flow.

BWA's Recommended Rate Structure: 70% Fixed and 30% Volume

Under the recommended rate, BWA allocates 70% of revenue to the fixed monthly charge and 30% of revenue to a new volume rate. The fixed charge is based on the BWA recommended EDU count. The volume rate for low, domestic, medium, and high strength customers is scaled to the strength factor for each customer class.

The average residential monthly bill under the recommended rate structure is $67.56.

Fixed Charge			Volume Rate		Winter Water Use			Total Monthly Bill
$47.01	+	(	$4.11 $/ccf	x	5 ccf	)	=	$67.56

Table 3
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Recommended Rate Structure: 70% Fixed and 30% Volume

FIXED CHARGE CALCULATION - 70%

			Fixed Charge 70% Revenue
Total Cost of Service		$1,167,000	$816,900
Customer Class	Strength Factor	BWA EDUs	Fixed Charge based on EDU	**Annual Fixed Charge Revenue**
Low	0.80	15	$47.01	**$8,462**
Domestic Strength	1.00	1,414	$47.01	**$797,666**
Medium	1.50	4	$47.01	**$2,256**
High	1.75	15	$47.01	**$8,462**
		1,448		**$816,846**

VOLUME RATE CALCULATION - 30%

				Volume Rate 30% Revenue
Total Cost of Service		$1,167,000		$350,100
				$4.14 avg rate per ccf
Customer Class	Strength Factor	Total Flow[1]	Volume Rate[2]	**Annual Volume Rate Revenue**
Low	0.80	684	$3.29	**$2,250**
Domestic Strength	1.00	83,088	$4.11	**$341,492**
Medium	1.50	180	$6.17	**$1,111**
High	1.75	696	$7.19	**$5,004**
		84,648		**$349,857**

1 - Units are hundred cubic feet (ccf). Based on winter water use. Residential winter water use is capped at 15 ccf per month.
2 - Volume rates are scaled to the domestic rate based on the strength factor (i.e. the low strength rate is 0.8 times the domestic strength rate). The domestic strength rate is set such that the total volume rate revenue is less than or equal to 30% of the cost of service.

Bill Impacts

Transitioning to a volume rate, residential customers with 7 ccf of wastewater flow or less will receive reductions in their monthly wastewater bills. BWA analyzed the monthly bill distribution of single family residential customers, see Figure 1. Under the recommended rates about 80% of single family residential customers would receive a decrease and about 20% of single family residential customers would receive an increase in their monthly wastewater bills. The maximum residential monthly bill (15 ccf) increase is $32.50.

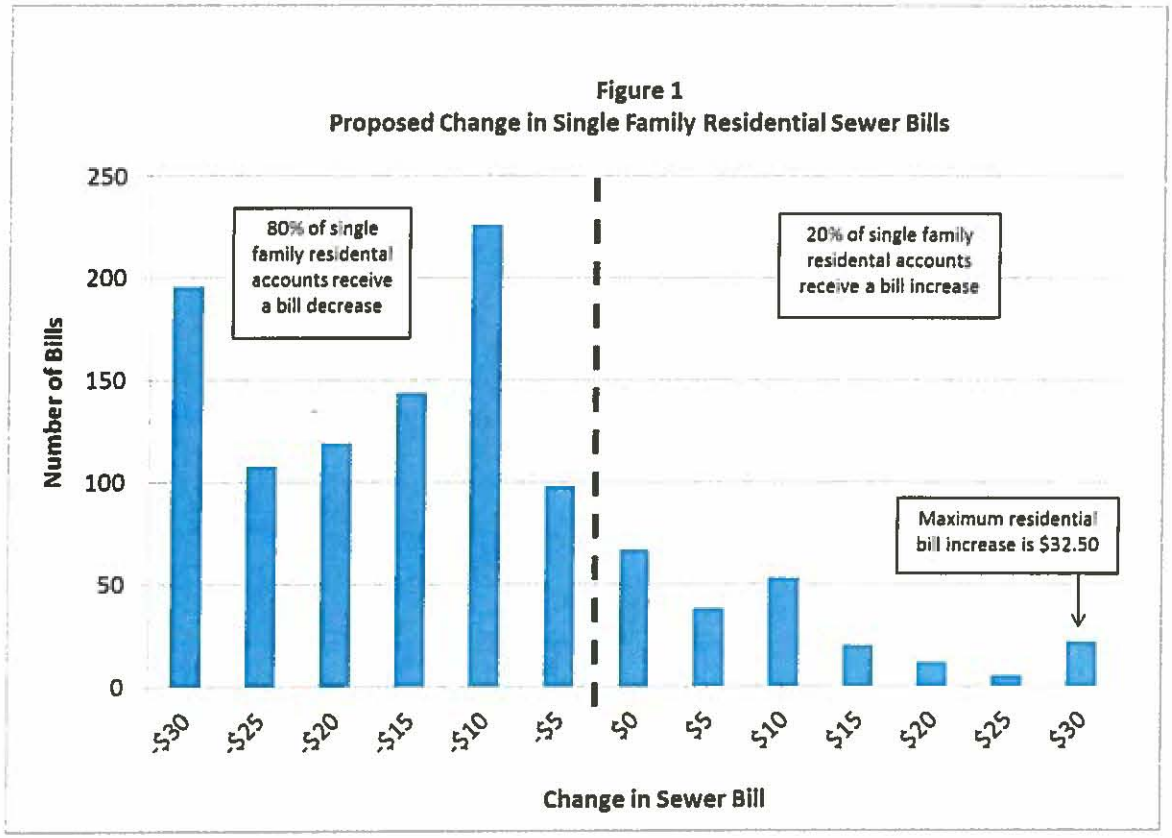


Table 4 shows bill impacts to low, average, and high water users under the recommeded rates.

Table 4
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Single Family Residential Customer Bills Comparison

Low User (3ccf)	Rate	Unit	Total Charge
Current			
Fixed	$76.16	1	$76.16
Total monthly bill			$76.16
Recommended			
Fixed	$47.01	1	$47.01
Volume	$4.11	3	$12.33
Total monthly bill			$59.34
Net change (recommended less current)			($16.82)

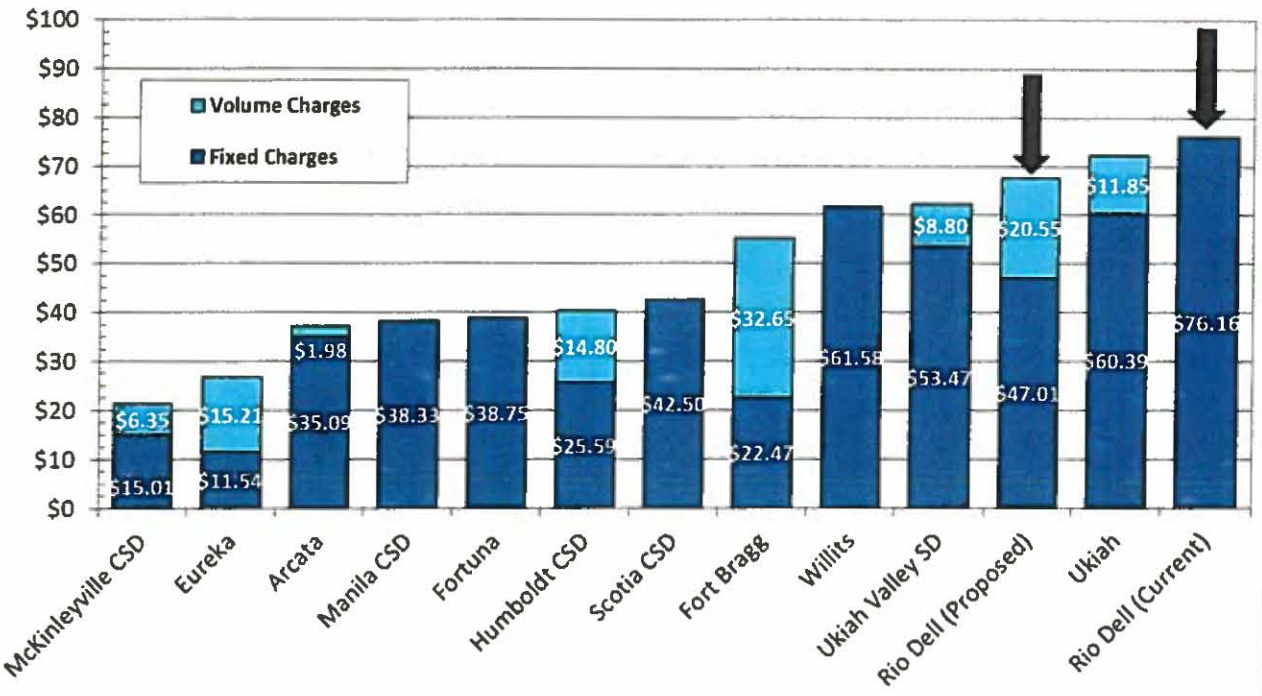
Average User (5ccf)	Rate	Unit	Total Charge
Current			
Fixed	$76.16	1	$76.16
Total monthly bill			$76.16
Recommended			
Fixed	$47.01	1	$47.01
Volume	$4.11	5	$20.55
Total monthly bill			$67.56
Net change (recommended less current)			($8.60)

High User (8ccf)	Rate	Unit	Total Charge
Current			
Fixed	$76.16	1	$76.16
Total monthly bill			$76.16
Recommended			
Fixed	$47.01	1	$47.01
Volume	$4.11	8	$32.88
Total monthly bill			$79.89
Net change (recommended less current)			$3.73

Bill Survey

BWA conducted a bill survey to compare the current and proposed single family wastewater bill in the City of Rio Dell to other local agencies. Rio Dell currently has the highest sewer bill in the region, see Figure 2 and Table 5. Under BWA's proposed sewer rate alternative, the average single family residential wastewater bill is reduced from $76.16 to $67.56 and is no longer the highest bill in the region.

Figure 2
Monthly Residential Wastewater Bill Survey
Based on 5 ccf monthly winter water use*



* 5 ccf is the average residential monthly winter water use in the City of Rio Dell

Table 5
City of Rio Dell
Wastewater Rate Study
Survey of Typical Monthly Bills of Residential Customers

Based on winter water use of 5 ccf per month	
McKinleyville Community Services District	
Fixed	15.01
Flow-based ($1.09/ccf up to 12 ccf)	6.35
Total Monthly Bill	**21.36**
City of Eureka	
Fixed	11.54
Volume-based on water use over 2 units ($4.43/ccf)	15.21
Total Monthly Bill	**26.75**
City of Arcata	
Base Charge	28.58
Sewer Repair Fee	5.00
Flow over allowance of 4.5 ccf ($4.30/ccf)	1.98
Subtotal	35.56
Utility Tax of 3%	1.51
Total Monthly Bill	**37.07**
Manila Community Services District	
Fixed	38.33
Total Monthly Bill	**38.33**
City of Fortuna	
Base Charge for up to 5 ccf of flow	38.75
Flow-based ($8.61/ccf over 5)	0.00
Total Monthly Bill	**38.75**
Humboldt Community Services District	
Account Charge	4.00
Base Rate	21.59
Flow-based ($2.79/ccf)	14.80
Total Monthly Bill	**40.39**
Scotia Community Services District	
Fixed	42.50
Total Monthly Bill	**42.50**
City of Fort Bragg	
Fixed	22.47
Flow-based ($6.20/ccf)	32.65
Total Monthly Bill	**55.12**
City of Willits	
Fixed	61.58
Total Monthly Bill	**61.58**
Ukiah Valley Sanitation District	
Fixed	53.47
Flow-based ($4.45/ccf over 3.4)	8.80
Total Monthly Bill	**62.27**
City of Ukiah	
Fixed	60.39
Flow-based ($2.29/ccf)	11.85
Total Monthly Bill	**72.24**
City of Rio Dell (current)	
Fixed	76.16
Total Monthly Bill	**76.16**

Wastewater Capacity Fee

As part of the wastewater rate study, BWA also evaluated the City's wastewater capacity fee. The purpose of capacity fees is to recover the capital costs of facilities needed to serve growth and new customers. In establishing any fee or charge, achieving equity is one of the primary goals. In the case of capacity fees, this goal is often expressed as "growth should pay for growth". The fees must be reasonable and non-arbitrary and based on facility capital costs, user loads, and system capacity.

California Government Code Section 66013 contains the regulations regarding water and wastewater connection fees or capacity fees. It states that such fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fees or charges are imposed unless the amount of the fee or charge imposed in excess of the estimated reasonable cost of providing the services is submitted to the electorate and approved by two-thirds vote. The calculations provided below demonstrate the reasonable cost of service of providing wastewater service to the City's customers.

Capacity Fee Methodology

BWA used a System Buy-in Method for calculating the City's wastewater capacity fee. The buy-in concept is based on the premise that new customers are entitled to service at the same price as existing customers. Existing customers, however, have already provided the facilities that will serve the new customers, including any costs of financing those facilities. Under this method, new customers pay an amount equal to the investment already made by existing customers in the facilities. This equity investment is divided by the number of customers (or customer equivalents) to determine the amount of payment required from the new customer to buy in to the utility at parity with existing customers. Once new customers have paid their fee, they become equivalent to existing customers and share the responsibility for existing facilities. When additional costs are incurred for system improvements, replacement, or expansion, all customers share the costs of such improvements.

This method is appropriate because new customers are buying into the existing collection system and into the wastewater treatment plant. The City recently upgraded its wastewater treatment plant to come into compliance with a cease and desist order from the Regional Water Quality Control Board and to expand capacity. The improvements to the treatment plant benefit both existing and new customers and the costs of the improvements should be shared by both groups of customers. The project will increase capacity of treatment plant from 0.3 million gallons per day (mgd) to 0.5 mgd average dry weather flow. The expanded capacity will serve growth in the community through buildout. The total cost of the wastewater treatment plant expansion and improvements is $10.7 million. $6 million of the construction cost is offset by a grant and the remaining cost of $4.7 million will be financed through a loan from the Clean Water State Revolving Fund.

BWA calculated a buy-in cost to the City's collection system based on the replacement cost new less depreciation (RCNLD) value of existing facilities. This valuation method is based on the depreciated accounting book value of each asset escalated into current dollars based on the change in the Engineering News-Record (ENR) Construction Cost Index 20 Cities Average from each asset's original date. The ENR index is a widely-used index for determining construction cost inflation.

Capacity Fee Calculation

The City provided BWA with a list of wastewater system assets, the original construction or purchase price, useful life of the asset, and depreciation. In total, the RCNLD value of the wastewater system is about $11.35 million. HDR Engineering, the engineer for the wastewater treatment plant upgrade, determined that the average dry weather flow buildout capacity of the treatment plant will be 0.5 million gallons per day (mgd). $11.35 million divided by 0.5 mgd equals a capacity cost of $22.70 per gallon of dry weather flow per day. The average dry weather capacity per EDU is about 230 gallons [1] which equals a wastewater capacity fee of $5,220 ($22.70/gpd x 230 gallons), see Table 6.

Table 6
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Wastewater Capacity Fee Calculation

Asset Description	Date of Construction or Purchase	Useful Life (Months)	Original Cost	Total Accumulated Depreciation	Remaining Book Value	RCNLD[1]
Infrastructure						
Misc Infrastructure	12/15/2010	360	2,750,571	(183,977)	2,566,594	2,823,613
Building and Improvements						
Corp Yard Fencing	12/15/2009	84	8,310	(3,561)	4,749	5,186
Land						
Misc Land	2000		502,543	NA	502,543	502,543
Mach & Equip						
RIVER PUMP	1/16/2004	84	5,505	(5,505)	0	0
SEWER PUMP	2/4/2004	84	15,974	(15,974)	0	0
SEWER MACHINE	3/18/2004	84	36,310	(36,310)	0	0
SEWER PUMP	6/1/2004	84	16,031	(16,031)	0	0
SEWER PUMP	7/9/2004	84	38,460	(38,460)	0	0
SEWER PUMP	3/20/2006	84	13,357	(13,183)	174	213
Fernbridge Tractor	4/25/2008	84	11,148	(7,964)	3,184	3,705
Aqua Sierra Controls	6/30/2008	60	73,342	(73,342)	0	
2008 John Deere Tractor	3/15/2009	60	45,011	(34,008)	11,003	12,167
City Hall Heating Unit	11/9/2011	60	190	(38)	152	156
Vehicles						
1/2 2003 FORD F-351	8/30/2003	84	13,750	(13,750)	0	0
2008 Ford F-350	8/1/2008	60	12,386	(12,386)	0	0
1978 GMC Vactor Truck	5/6/2010	36	1,833	(1,833)	0	0
1993 Chevy S-10	7/28/2010	36	1,252	(1,252)	0	0
Construction in Progress						
CIP - Sewer Effluent Disposal	12/15/2012	480	3,291,939	0	3,291,939	3,300,683
Wastewater Treatment Plant (less grant)			10,700,000	(6,000,000)	4,700,000	4,700,000
Total Value of City Wastewater Facilities			**$17,537,910**	**($6,457,573)**	**$11,080,337**	**$11,348,265**
				Buildout dry weather flow (gallons/day)		500,000
				Buy-in cost per gallon of flow		$22.70
				Average dry weather flow per EDU (gallons/day)[2]		230
				Wastewater capacity fee per EDU		$5,220

1 - RCNLD is calculated by escalating the original cost to current dollars using the Engineering News Record Construction Cost Index 20 Cities Average.
2 - Calculated by BWA from information provided by HDR Engineering, Inc.

For new nonresidential customers, the City engineer should determine the EDU count of each new customer based on estimated wastewater flow and strength. The wastewater capacity fee for new nonresidential customers should be scaled to the EDU count.

[1]Calculated by BWA from information provided by Craig Olson, Project Manager for the Wastewater Treatment Plant upgrade, HDR Engineering, Inc. The current dry weather flow at the plant is approximately 0.3 mgd, divided by 1,292 EDUs equals a capacity of 230 gallons per day per EDU.

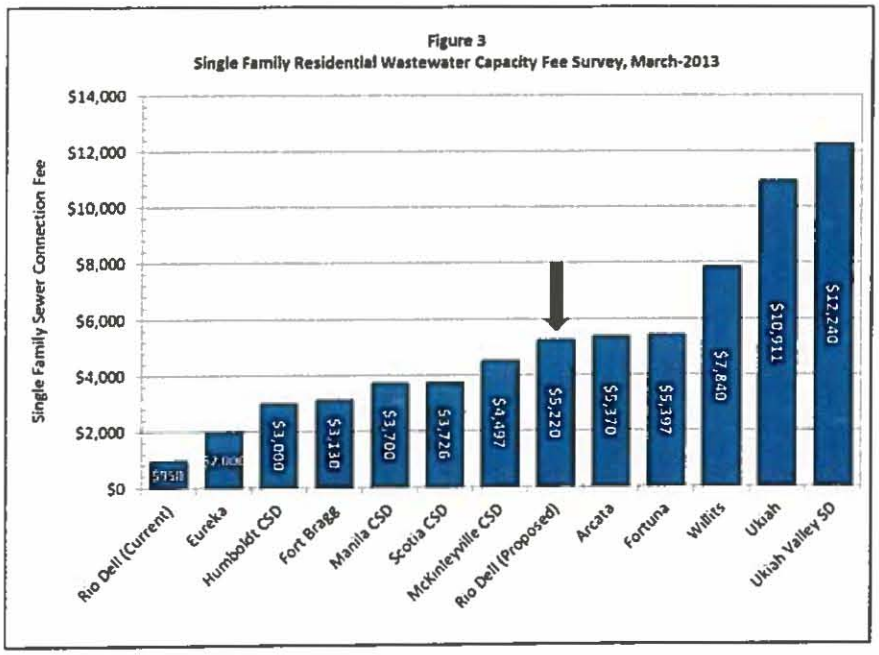
Capacity Fee Survey

The City's current wastewater capacity fee is $950 per EDU, the lowest in the region. The recommended capacity fee of $5,220 is competitive with other local agencies. BWA conducted a capacity fee survey of the typical fees for new single family connections and found that the fees range up to $12,240 (Ukiah Valley Sanitation District), see Table 7 and Figure 3.

Table 7
City of Rio Dell
Wastewater Rate and Capacity Fee Study
Wastewater Capacity Fee Survey - Single Family Residential Home

City of Rio Dell (Current)	**950.00**
City of Eureka	2,000.00
Humboldt Community Services District	3,000.00
City of Fort Bragg	3,129.59
Manila Community Services District[1]	3,700.00
Scotia Community Services District[2]	3,726.00
McKinleyville Community Services District	4,497.00
City of Rio Dell (Proposed)	**5,220.00**
City of Arcata	5,370.00
City of Fortuna[3]	5,397.00
City of Willits	7,840.00
City of Ukiah	10,911.00
Ukiah Valley Sanitation District[4]	12,240.00

1 - District has a STEP sewer system.
2 - Typical capacity fee as shown in the District's Rules and Regulations, includes many sub-charges based on acreage.
3 - Assumes 17 fixture units for the typical home at a cost of 317.50 per fixture unit.
4 - Wastewater capacity fee for a two bedroom house.



Adjusting Capacity Fees

Capacity fees should be adjusted regularly to prevent them from falling behind the costs of constructing new facilities. Several methods can be used to adjust the capacity fees, including:

- ENR Construction Cost Index: ENR (Engineering News-Record) magazine publishes construction cost indices monthly for 20 major U.S. cities and an average of 20 cities around the U.S. These indices can be used to estimate the change in the construction cost of facilities. If the ENR Index has increased by three percent since the last capacity fee adjustment, the capacity fee should be increased by three percent.
- U.S., California, or regional consumer price index.
- Interest rate and borrowing costs: The interest and borrowing costs for debt issued to finance wastewater capital projects can be added to the capacity fee annually.

BWA recommends that the City adjust its capacity fees annually by the change in the ENR Construction Cost Index 20 Cities Average. This is the most appropriate index because it directly reflects construction costs. Suggested language for implementing this policy is:

> Each year, commencing on __(m/d/y)__ and continuing thereafter on each __(m/d)__, the capacity fee shall be adjusted by an increment based on the change in the Engineering News-Record Construction Cost Index 20 Cities Average over the prior year. However, the City Council may at its option determine, by resolution adopted prior thereto, that such adjustment shall not be effective for the next succeeding year, or may determine other amounts as appropriate.

Capacity fees should also be reviewed in detail when updated information, such as a revised master plan or capital improvement program, is obtained, but not less than every five years.

Appendix A

Low Strength	Banks & Financial Institutions
	Barber Shops
	Hair Salon (hair cutting only)
	Dry Cleaners
	Laundromats
	Offices - Business and Professional
	Offices - Medical/Dental (without surgery)
	Post Offices
	Retail Stores
	Schools without cafeteria
	Car Wash
Domestic Strength	Residential - All
	Appliance Repair
	Auto Dealers - without Service Facilities
	Nail Salons
	Pet Groomers
	Bars & Taverns - without dining
	Camp Ground or RV Park
	Churches, Halls & Lodges
	Fire Stations
	Hotels, Motels, B&Bs, and Vacation Rentals (W/O restaurant)
	Libraries
	Rest Homes
	Shoe Repair Shops
	Theaters
	Warehouses
	Car Washes - Self Service
	High Tech Medical Manufacturing
	Light Manufacturing/Industrial
	Mobile Home Park
	Gas Station
	Gym or Health Club
	Schools with cafeteria
	Auto Dealers - with Service Facilities
	Machine Shops
	Service Stations, Garages, Auto Repair Shops
Medium Strength	Restaurants - W/O Dish Washer & Garbage Disposal
	Coffee Shops - W/O Dish Washer & Garbage Disposal
	Mini Marts - W/O Dish Washer & Garbage Disposal
	Mini Mart with Gas Pumps - W/O Dish Washer & Garbage Disposal
	Catering - W/O Dish Washer & Garbage Disposal
	Hotel/Motel with Restaurant
	Beauty Shops (hair cutting w/additional treatments)
	Hospitals - General, Convalescent & Veterinarian
	Medical Offices - with Surgery
	Dental Offices
High Strength	Restaurants - with Dish Washer or Garbage Disposal
	Coffee Shops - with Dish Washer or Garbage Disposal
	Catering - with Dish Washer or Garbage Disposal
	Bakeries
	Butcher Shops
	Fish Market/Shop
	Markets - with Dish Washer or Garbage Disposal
	Markets - with Bakeries or Butcher Shops
	Mini Marts - with Dish Washer or Garbage Disposal
	Wineries
	Cheese Makers
	Dairy Products (milk producers, yogurt, ice cream maker)
	Specialty Foods Manufacturing (e.g., olive oil maker)
	Ice Cream Shop
	Tasting Rooms
	Spa with Various Beauty Treatments
	Funeral Homes/ Mortuary

Rio Dell City hall
675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532
riodellcity.com

May 20, 2104

TO: Rio Dell City Council

FROM: Mayor Jack Thompson and Council Member Gordon Johnson, ORR Water System Subcommittee of the Council

SUBJECT: Release subcommittee and give City Manager Direction

IT IS RECOMMENDED THAT THE CITY COUNCIL:

1. Release the Old Ranch Road Water Users Subcommittee of the City Council and direct the City Manager to return on June 17, 2014 with an updated recommendation or status report, and

2. If the City Manager is not been able to reach an agreement with the ORR water users by the time the Prop. 218 hearing on water rate adjustments is planned, the Council directs that the ORR water service area be designated as a special out-of-City rate area subject to higher rates for the cost of the replacement of 2" water line along ORR and including road improvements from Monument Road, funds for the annual maintenance of the road and waterline and the cost of City staff to drive the road to read water meters, and

3. Approve the filing of a timber harvest plan for the 5.5 acre Monument Springs property in order to generate approximately $118,000 (net) for the Water Fund.

BACKGROUND AND DISCUSSION

On May 5, 2014 the Old Ranch Road (ORR) Subcommittee of the Council made its report to the full City Council concerning its meeting with 7 water customer families receiving water service from the ORR water line. At the time, a missing piece of the conversation was with the downhill neighboring property owner, Humboldt Redwood Company (HRC), with whom the City had corresponded.

On April 25, 2014 the City requested an easement from HRC for the placement of 4 water meters at the intersection of ORR and Monument Road and an easement across their property for 4 separate water lines for ORR customers. On May 7, 2014 the City Manager met with Mark Biaggi, Land Manager for HRC, and went over the request. Though he did not say no, he indicated that the Company was not inclined to enter into an easement agreement with that number of property owners. He suggested working with the property owner on the uphill side of ORR, one of our customers.

On May 8, 2014 the City Manager was informed by one of the customers that the uphill property owner, Linda Cidoni, was not willing to grant an easement across her property for her neighbor's laterals.

On May 12, 2014 a spokesperson for the group emailed all Council Members, asking for a study session on the matter and the involvement of Members of the Board of Supervisors.

At this point the parties are not all on the same page and the subcommittee believes that it has completed its assignment.

It is recommended that the City Council release the subcommittee of its assignment and refer the matter back to the City Manager for limited negotiation.

The City is presently engaged in a Water Capital Improvement Plan and Rate Study which should be ready for a Proposition 218 hearing in the next couple of months. If the City Manager, who has limited time available, is not been able to reach a mutual agreement with the ORR water users by the time the Prop. 218 hearing is planned, it is recommended that, as part of the water rate adjustment, the ORR water service area be designated as a special out-of-City rate area subject to higher rates for the replacement of 2" water line along ORR for 7 property owners currently using 4 meter, and including road improvements from Monument Road, funds for the maintenance of the road and waterline and the cost of City staff to drive the road to read water meters.

Further, the City has a recent timber appraisal for its 5.5 acre "springs property" indicating the net value of the timber for harvest is approximately $118,000. The cost of a timber harvest plan may cost approximately $10,500 and the estimated Timber Yield Tax due is $3,400. The net proceeds from the harvest are to be deposited in the Water fund.

675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532

For Meeting of: May 20, 2014

To: City Council

From: Kevin Caldwell, Community Development Director

Through: Jim Stretch, City Manager

Date: May 6, 2014

Subject: Text Amendment to the Commercial and Industrial Designations replacing the language "such as" with "similar to and including but not limited to" and to allow uses not specifically allowed with a Conditional Use Permit, but are similar to and compatible with the uses permitted in the zone with a Conditional Use Permit.

Recommendation:

That the City Council:

1. Receive staff's report regarding the proposed text amendment;

2. Re-Open the public hearing, receive public input, close the public hearing and deliberate;

3. Adopt Ordinance No. 316-2014 amending the Town Center regulations, Section 17.20.040(2), the Neighborhood Center regulations, Section 17.20.50(1)(c) and 17.20.050(2), the Community Commercial regulations, Section 17.20.060(1) and 17.20.060(2), the Industrial regulations, Section 17.20.100(1) and 17.20.100(2) and the Industrial Commercial regulations, Section 17.20.110(1) and 17.20.110(2) of the Rio Dell Municipal Code (RDMC).

4. Direct the City Clerk, within 15 days after adoption of the Ordinance, to post an adoption summary of the Ordinance with the names of those City Council members voting for or against, or otherwise voting in at least three (3) public places and to post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance pursuant to Section 36933(a) of the California Government Code.

Background/Summary

At your meeting of May 6, 2014 the Council conducted the first reading (introduction) of Ordinance No. 316-2014. The Ordinance will amend the City's commercial and industrial zones to eliminate the term "such as" and replace it with "similar to and including but not limited to". This provides staff some additional flexibility when considering use types that are not specifically identified in the zone.

In addition, staff is recommending that conditionally permitted use types in the Commercial and Industrial zones be expanded to allow "Any use not specifically enumerated if it is similar to and compatible with the uses permitted in the zone". Again, this provides flexibility for project proponents, when the use type is not specifically identified as a conditionally permitted use.

Zone Reclassification Required Finding:

1. The proposed amendment is consistent and compatible with the General Plan and any implementation programs that may be affected.

One of the six Goals identified in the Land Use Element of the General Plan is: "To grow sustainably, provide economic opportunities and local jobs". In addition, Land Use Policy LU-17 includes the following language: "Strengthen and diversify the local economy and maintain and improve property values." Furthermore, Land Use Policies LU-21 and LU-24 calls for in part "...the creation and retention of employment opportunities... and ...economic development in Rio Dell...". The proposed revisions to allow and facilitate economic opportunities is consistent with the Goals and Polices of the General Plan

2. The proposed amendments have been processed in accordance with the California Environmental Quality Act (CEQA).

The primary purpose of the California Environmental Quality Act (CEQA) is to inform the decision makers and the public of potential environmental effects of a proposed project.

Based on the nature of the project, staff has determined that the project is Statutorily Exempt pursuant to Section 15061(b) (3) of the CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations. Pursuant to Section 15061(b) (3) of the CEQA Guidelines this exemption is covered by the general rule that CEQA applies only to projects which have the potential for causing a ***significant*** effect on the environment. Where it can be seen with certainty that there

is no possibility that the project in question may have a significant effect on the environment, the project is not subject to CEQA. The text amendment to replace "such as" with "similar to and including but not limited to" and to allow similar and compatible uses with a Conditional Use Permit, will not affect whether or not the use is exempt from CEQA. Based on the minor nature of the proposed amendments, staff believes there is no evidence to suggest that the amendments will have a ***significant*** effect on the environment.

Financial Impact

The City is responsible for the costs associated with the proposed amendment. The cost is insignificant and will not result in additional budget expenditures or revisions.

Attachments:

1. Ordinance No. 316-2014 amending the Town Center regulations, Section 17.20.040(2), the Neighborhood Center regulations, Section 17.20.50(1)(c) and 17.20.050(2), the Community Commercial regulations, Section 17.20.060(1) and 17.20.060(2), the Industrial regulations, Section 17.20.100(1) and 17.20.100(2) and the Industrial Commercial regulations, Section 17.20.110(1) and 17.20.110(2) of the Rio Dell Municipal Code (RDMC).

2. Post Adoption Summary.

ORDINANCE NO. 316 – 2014

AMENDING THE COMMERCIAL AND INDUSTRIAL REGULATIONS, BY REPLACING THE LANGUAGE "SUCH AS" WITH "SIMILAR TO AND INCLUDING BUT NOT LIMITED TO" AND TO ALLOW USES NOT SPECIFICALLY ALLOWED WITH A CONDITIONAL USE PERMIT, BUT ARE SIMILAR TO AND COMPATIBLE WITH THE USES PERMITTED IN THE ZONE WITH A CONDITIONAL USE PERMIT. SECTIONS 17.20.040(2), 17.20.50(1)(c), 17.20.050(2), 17.20.060(1), 17.20.060(2), 17.20.100(1), 17.20.100(2), 17.20.110(1) and 17.20.110(2) OF THE RIO DELL MUNICIPAL CODE (RDMC).

THE CITY COUNCIL OF THE CITY OF RIO DELL ORDAINS AS FOLLOWS:

WHEREAS the City is often contacted by individuals interested in certain use types that may not be specifically identified as an allowed use in the zone the property is located; and

WHEREAS the City recently amended the Town Center development standards to include the following language: "similar to and including but not limited to"; and

WHEREAS this language allows staff some flexibility in determining whether or not a proposed use is similar to and compatible with the uses permitted in the zone; and

WHEREAS staff is recommending that the language "such as" be replaced with "similar to and including but not limited to" in the Commercial and Industrial zones; and

WHEREAS staff is also recommending that conditionally permitted use types in the Commercial and Industrial zones be expanded to allow "Any use not specifically enumerated if it is similar to and compatible with the uses permitted in the zone"; and

WHEREAS the City has reviewed and processed the proposed amendments in conformance with Sections 65350 – 65362 of the California Government Code; and

WHEREAS the City has reviewed and processed the proposed amendments in conformance with Section 17.35.010 of the City of Rio Dell Municipal Code; and

WHEREAS the City finds that based on evidence on file and presented in the staff report that the proposed amendments are consistent and compatible with the General Plan and any implementation programs that may be affected; and

WHEREAS the proposed amendments have been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA); and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Rio Dell finds that:

1. The proposed amendments are consistent with the General Plan and any applicable specific plan; and

2. The City has determined that the proposed amendment is Statutorily Exempt pursuant to Section 15061(b) (3) of the CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Rio Dell does hereby ordain as follows:

Section 1. Amendments

Section 17.20.040(2) Town Center or TC zone.

Section 17.20.040(2)(f) of the Rio Dell Municipal Code is hereby established as follows:

(f) Uses not specifically identified, but similar to and compatible with the uses permitted in the zone.

Sections 17.20.050(1)(c) and 17.20.050(2)(e) Neighborhood Center or NC zone.

Section 17.20.050(1)(c) of the Rio Dell Municipal Code is hereby amended as follows:

(c) Stores, agencies and services of a light commercial character, conducted entirely within an enclosed building, ~~such as~~ **including, but not limited to** antique shops, art galleries, retail bakeries, banks, barber shops, beauty salons, bookstores, clothing and apparel stores, coin-operated dry cleaning and laundries, dry cleaning and laundry agencies, drug stores, florists, food markets, furniture stores, hardware and appliance stores, radio and television sales and services, restaurants and licensed premises appurtenant thereto, automobile service stations and repair, studios, tailor shops, enclosed theaters, and variety stores;

Section 17.20.050(2)(e) of the Rio Dell Municipal Code is hereby established as follows:

(e) Uses not specifically identified, but similar to and compatible with the uses permitted in the zone.

Sections 17.20.060(1). 17.20.060(2)(c) and 17.20.060(2)(e) Community Commercial or CC zone.

Section 17.20.060(1) of the Rio Dell Municipal Code is hereby amended as follows:

(1) Principal Permitted Uses**, including, but not limited to:**

Section 17.20.060(2)(c) of the Rio Dell Municipal Code is hereby amended as follows:

(c) Stores, agencies and services ~~such as~~ **including, but not limited to** carpentry and cabinet-making shops, clothing manufacture, contractors' yards, dry cleaning and laundry plants, handicraft manufacture, lumber yards, metalworking shops, wholesale outlet stores, painters' and decorators' yards, plumbing shops, printing and lithographic;

Section 17.20.060(2)(e) of the Rio Dell Municipal Code is hereby established as follows:

(e) Uses not specifically identified, but similar to and compatible with the uses permitted in the zone.

Sections 17.20.100(1) and 17.20.100(2)(c) Industrial or I zone.

Section 17.20.100(1) of the Rio Dell Municipal Code is hereby amended as follows:

(1) Principal Permitted Uses**, including, but not limited to:**

Section 17.20.100(2)(c) of the Rio Dell Municipal Code is hereby established as follows:

(c) Uses not specifically identified, but similar to and compatible with the uses permitted in the zone.

Sections 17.20.110(1) and 17.20.110(2)(c) Industrial Commercial or IC zone.

Section 17.20.110(1) of the Rio Dell Municipal Code is hereby amended as follows:

(1) Principal Permitted Uses**, including, but not limited to:**

Section 17.20.110(2)(c) of the Rio Dell Municipal Code is hereby established as follows:

(c) Uses not specifically identified, but similar to and compatible with the uses permitted in the zone.

Section 2. Severability

If any provision of the ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

Section 3. Limitation of Actions

Any action to challenge the validity or legality of any provision of this ordinance on any grounds shall be brought by court action commenced within ninety (90) days of the date of adoption of this ordinance.

Section 4. CEQA Compliance

The City Council has determined that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines. The text amendment to replace "such as" with "similar to and including but not limited to" and to allow similar and compatible uses with a Conditional Use Permit, will not affect whether or not the use is exempt from CEQA. Due to the nature of the proposed code revision, there is no evidence that a ***significant*** impact to the environment would occur as a result of adoption of the Ordinance.

Section 5. Effective Date

This ordinance becomes effective thirty (30) days after the date of its approval and adoption.

I HEREBY CERTIFY that the forgoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Rio Dell on May 6, 2014 and furthermore the forgoing Ordinance was passed, approved and adopted at a regular meeting of the City Council of the City of Rio Dell, held on the 20th of May 2014 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jack Thompson, Mayor

ATTEST:

I, Karen Dunham, City Clerk for the City of Rio Dell, State of California, hereby certify the above and foregoing to be a full, true and correct copy of Ordinance No. 316-2014 adopted by the City Council of the City of Rio Dell on May 20, 2014.

_____
Karen Dunham, City Clerk, City of Rio Dell

675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532

Public Notice
City of Rio Dell City Council
SUMMARY FOR POSTING AFTER ADOPTION OF ORDINANCE

(The summary shall be published or posted within 15 calendar days after the adoption of the ordinance)

Summary

On **Tuesday, May 20, 2014 at 6:30 p.m.**, the Rio Dell City Council held a public hearing in the City Council Chamber at City Hall and approved and adopted **Ordinance No. 316-2014** amending the Commercial and Industrial Designations by replacing the language "such as" with "similar to and including but not limited to" and to allow uses not specifically allowed with a Conditional Use Permit, but are similar to and compatible with the uses permitted in the zone with a Conditional Use Permit.

Section 36933(a) of the California Government Code requires that the City Clerk, to post a summary of the Ordinance within 15 days of adoption with the names of those City Council members voting for or against, or otherwise voting in at least three (3) public places and to post in the office of the City Clerk a certified copy of the full text of the adopted Ordinance. Said Ordinance was passed, approved and adopted at a regular meeting of the City Council of the City of Rio Dell, held on the May 20, 2014 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

A certified copy of the full text of the Ordinance is posted in the office of the City Clerk at 675 Wildwood Avenue in Rio Dell. General questions regarding the Ordinance and the process should be directed to Kevin Caldwell, Community Development Director, (707) 764-3532.

675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532

For Meeting of: May 20, 2014

To: City Council

From: Kevin Caldwell, Community Development Director

Through: Jim Stretch, City Manager

Date: May 6, 2014

Subject: Text Amendment Establishing Density Bonus Regulations, Sections 17.30.073 of the Rio Dell Municipal Code (RDMC).

Recommendation:

That the City Council:

1. Receive staff's report regarding the proposed text amendment;

2. Open the public hearing, receive public input, and deliberate; and

3. Introduce Ordinance No. 318-2014 establishing Density Bonus Regulations, Section 17.30.073 of the Rio Dell Municipal Code (RDMC).

4. Continue consideration, approval and adoption of the proposed Ordinance to your meeting of June 3, 2014 for the second reading and adoption.

Background

State Density Bonus Law, Government Code Section 65915, was first enacted in 1979. In 2005 significant changes were made to the State's Density Bonus Law, including a requirement that Cities and Counties adopt local regulations implementing Government Code Section 65915.

The law requires local governments to provide density bonuses and other incentives to developers of affordable housing who commit to providing a certain percentage of dwelling units to persons whose income do not exceed specific thresholds. Cities also must provide bonuses to certain developers of senior housing developments, and in response to certain donations of land and the inclusion of childcare centers in some developments.

Essentially, state density bonus law establishes that a residential project of five or more units that provides affordable or senior housing at specific affordability levels may be eligible for:

- a "density bonus" to allow more dwelling units than otherwise allowed on the site by the applicable General Plan Land Use Map and Zoning;
- use of density bonus parking standards;
- incentives reducing site development standards or a modification of zoning code or architectural requirements that result in financially sufficient and actual cost reductions;
- waiver of development standards that would otherwise make the increased density physically impossible to construct;
- an additional density bonus if a childcare facility is provided.

The density bonus may be approved only in conjunction with a development permit (i.e., tentative map, parcel map, use permit or design review). Under State law, a jurisdiction must provide a density bonus, and incentives will be granted at the applicant's request based on specific criteria. These bonuses and incentives will be granted based on the following criteria:

Table 1: Criteria for Density Bonuses and Incentives for Affordable Housing

Target Group*	Target Units	Density Bonus	Incentives
Very Low Income[1]	5%	20%	1
	10%	33%	2
	15% or above	35%	3
Lower Income[2]	10%	20%	1
	20%	35%	2
	30% or above	35%	3
Moderate Income[3] (condominium or planned development)	10%	5%	1
	20%	15%	2
	30% or above	25%	3

** California Civil Code Section 65915 applies only to proposed developments of five (5) or more units.*

(1) For each 1% increase over 5% of the Target Units the Density Bonus shall be increased by 2.5% up to a maximum of 35%

(2) For each 1% increase over 10% of the Target Units the Density Bonus shall be increased by 1.5% up to a maximum of 35%

(3) For each 1% increase over 10% of the Target Units the Density Bonus shall be increased by 1% up to a maximum of 35%

Table 2: Criteria for Density Bonuses and Incentives for Senior Housing and Land Donation

Target Group	Target Units	Density Bonus	Concession or Incentives
Senior Housing [1]	100%	20%	1
Land Donation [2]	10% Very Low Income	15% - 35%	1

(1) 35 units dedicated to senior housing as defined in Civil Code Sections 51.3 and 51.12
(2) For each 1% increase over 10% of the Target Units the Density Bonus shall be increased by 1% up to a maximum of 35%

Table 3: Density Bonus Parking Standards Compared to Rio Dell Municipal Code

Type of Use	City Requirement	State Density Bonus Requirement
Studio	**1 space**	**1 space**
1 Bedroom	**1 space**	**1 space**
2 Bedroom	**2 spaces**	**2 spaces**
3 Bedroom	**2 spaces**	**2 spaces**
Guest Parking	**.5 spaces per unit**	**0 spaces**

State Density Bonus law provides that if the criteria above are met then the jurisdiction essentially has no grounds for denying density bonuses or use of the density bonus parking standards. A jurisdiction has limited grounds for denying incentives and waivers. A jurisdiction can deny incentives and waivers if, for example, (1) it violates state or federal laws, (2) it is not needed economically (for incentives only), (3) there are adverse health and safety effects, (4) there is an impact on an historic structure, and, for waivers only, (5) it does not physically preclude development.

If a child care center is also included in the affordable or senior housing development, the local agency shall grant either an additional density bonus equal to or greater than the amount of square feet of the child care center or grant an additional incentive that contributes significantly to the economic feasibility of the construction of the child care facility, with the following additional requirements:

- The child care facility shall remain in operation for a period of time as long as the term of the affordable units;
- The percentage of children from very low-, low- and moderate income-families reflects the percentage of affordable units in the development;
- The local agency shall not be required to provide a density bonus or concession for a child care facility if it finds that the community has adequate child care facilities.

Discussion

Even without local Density Bonus regulations, the City is obligated consider and approve density bonuses if the State criteria is met. However, now the City is obligated to adopt a local Density Bonus Ordinance. The proposed Ordinance would formalize the process for implementing the review of density bonuses and related parking standards, incentives and waivers. Staff has crafted the ordinance to rely, as much as possible, on the standards and requirements contained in State law, so that if provisions in State law are amended in the future, the City's regulations will not necessarily need to be amended.

State Density Bonus Law includes the following definitions of terms used in the proposed regulations:

Density Bonus (Section 65915(f)
For the purposes of the Density Bonus regulations, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county or city and county. The applicant may elect to accept a lesser percentage of a density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

Concession or Incentive (Section 65915(k)
For the purposes of the Density Bonus regulations, concession or incentive means any of the following:

1. A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

2. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

3. Other regulatory incentives or concessions proposed by the developer of the city, county or city and county that result in identifiable, financially sufficient, and actual cost reductions.

The provisions of the recommended Density Bonus Regulations are summarized below in Table 4.

Table 4: Proposed Density Bonus Regulations

Provision	Proposed	Comments/Options
Purpose	The purpose of these regulations is to adopt an ordinance that specifies how compliance with Government Code Section 65915 ("State Density Bonus Law") will be implemented in an effort to encourage the production of affordable housing units in developments proposed within the City.	The purpose is to implement State Density Bonus Law and encourage production of affordable housing.
Definitions	Unless otherwise specified in the regulations, the definitions found in State Density Bonus Law shall apply to the terms contained herein.	Definitions in State Bonus Density law will apply
Applicability	This Chapter shall apply to all zoning districts, including mixed use zoning districts, where residential developments of five or more dwelling units are proposed and where the applicant seeks and agrees to provide low, very-low or moderate income or senior housing units in the threshold amounts specified in State Density Bonus Law such that the resulting density is beyond that which is permitted by the applicable zoning. This Chapter and State Density Bonus Law shall apply only to the residential component of a mixed use project and shall not operate to increase the allowable density of the non-residential component of any proposed project.	Applicability is for development of five units or more, per the definition of "housing development" provided in Section 65915(i).
Application Requirements	A. Any applicant requesting a density bonus, incentive(s), waiver(s) and/or use of density bonus parking standards pursuant to State Density Bonus Law shall provide the City with a written proposal. The proposal shall be submitted prior to or concurrently with the filing of the planning application for the housing development and shall be processed in conjunction with the underlying application.	A request for a density bonus shall be made in writing. A request for an incentive will require a pro forma or other report showing "identifiable, financially sufficient and actual cost reductions" because that is the standard the City is allowed to utilize to review the request.

Provision	Proposed	Comments/Options
Application Requirements Continued...	B. The proposal for a density bonus, incentive(s) and/or waiver(s) pursuant to State Density Bonus Law shall include the following information: 1. Requested density bonus. The specific requested density bonus proposal shall include evidence that the project meets the thresholds for State Density Bonus Law. The proposal shall also include calculations showing the maximum base density, the number/percentage of affordable units and identification of the income level at which such units will be restricted, additional market rate units resulting from the density bonus allowable under State Density Bonus Law and the resulting unit per acre density. The density bonus units shall not be included in determining the percentage of base units that qualify a project for a density bonus pursuant to State Density Bonus Law. 2. Requested incentive(s). The request for particular incentive(s) shall include a pro forma or other report evidencing that the requested incentive(s) results in identifiable, financially sufficient and actual cost reductions that are necessary to make the housing units economically feasible. The report shall be sufficiently detailed to allow the City to verify its conclusions. If the City requires the services of specialized financial consultants to review and corroborate the analysis, the applicant will be responsible for all costs incurred in reviewing the documentation. 3. Requested Waiver(s). The written proposal shall include an explanation of the waiver(s) of development standards requested and why they are necessary to make the construction of the project physically possible. Any requested waiver(s) shall not exceed the limitations provided by Section 17.30.073(8) and to the extent such limitations are exceeded will be	A request for a waiver of development standards shall specify why the waiver is necessary to make the construction of the project physically possible.

Provision	Proposed	Comments/Options
Application Requirements Continued...	considered as a request for an incentive pursuant to Section 17.30.073(6) 4. Fee. Payment of the fee in an amount set by Resolution of the City Council to reimburse the City for staff time spent reviewing and processing the State Density Bonus Law application submitted pursuant to these regulations.	As with all projects, applicants are required to pay "actual costs".
Density Bonus	A. A density bonus for a housing development means a density increase over the otherwise maximum allowable residential density under the applicable zoning and land use designation on the date the application is deemed complete. The amount of the allowable density bonus shall be calculated as provided in State Density Bonus Law. The applicant may select from only one of the income categories identified in State Density Bonus Law and may not combine density bonuses from different income categories to achieve a larger density bonus. B. The body with approval authority for the planning approval sought will approve, deny or modify the request for a density bonus, incentive, waiver or use of density bonus parking standards in accordance with State Density Bonus Law and these regulations. Additionally, nothing herein prevents the City from granting a greater density bonus and additional incentives or waivers than that provided for herein, or from providing a lesser density bonus and fewer incentives and waivers than that provided for herein, when the housing development does not meet the minimum thresholds.	The review and approval of the request would be by the body with approval authority for the planning approval sought. For example, the Planning Commission would review a request submitted with a Subdivision or Use Permit. The Planning Commission and City Council would review a request submitted with a Rezoning/General Plan Amendment.
Incentives	A. The number of incentives granted shall be based upon the number the applicant is entitled to pursuant to State Density Bonus Law. B. An incentive includes a reduction in site development standards or a modification of zoning code requirements or architectural requirements that result in identifiable,	This section references State Density Bonus Law for the review of incentives, including grounds for denial.

Provision	Proposed	Comments/Options
Incentives Continued...	financially sufficient and actual cost reductions. An incentive may be the approval of mixed use zoning (e .g. commercial) in conjunction with a housing project if the mixed use will reduce the cost of the housing development and is compatible with the housing project. An incentive may, but need not be, the provision of a direct financial incentive, such as the waiver of fees. C. A requested incentive may be denied only for those reasons provided in State Density Bonus Law. Denial of an incentive is a separate and distinct act from a decision to deny or approve the entirety of the project.	
Discretionary Approval Authority Retained	The granting of a density bonus or incentive(s) shall not be interpreted in and of itself to require a general plan amendment, zoning change or other discretionary approval. If an incentive would otherwise trigger one of these approvals, when it is granted as an incentive, no general plan amendment, zoning change or other discretionary approval is required. However, if the base project without the incentive requires a general plan amendment, zoning change or other discretionary approval, the City retains discretion to make or not make the required findings for approval of the base project.	The granting of a density bonus or incentive does not trigger the need for a general plan amendment, zoning change or other approval (65915(j). As an example, if a Use Permit for a development project at 35 units per acre is consistent with the maximum density allowed by the General Plan and Zoning, but the applicant seeks a density bonus that results in a density of more than 35 units per acre, a General Plan Amendment or Rezoning is not required.
Waivers	A waiver is a modification to a development standard such that construction at the increased density would be physically possible. Development standards, include, but are not limited to, a height limitation, a setback requirement, minimum floor areas, an onsite open space requirement, or a parking ratio that applies to a residential development. An	To request a waiver of a development standard, the applicant must show that without the waiver, the project would be physically impossible to construct (65915(e)).

Provision	Proposed	Comments/Options
Waivers Continued...	applicant may request a waiver of any development standard to make the project physically possible to construct at the increased density. To be entitled to the requested waiver, the applicant must show that without the waiver, the project would be physically impossible to construct. There is no limit on the number of waivers.	
Affordable Housing Agreement	Prior to issuance of a building permit, the applicant shall enter into an Affordable Housing Agreement with the City to the satisfaction of the City Attorney guaranteeing the affordability of the rental or ownership units for a minimum of thirty (30) years, identifying the type, size and location of each affordable unit and containing requirements for administration, reporting and monitoring. Such Affordable Housing Agreement shall be recorded in the Humboldt County Recorder's Office.	The minimum term of 30 years for affordable units is specified in Section 65915(c)(1).
Design and Quality	A. Affordable units must be constructed concurrently with market-rate units and shall be integrated into the project. Affordable units shall be of equal design and quality as the market rate unit. Exteriors and interiors, including architecture, elevations, floor plans, interior finishes and amenities of the affordable units shall be similar to the market rate units. The number of bedrooms in the affordable units shall be consistent with the mix of market rate units. This section may be waived or modified on a case by case basis for affordable housing units developed for special groups, including housing for special needs or seniors. B. Parking standards may be modified as allowable under the State Density Bonus Law and anything beyond those standards shall be considered a request for an incentive.	Affordable units shall be constructed concurrently and integrated into the project with equal design and quality as the market rate units. This section may be waived or modified for affordable units developed for special groups, such as housing for special needs or seniors. Such housing may need to be grouped for financing or design reasons.

Procedures for Zoning Ordinance Amendments

Pursuant to Section 17.35.010 of the City of Rio Dell Municipal Code, the following City procedures are required to amend the Ordinance:

- An amendment may be initiated by one or more owners of property affected by the proposed amendment, as set out in Section 17.35.010(3), or by action of the Planning Commission, or the City Council.

- The application of one or more property owners for the initiation of an amendment shall be filed in the office of the City Clerk on a form provided, accompanied by a filing fee.

- Subject only to the rules regarding the placing of matters on the Planning Commission agenda, the matter shall be set for a public hearing.

- Notice of hearing time and place shall be published once in a newspaper of general circulation at least ten calendar days before the hearing or by posting in at least three public places.
- At the public hearing, the Planning Commission shall hear any person affected by the proposed amendment. The hearing may be continued from time to time.

- Within 40 days of the conclusion of the hearing, the Planning Commission shall submit to the City Council a written report of recommendations and reasons therefore.

- Subject only to the rules regarding the placing of matters on its agenda, the City Council, at its next regular meeting following the receipt of such report, shall cause the matter to be set for a public hearing. Notice of the time and place of the hearing shall be given as provided in Section 17.35.010(5), hereof.

- At the public hearing, the City Council shall hear any person affected by the proposed amendment. The hearing may be continued to a specified future date, but shall be concluded within 60 days of the commencement thereof.

- The City Council shall not make any change in the proposed amendment until the proposed change has been referred to the Planning Commission for a report, and the Planning Commission report has been filed with the City Council.

Zone Reclassification Required Findings:

1. The proposed amendment is consistent and compatible with the General Plan and any implementation programs that may be affected.

The proposed establishment of Density Bonus regulations is consistent with the Goals and Polices of the General Plan. Goal A of the Housing Element calls for "A variety of housing types to meet the needs of all economic segments of the community including those with special housing requirements." Policy A-5 of the Housing Element encourages density bonuses for developments providing housing for low to moderate income households and for qualifying senior housing projects. In addition, the Action Plan of the Housing Element calls for the development of a Density Bonus Ordinance consistent with State law.

2. The proposed amendments have been processed in accordance with the California Environmental Quality Act (CEQA).

The primary purpose of the California Environmental Quality Act (CEQA) is to inform the decision makers and the public of potential environmental effects of a proposed project.

Based on the nature of the project, staff has determined that the proposed Density Bonus Ordinance is exempt from the California Environmental Quality Act (CEQA) because: (1) the Ordinance is not a discretionary project pursuant to Public Resources Code Section 21080(a); and (2) the Ordinance is a ministerial project pursuant to Public Resources Code Section 21080(b) and CEQA Guideline Section 15268(a) since the Ordinance simply adopts the density bonus standards otherwise required by Government Code Section 65915. Therefore, the Density Bonus Ordinance is exempt from CEQA pursuant to CEQA Guidelines 15061(b)(1), 15061(b)(2) and 15061(b)(3).

Financial Impact

The City is responsible for the costs associated with the proposed amendment. The cost is insignificant and will not result in additional budget expenditures or revisions.

Attachments:

1. Draft Ordinance No. 318-2014 establishing Density Bonus Regulations, Section 17.30.073 of the Rio Dell Municipal Code (RDMC).

2. "The Density Bonus Law: Has Its Time Finally Arrived?" by David Blackwell, California Real Property Journal, Volume 29, Number 4, 2011.

3. "Maximizing Density Through Affordability," by Jon E. Goetz and Tom Sakai, Kronick Moskovitz Tiedemann & Girard, 2012.

ORDINANCE NO. 318 – 2014

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIO DELL
ESTABLISHING DENSITY BONUS REGULATIONS,
SECTION 17.30.073 OF THE RIO DELL MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF RIO DELL ORDAINS AS FOLLOWS:

WHEREAS State Density Bonus Law, Government Code Section 65915, was first enacted in 1979; and

WHEREAS in 2005 significant changes were made to the State's Density Bonus Law, including a requirement that Cities and Counties adopt local regulations implementing Government Code Section 65915; and

WHEREAS the law requires local governments to provide density bonuses and other incentives to developers of affordable housing who commit to providing a certain percentage of dwelling units to persons whose income do not exceed specific thresholds; and

WHEREAS cities also must provide bonuses to certain developers of senior housing developments, and in response to certain donations of land and the inclusion of childcare centers in some developments; and

WHEREAS the density bonus may be approved only in conjunction with a development permit (i.e., tentative map, parcel map, use permit or design review); and

WHEREAS under State law, a jurisdiction must provide a density bonus, and incentives will be granted at the applicant's request based on specific criteria; and

WHEREAS State Density Bonus law provides that if certain criteria is met then the jurisdiction essentially has no grounds for denying density bonuses or use of the density bonus parking standards; and

WHEREAS a jurisdiction has limited grounds for denying incentives and waivers. A jurisdiction can deny incentives and waivers if, for example, (1) it violates state or federal laws, (2) it is not needed economically (for incentives only), (3) there are adverse health

and safety effects, (4) there is an impact on an historic structure, and, for waivers only, (5) it does not physically preclude development; and

WHEREAS the proposed establishment of Density Bonus regulations is consistent with the Goals and Polices of the General Plan. Goal A of the Housing Element calls for "A variety of housing types to meet the needs of all economic segments of the community including those with special housing requirements."; and

WHEREAS Policy A-5 of the Housing Element encourages density bonuses for developments providing housing for low to moderate income households and for qualifying senior housing projects. In addition, the Action Plan of the Housing Element calls for the development of a Density Bonus Ordinance consistent with State law; and

WHEREAS the City has reviewed and processed the proposed amendment in conformance with Sections 65350 – 65362 of the California Government Code; and

WHEREAS the City has reviewed and processed the proposed amendment in conformance with Section 17.35.010 of the City of Rio Dell Municipal Code; and

WHEREAS the City finds that based on evidence on file and presented in the staff report that the proposed amendment is consistent and compatible with the General Plan and any implementation programs that may be affected; and

WHEREAS the proposed amendment has been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act (CEQA); and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Rio Dell does hereby ordain as follows:

Section 1.

17.30.073 Density Bonus

Section 17.30.073(1) Purpose.

The purpose of this Chapter is to adopt an ordinance that specifies how compliance with Government Code Section 65915 ("State Density Bonus Law") will be implemented in an effort to encourage the production of affordable housing units in developments proposed within the City.

Section 17.30.073(2) Definitions.

Unless otherwise specified in this Chapter, the definitions found in State Density Bonus

Law shall apply to the terms contained herein.

Section 17.30.073(3) Applicability.

These regulations shall apply to all zoning districts where residential developments of five or more dwelling units are proposed and where the applicant seeks and agrees to provide low, very-low or moderate income or senior housing units in the threshold amounts specified in State Density Bonus Law such that the resulting density is beyond that which is permitted by the applicable zoning. These regulations and State Density Bonus Law shall apply only to the residential component of a mixed use project and shall not operate to increase the allowable density of the nonresidential component of any proposed project.

Section 17.30.073(4) Application Requirements.

(a) Any applicant requesting a density bonus, incentive(s), waiver(s) and/or use of density bonus parking standards. The proposal shall be submitted prior to or concurrently with the filing of the planning application for the housing development and shall be processed in conjunction with the underlying application.

(b) The proposal for a density bonus, incentive(s) and/or waiver(s) pursuant to State Density Bonus Law shall include the following information:

1. Requested density bonus. The specific requested density bonus proposal shall include evidence that the project meets the thresholds for State Density Bonus Law. The proposal shall also include calculations showing the maximum base density, the number/percentage of affordable units and identification of the income level at which such units will be restricted, additional market rate units resulting from the density bonus allowable under State Density Bonus Law and the resulting unit per acre density. The density bonus units shall not be included in determining the percentage of base units that qualify a project for a density bonus pursuant to State Density Bonus Law.

2. Requested incentive(s). The request for particular incentive(s) shall include a pro forma or other report evidencing that the requested incentive(s) results in identifiable, financially sufficient and actual cost reductions that are necessary to make the housing units economically feasible. The report shall be sufficiently detailed to allow the City to verify its conclusions. If the City requires the services of specialized financial consultants to review and corroborate the analysis, the applicant will be responsible for all costs incurred in reviewing the documentation.

3. Requested Waiver(s). The written proposal shall include an explanation of the waiver(s) of development standards requested and why they are necessary to make the construction of the project physically possible. Any requested waiver(s) shall not exceed the limitations provided by Section 17.30.073(8) and to the extent such limitations are

exceeded will be considered as a request for an incentive pursuant to Section 17.30.073(6).

4. Fee. Payment of the fee/deposit in an amount set by resolution of the City Council to reimburse the City for staff time spent reviewing and processing the State Density Bonus Law application submitted pursuant to these regulations.

Section 17.30.073(5) Density Bonus.

(a) A density bonus for a housing development means a density increase over the otherwise maximum allowable residential density under the applicable zoning and land use designation on the date the application is deemed complete. The amount of the allowable density bonus shall be calculated as provided in State Density Bonus Law. The applicant may select from only one of the income categories identified in State Density Bonus Law and may not combine density bonuses from different income categories to achieve a larger density bonus.

(b) The body with approval authority for the planning approval sought will approve, deny or modify the request for a density bonus, incentive, waiver or use of density bonus parking standards in accordance with State Density Bonus Law and these regulations. Additionally, nothing herein prevents the City from granting a greater density bonus and additional incentives or waivers than that provided for herein, or from providing a lesser density bonus and fewer incentives and waivers than that provided for herein, when the housing development does not meet the minimum thresholds.

Section 17.30.073(6) Incentives

(a) The number of incentives granted shall be based upon the number the applicant is entitled to pursuant to State Density Bonus Law.

(b) An incentive includes a reduction in site development standards or a modification of zoning code requirements or architectural requirements that result in identifiable, financially sufficient and actual cost reductions. An incentive may be the approval of mixed use zoning (e.g. commercial) in conjunction with a housing project if the mixed use will reduce the cost of the housing development and is compatible with the housing project. An incentive may, but need not be, the provision of a direct financial incentive, such as the waiver of fees.

(c) A requested incentive may be denied only for those reasons provided in State Density Bonus Law. Denial of an incentive is a separate and distinct act from a decision to deny or approve the entirety of the project.

Section 17.30.073(7) Discretionary Approval Authority Retained.

The granting of a density bonus or incentive(s) shall not be interpreted in and of itself to require a general plan amendment, zoning change or other discretionary approval. If an incentive would otherwise trigger one of these approvals, when it is granted as an incentive, no general plan amendment, zoning change or other discretionary approval is required. However, if the base project without the incentive requires a general plan amendment, zoning change or other discretionary approval, the City retains discretion to make or not make the required findings for approval of the base project.

Section 17.30.073(8) Waivers.

A waiver is a modification to a development standard such that construction at the increased density would be physically possible. Development standards, include, but are not limited to, a height limitation, a setback requirement, minimum floor areas, an onsite open space requirement, or a parking ratio that applies to a residential development. An applicant may request a waiver of any development standard to make the project physically possible to construct at the increased density. To be entitled to the requested waiver, the applicant must show that without the waiver, the project would be physically impossible to construct. There is no limit on the number of waivers.

Section 17.30.073(9) Affordable Housing Agreement

Prior to issuance of a building permit, the applicant shall enter into an Affordable Housing Agreement with the City to the satisfaction of the City Attorney guaranteeing the affordability of the rental or ownership units for a minimum of thirty (30) years, identifying the type, size and location of each affordable unit and containing requirements for administration, reporting and monitoring. Such Affordable Housing Agreement shall be recorded in the Humboldt County Recorder's Office.

Section 17.30.073(10) Design and Quality.

(a) Affordable units must be constructed concurrently with market-rate units and shall be integrated into the project. Affordable units shall be of equal design and quality as the market rate unit. Exteriors and interiors, including architecture, elevations, floor plans, interior finishes and amenities of the affordable units shall be similar to the market rate units. The number of bedrooms in the affordable units shall be consistent with the mix of market rate units. This section may be waived or modified on a case by case basis for affordable housing units developed for special groups, including housing for special needs or seniors.

(b) Parking standards may be modified as allowable under the State Density Bonus Law and anything beyond those standards shall be considered a request for an incentive.

Section 2. Severability

If any provision of the ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

Section 3. Limitation of Actions

Any action to challenge the validity or legality of any provision of this ordinance on any grounds shall be brought by court action commenced within ninety (90) days of the date of adoption of this ordinance.

Section 4. Effective Date

This ordinance becomes effective thirty (30) days after the date of its approval and adoption.

I HEREBY CERTIFY that the forgoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Rio Dell on May 20, 2014 and furthermore the forgoing Ordinance was passed, approved and adopted at a regular meeting of the City Council of the City of Rio Dell, held on the June 3, 2014 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jack Thompson, Mayor

ATTEST:

I, Karen Dunham, City Clerk for the City of Rio Dell, State of California, hereby certify the above and foregoing to be a full, true and correct copy of Ordinance No. 318-2014 which was passed, approved and adopted at a regular meeting of the City Council of the City of Rio Dell, held on the June 3, 2014.

_____
Karen Dunham, City Clerk, City of Rio Dell

The Density Bonus Law: Has Its Time Finally Arrived?

By David H. Blackwell

I. INTRODUCTION

The confluence of a declining single-family market and a growing emphasis on "smart growth" infill projects has created an increased demand for urban multifamily development.[1] These projects, particularly those that include affordable housing units, face considerable financial and political constraints. To make such projects feasible, some California developers rely on California's Density Bonus Law.[2] In general, this statute allows developers whose housing development[3] proposals meet certain thresholds of affordability to receive density bonuses,[4] incentives, and development waivers from the local agency.

The Density Bonus Law is not well-organized, however, and its application by cities and counties (collectively "cities") varies considerably throughout the state. As noted during the most recent attempt to clean up the statute in 2008:

> Due to the substantial changes the law has undergone over the years, it is confusing to interpret and is the subject of numerous debates as to both its intent and its actual requirements. Developers and cities frequently clash over what the law dictates, with developers increasingly demanding concessions and waivers that cities do not feel they should have to grant under the law.[5]

Unfortunately, there is little guidance from the courts, as only a handful of published appellate court decisions have examined the Density Bonus Law since its adoption in 1979. In particular, the courts have not yet addressed in any detail how much discretion a city retains to condition or *deny* a proposed project that otherwise qualifies under the Density Bonus Law. As with any exercise of police power, local development requirements cannot be imposed in a manner that conflicts with state statutes. However, the application of this limitation to specific projects is often disputed.

A few key cases, however, have provided limited insight into the application of the Density Bonus Law to promote development and the corresponding limitations imposed upon cities. Most recently, the court in *Wollmer v. City of Berkeley* ("*Wollmer II*")[6] provided some guidance concerning the scope of the statute and underscored the courts' growing reluctance to constrain cities' ability to use the Density Bonus Law to promote the development of affordable housing units. However, even the *Wollmer II* decision leaves questions unanswered.

The Density Bonus Law has the potential to provide developers of multifamily housing projects considerable leverage during the entitlement process. The awkwardness of the statute and the uncertainty of its application sometimes dissuades developers (and practitioners) from utilizing its provisions. Indeed, many cities exhibit an inherent distrust of the statute or are uncertain about what it actually requires a city to do. This article explores some of these practical and political realities, while positing that the Density Bonus Law is an often-neglected device that developers should consider using more frequently in this challenging real estate market.

II. BACKGROUND

The Density Bonus Law is one of several California statutes designed to implement "an important state policy to promote the construction of low-income housing and to remove impediments to the same."[7] As summarized in *Wollmer II*, the Density Bonus Law "is a powerful tool for enabling developers to include very low, low, and moderate-income housing units in their new developments."[8] The purpose of the Density Bonus Law is to encourage cities to offer bonuses and incentives to housing developers that will "contribute significantly to the economic feasibility of lower income housing in proposed housing developments."[9] As recognized by California courts, "the Density Bonus Law 'reward[s] a developer who agrees to build a certain percentage of low-income housing with the opportunity to build more residences than would otherwise be permitted by the applicable local regulations.'"[10] By incentivizing developers, the Density Bonus Law promotes the construction of housing for seniors and low-income families.[11]

When the Legislature adopted the Density Bonus Law, it declared that a housing shortage crisis must be addressed and that the State should rely on local governments to provide the necessary increased housing stock "provided, that such local discretion and powers not be exercised in a manner to frustrate the purposes of this act."[12] The author of a successful 2002 amendment to the statute noted that "too many local governments have undercut [the Density Bonus Law] by layering density bonus and second unit projects with unnecessary and procedural obstacles."[13] According to the author and sponsors of the 2002 amendment bill, its purpose was to simplify the process for obtaining density bonuses "in order to increase California's supply of affordable housing."[14]

The Density Bonus Law applies to both general law and charter cities.[15] It requires cities to adopt an ordinance that specifies how local compliance with the statute will be implemented, though failure to adopt such an ordinance does not relieve the city from complying with the law.[16]

III. DENSITY BONUS LAW MECHANICS

A. Density Bonuses

1. *Density Bonus Thresholds*

A housing project must first meet certain thresholds of affordability in order to qualify for a density bonus. As

explained in *Wollmer II*:

> Section 65915 mandates that local governments provide a density bonus when a developer agrees to construct any of the following: (1) 10 percent of the total units within the project for lower income[17] households; (2) 5 percent of total units for very low income[18] households; (3) a senior citizen housing development or mobilehome park restricted to older persons, each as defined by separate statute; or (4) 10 percent of units in a common interest development for moderate-income[19] families or persons.[20]

Section 65915(b)(1) of the Density Bonus Law provides that requests for a density bonus and incentives[21] *must* be granted "when an applicant for a housing development seeks and agrees to construct a housing development" that meets one or more of the statute's thresholds. Although a city may eventually deny a request for an *incentive* if certain limited findings are made,[22] the Density Bonus Law does not identify any findings that would allow a city to deny a *density bonus* request.

Some have argued that the "seeks and agrees" phrase in the Density Bonus law limits its application to housing developments that are not otherwise required to provide affordable units under an inclusionary zoning ordinance. Indeed, this issue was the subject of a 2005 debate in the legislature concerning the intent of SB 1818 and SB 435, which were proposed amendments to the Density Bonus Law.[23] If that interpretation were followed, however, cities could thwart the Density Bonus Law by imposing inclusionary zoning requirements at or above the qualifying thresholds in the Density Bonus Law, thereby preventing any project from qualifying for a density bonus.

Despite these uncertainties with the Density Bonus Law, it is clear that cities cannot impose thresholds higher than those provided under the Density Bonus Law for a project to qualify for a density bonus. In *Friends of Lagoon Valley v. City of Vacaville*,[24] the city's density bonus ordinance contained thresholds similar to those set forth in an earlier version of the Density Bonus Law. "However, once the Legislature amended Section 65915 [to impose lower thresholds], state law preempted inconsistent provisions in these municipal ordinances."[25] Therefore, as a matter of practice, applicants should compare any local density bonus thresholds to those set forth in Section 65915(b) to ensure that the city is applying the correct figures.

2. *Density Bonus Calculations*

Once a project meets one of the minimum thresholds,[26] the size of the density bonus is governed by the number of affordable units the project will provide. "In its specifics, section 65915 establishes a progressive scale in which the density bonus percentage available to an applicant increases based on the nature of the applicant's offer of below market rate housing."[27] By linking the size of the density bonus to the number of affordable units offered by the developer, the statute promotes the voluntary production of more affordable housing. "The progressive level of benefits for deeper affordability is the mechanism by which municipalities entice developers to build low-income housing."[28]

Proposed projects reserving a minimum of 10% of total units for moderate-income households receive a 5% density bonus, with every additional percentage point increase in applicable units above the minimum (up to 40%) receiving a 1% increase in the density bonus, up to a maximum 35% bonus.[29] Developers agreeing to construct a minimum of 10% of units for low-income households are eligible for a 20% density bonus, and the multiplier for each additional increase in units above the minimum amount (up to 20%) is 1.5%.[30] A similar scale applies to construction of very low-income units, except the minimum 20% density bonus kicks in when only 5% of units are reserved for this classification, and the multiplier for each additional percent increase in units above the minimum amount (up to 11%) is 2.5%.[31] Finally, for a senior housing development or age-restricted mobilehome park, the density bonus is 20% of the number of senior housing units.[32]

The total number of units for the purpose of calculating the percentages described above does not include units added by a density bonus awarded under the Density Bonus Law or any local law granting a greater density bonus.[33] If permitted by local ordinance, nothing prohibits cities from granting a density bonus greater than what is described in the Density Bonus Law.[34]

B. Incentives and Concessions

1. *Defined*

Applicants for density bonuses may also request specific incentives or concessions from cities.[35] Thus, "when an applicant seeks a density bonus for a housing development that includes the required percentage of affordable housing, section 65915 *requires* that the city not only grant the density bonus, but provide *additional* incentives or concessions where needed based on the percentage of low income housing units."[36] A "concession or incentive" (together, "incentive" as the statute does not distinguish the terms) includes:

- a reduction in site development standards, or a modification of zoning code or architectural design requirements, including reductions in otherwise mandated setback, square footage, and parking ratio requirements, resulting in identifiable, financially sufficient, and actual cost reductions;
- approval of mixed-use zoning in conjunction with the housing project if the nonresidential land uses would reduce the cost of the housing development and are compatible with the housing project and the surrounding area;
- other regulatory incentives proposed by the developer or city that result in identifiable, financially sufficient, and actual cost reductions.[37]

The legislative history indicates that the "identifiable, financially sufficient, and actual cost reductions" text in the incentive definitions was added to protect the developer from a city's attempt to force a developer to accept marginal incentives.[38] The intent of the Density Bonus Law is to ensure that incentives offered by the city "contribute significantly" to the development of affordable housing and, therefore, unless the developer expressly agrees otherwise, "a locality shall not offer a

density bonus or any other incentive that would undermine the intent of" the Density Bonus Law.[39]

The "incentive" definition does not limit or require the provision of direct financial incentives by a city.[40] Some commentators believe that an incentive also includes designating the development as "by right," and exemptions from any local ordinances that would indirectly increase the cost of the housing units to be developed.[41]

2. Calculations

As with density bonus calculations, the number of incentives to which a developer is entitled depends upon the percentage of very low, low, or moderate-income units provided (no incentive is provided for the provision of non-income restricted senior units). The developer must receive the following number of incentives:

- One incentive for projects that include at least 10% of the total units for low-income, at least 5% for very low income, or at least 10% for moderate-income households.[42]
- Two incentives for projects that include at least 20% of the total units for low-income, at least 10% for very low income, or at least 20% for moderate-income households.
- Three incentives for projects that include at least 30% of the total units for low-income, at least 15% for very low income, or at least 30% for moderate-income households.[43]

In addition, an applicant may request that the city not require a vehicular parking ratio for a density bonus project that exceeds the following: 1 onsite space for 0-1 bedroom; 2 onsite spaces for 2-3 bedrooms; and 2.5 onsite spaces for four or more bedrooms.[44] An applicant also may request parking incentives beyond those expressly set forth in the Density Bonus Law.[45]

3. Required Findings for Denial of an Incentive Request

A city must establish local procedures, approved by the city council, for complying with incentive provisions of the Density Bonus Law.[46] Even if local procedures are not established, a city *must* grant the incentive requested by the applicant unless the city makes a written finding, based upon substantial evidence,[47] that the incentive:

- is not required in order to provide for affordable housing costs;
- would have a "specific adverse impact . . . upon public health and safety or the physical environment" that cannot be feasibly mitigated without rendering the development unaffordable to low- and moderate-income households; or
- would be contrary to state or federal law.[48]

The statute does not provide guidance on how a city should demonstrate that the incentive is not required in order "to provide for affordable housing costs." A 2002 amendment to the Density Bonus Law generated opposition from local government advocates who argued that this provision would require cities to prepare separate project feasibility analyses in order to refute an incentive request.[49] Even though there is no generally accepted methodology to date, one potential approach is to subtract the mandated lower sales price for the affordable unit from the actual cost to build the unit, and then to compare that developer cost to the financial benefit created by the incentive. Local attempts to restrict the developer's profit margin by denying an incentive request under the first criterion, however, are suspect and may be considered hostile to the Density Bonus Law.[50]

The second finding expressly borrows the definition of a "specific adverse impact" from the Housing Accountability Act,[51] specifically, "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."[52] This finding is narrower than the local standards used to deny use permit applications, which often invoke broader "general welfare" considerations. "Moreover, mere '[i]nconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.'"[53]

The third finding is self-explanatory, although as discussed below,[54] issues may arise if a city attempts to rely on other development-related statutes such as the California Environmental Quality Act, the Subdivision Map Act, or other provisions of the Planning and Zoning Law to provide justification for denying an incentive.

To add some teeth to a city's application of these findings, the Density Bonus Law mandates that a court award the successful plaintiff reasonable attorney's fees and costs if a city refused to grant a requested incentive and the court later determines that the refusal lacks the requisite written findings and evidence.[55]

C. DEVELOPMENT STANDARD WAIVERS

In addition to, and separate from, requests for incentives, a density bonus applicant may request a waiver or reduction of development standards that would have the effect of physically precluding the construction of the project at the densities or with the incentives permitted under the statute.[56] "Development standard" means a site or construction condition, including, without limitation, local height, setback, floor area ratio, onsite open space, and parking area ratio requirements that would otherwise apply to residential development under local ordinances, general plan elements, specific plans, charters, or other local condition, law, policy, resolution, or regulation.[57]

A request for a development standard waiver neither reduces nor increases the number of incentives to which the developer is otherwise entitled.[58] Furthermore, there is no limit on the number of waivers that may be issued.

As with incentives, although a city might ask a developer to modify a requested development standard waiver, it cannot force the developer to do so. Instead, a city's refusal to waive or reduce development standards must be supported by one or more findings similar to those available for denying a request for an incentive.[59] Again, if a court determines that such refusal was unwarranted, it must award the developer attorney's fees and costs of suit.[60]

Importantly, even if the developer does not submit a request for a development standard waiver, a city is prohibited from

applying a development standard that would have the effect of physically precluding the construction of the project at the densities or with the incentives permitted under the Density Bonus Law.[61] This statutory restriction on a city's planning and zoning powers raises important questions about what a city can and cannot do when considering a project that qualifies for a density bonus.

IV. RELATIONSHIP TO THE HOUSING ACCOUNTABILITY ACT

Context for the interplay between the state mandates under the Density Bonus Law and local government discretion is afforded by the Housing Accountability Act for guidance,[62] which similarly promotes the development of affordable housing (and housing generally).

The Housing Accountability Act implements the state policy "that a local government not reject or make infeasible housing developments" that contribute to meeting the state's housing need "without a thorough analysis of the economic, social and environmental effects of the action and without complying with subdivision (d)."[63] Courts have clarified that subdivision (d) of the Housing Accountability Act imposes strict limitations on a city's ability to disapprove or conditionally approve certain low-income housing projects, while subdivision (j) applies to housing development projects generally.[64] Both subdivisions apply to affordable housing developments.

Under subdivision (d), a city cannot disapprove or conditionally approve an affordable housing project in a manner that renders it infeasible (including through the use of design review standards) unless it makes one of five written findings based on substantial evidence in the record.[65] One of those findings is that the development project would have a "specific, adverse impact upon the public health or safety," which is similar to the finding available for denying an incentive request under the Density Bonus Law, although the latter includes consideration of impacts to the "physical environment."[66] An affordable housing project under subdivision (d), however, differs slightly from a project that may qualify for a density bonus because the former requires that at least 20% of the units be sold or rented to "lower-income households" or 100% of the units be sold or rented to "moderate-income households."[67] Therefore, a project that may qualify for a density bonus by providing only 10% of its units for lower-income households[68] may not qualify for the protections under subdivision (d) of the Housing Accountability Act.

Subdivision (j), which is not limited to affordable housing projects but applies to housing development projects generally, provides that if the proposed development project complies with applicable planning and zoning standards and criteria (including design review standards) that are in effect at the time of project application completion, a city *cannot* disapprove or conditionally approve the project with a lower density unless it makes written findings supported by substantial evidence in the record that the proposed project "would have a specific, adverse impact[69] on the public health or safety" and that there is no feasible mitigation.[70] Notably, this limitation on a local agency's discretion is similar to the Density Bonus Law's restrictions for denying an incentive request or a proposed waiver or reduction of development standards.

Section 65589.5(j) of the Housing Accountability Act thus imposes mandatory conditions limiting cities' discretion to deny the permit, and "does so by setting forth the *only* conditions under which an application may be disapproved."[71] In addition, the Act places the burden of proof on cities if its project disapproval or conditional approval is challenged in court.[72]

V. CITY DISCRETION TO TAKE ACTIONS NECESSARY TO EFFECTUATE THE DENSITY BONUS LAW

Keeping the above framework in mind and understanding the interplay between the various requirements will help to understand the 2011 appellate decision in *Wollmer II*.

Wollmer II continued the trend begun by *Friends of Lagoon Valley* and *Wollmer I* in 2007 and 2009, respectively, in which the courts deferred to a city's decisions promoting the supply of affordable housing.[73] The key facts in *Wollmer II* involved the City of Berkeley's ("City") approval of a use permit to construct a five-story, mixed-use building with 98 residential units (74 base units plus 24 bonus units), including 15 affordable units, commercial space, and parking. In addition to a 20.3% density bonus, the City granted the developer's requests for development standard waivers applicable to building height, number of stories, and setbacks. Project opponent Wollmer sued, but the trial court denied his petition for writ of administrative mandate and entered judgment in favor of the City.

On appeal, Wollmer raised three density bonus related arguments (in addition to unsuccessful CEQA-based arguments): "(1) condition 68 of the use permit allowed the Developers to receive Section 8 subsidies for density-bonus-qualifying units, thereby exceeding the maximum 'affordable rent' established in Health and Safety Code section 50053; (2) the City's approval of amenities should not have been considered when deciding what standards should be waived to accommodate the project; and (3) the City improperly calculated the project's density bonus."[74] The court of appeal rejected all three arguments.

Wollmer first argued that the total amount of rent the developer would receive from very low income tenants qualifying for Section 8 subsidies would exceed the "affordable rent" allowed under the Density Bonus Law because the additional federal subsidies would exceed the statutory amount. In determining the merits of this argument, the court concluded: "Under this reasoning, the density bonus law *caps* the total rent a housing provider can receive *from any source* to the above amount, whether that rent comes from direct tenant payment or a combination of tenant contributions and a Section 8 subsidy. This is not the law."[75] The court continued, "'affordable rent' within the meaning of our density bonus law is concerned with the rent that a tenant pays, not with the compensation received by the housing provider. . . . It would be nonsensical to equate the notion of setting of 'an affordable rent' with that of setting and capping the developer's compensation."[76] Finally, "imposing 'costs' on a developer attempting to build affordable units is hostile to the letter and spirit of the density bonus law."[77]

Next, Wollmer argued that by granting a development standard waiver, the City violated the Density Bonus Law because it was granted to accommodate certain project amenities, including an interior courtyard, a community plaza, and higher ceilings. The appellate court again rejected this argument,

holding that "nothing in the statute requires the applicant to strip the project of amenities. . . . Standards may be waived that physically preclude construction of a housing development meeting the requirements for a density bonus, period."[78] The court's reasoning suggests that a city may not micromanage the design of a project. If the project meets the requirements of the Density Bonus Law, the city must grant development standard waiver requests to ensure the project as designed is not physically prevented from being developed. Quoting the prohibition contained in section 65915(d)(1), the *Wollmer II* court warned, as it did in *Wollmer I*: "Had the City failed to grant the waiver and variances, such action would have had 'the effect of physically precluding the construction of a development' meeting the criteria of the density bonus law."[79]

Third, Wollmer argued that the City's calculation of the density bonus was improper because the City relied on the densities set forth in its zoning ordinance instead of its general plan. In rejecting Wollmer's third argument, the court explained that the City does not apply the general plan density standards to specific parcels, and found that the City properly calculated the density bonus based on the more specific provisions of its zoning code.[80]

The *Wollmer II* decision reaffirms cities' ability to apply broadly the Density Bonus Law to promote its goals through the award of density bonuses and incentives, and by providing flexibility in granting development standard waivers.

VI. LIMITS ON ABILITY TO CONDITION OR DENY A QUALIFIED HOUSING DEVELOPMENT

What happens, though, if a city wants to *deny* a density bonus project or impose conditions that make the project infeasible? As explained above,[81] the Housing Accountability Act expressly provides that a city may not take such action against a qualified affordable housing project unless one of that statute's limited findings can be made, and similarly, the Density Bonus Law prohibits a city from denying a request for an incentive or development standard waiver on grounds not identified in that statute.

There is less certainty, however, about whether a city can grant the density bonus, and incentive and waiver requests, then deny the project on other grounds. The Density Bonus Law provides that if a general plan amendment, zoning amendment, or other discretionary approval would not otherwise be required for a proposed project, approval of a density bonus or incentives does not require such approvals.[82] For example, even if an approved density bonus makes the project's density exceed what was otherwise allowed under the applicable general plan land use designation and zoning district, the applicant would not be required to seek amendments of those local regulations.

There may be situations, however, where a project may nonetheless require discretionary approvals not directly related to the density bonus or incentives. In such cases, some cities may argue that the Density Bonus Law does not affect their ability to deny or condition a project under their broad police powers: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."[83] This constitutional authority given to cities to adopt local ordinances is derived from the "inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare."[84] A city's police power "is as broad as that of the state Legislature itself."[85] For example, local regulations based on aesthetics are permissible so long as they are reasonably related to the general welfare.[86] Even though the police power is broad, it must not "conflict with the general laws."[87] A local regulation conflicts with the "general laws," including statutes such as the Density Bonus Law, if it "duplicates, contradicts or enters an area fully occupied by general law, either expressly or by legislative implication."[88]

It is important to consider this issue in its historical context. Throughout the Density Bonus Law's development, the Legislature declared that affordable housing was critical to California and that cities should not create obstacles to developing affordable housing. This mandate is not limited to the Density Bonus Law, but is also embodied in other statutes, many of which are identified in Government Code section 65582.1. This legislative directive has been accepted by the courts, which have held that the Density Bonus Law should be fully implemented to encourage the creation of more affordable units.[89] Therefore, the Legislature and the courts recognize that more affordable housing is badly needed in California, and local agencies should not impose roadblocks to thwart such development unless they can make one of the statutory findings.[90]

For example, in *Building Industry Association v. City of Oceanside*, the court held that a local ballot measure facially conflicted with, and was preempted by, the Density Bonus Law when it impeded the Density Bonus Law's promotion of construction of low-income housing.[91] Similarly, in *Friends of Lagoon Valley*,[92] the court examined the Density Bonus Law and its relationship to the city's police powers, and held that a local ordinance's imposition of a higher threshold for a project to qualify for a density bonus would be preempted by the Density Bonus Law and therefore void. Finally, *Wollmer I* and *Wollmer II* suggest that disapproving a density bonus project would invoke the prohibition in the Density Bonus Law against applying development standards that would physically preclude construction of the project.[93]

In *Wollmer I*, the City of Berkeley approved use permits and variances for a mixed-use density bonus project consisting of residential units and retail commercial space.[94] When the legality of the City's approval was challenged, the appellate court held:

> Had the City failed to grant the variances the result would "have the effect of precluding the construction of a development" (§ 65915, subd. (e)), which met the criteria of the Density Bonus Law. If the Project as a whole was not economically feasible, then the below market rate housing units would not be built, and the purpose of the Density Bonus Law to encourage the development of low and moderate income housing would not be achieved.[95]

A similar conclusion was reached in *Wollmer II* regarding the City's consideration of the project's use permit application.[96] Thus, both *Wollmer* courts have warned that denial of a use permit or variance might be contrary to the Density Bonus law, specifically, section 65915(e)(1). This judicial language implies that if a city

disapproves a density bonus project's application for a use permit, variance, design review, or similar permit, and the city cannot make any of the findings set forth in the Density Bonus Law to justify the disapproval, then the action would be contrary to the purpose of the Density Bonus Law and vulnerable to a writ of mandate issued by the courts,[97] including attorney's fees and costs.

To interpret the law otherwise would allow a city to undermine the purpose of the Density Bonus Law by subjecting the project to a discretionary approval process such as a conditional use permit, then disapproving the project based on broad "general welfare" concerns or similar grounds. Even though such an adjudicatory action would be subject to the standard of review in Code of Civil Procedure section 1094.5, which is a less deferential standard than is typical for legislative actions,[98] it is a far easier to meet than the "specific adverse impact" standard provided in the Density Bonus Law. Denying density bonus projects or rendering them infeasible through excessive conditions would mean "that housing units for lower-income households would not be built and the purpose of the density bonus law to encourage such development would not be achieved."[99]

As a practical note, an applicant should consider formally requesting an incentive or development standard waiver that addresses potential grounds for denial (or excessive conditions of approval). This will invoke the restrictions on denial set forth in subdivisions (d)(3) and (e)(1) of the Density Bonus Law, thereby preserving the opportunity to recover attorney's fees if a subsequent lawsuit is successful.

VII. POLITICAL REALITIES

Although many cities struggle to meet their fair share of their respective regional housing need,[100] particularly the provision of affordable housing units, developers often encounter local resistance when proposing density bonus projects that would help remedy this shortfall. Indeed, affordable multifamily projects are regularly opposed by neighborhood groups. (These groups often include citizens who identify themselves with "anti-sprawl" and "smart growth" policies — an irony not lost on the development community.) Project opposition in California's urban centers is often highly-educated and organized, and exerts significant influence on city staff and elected officials. As a result, density bonus projects regularly confront strong third-party opposition and unenthused local officials.

A related political consideration is the resistance that developers encounter when city staff and elected officials perceive a development project is forced upon them. If a city believes that a developer is using the Density Bonus Law as a hammer without considering the effect of the project on the community, the city might resist the project with the tools it has available. Given this potential agency reaction, a developer should consider spending time with city staff and officials to discuss not only how the Density Bonus Law affects the project, but also how the project positively affects the city (e.g., by helping attain regional housing requirements, and promoting transit-oriented and sustainable development policies). A mutual understanding of the applicable legal environment and the impact of the project on the community should be viewed as a means for advancing the dialogue between the developer and the city, and need not be characterized as a confrontation.

The reality, however, is that even if the statute limits a city's discretion to condition or deny a density bonus project, a city may decide to do so anyway due to neighborhood pressure or as a reaction to perceived strong-arming by the developer. A developer then must decide whether to seek judicial relief, which many are reluctant to do despite the potential to recover attorney's fees and costs, especially if the developer fears repercussions on future projects within that jurisdiction.

Because key elements of the Density Bonus Law are still subject to various interpretations that have not been clarified by the Legislature, it will likely be the courts that provide guidance to both developers and cities on future projects.

VIII. CONCLUSION

The Density Bonus Law is a potentially powerful tool for developers of multifamily projects. Although the Density Bonus Law has existed for over thirty years, both developers and cities have struggled with its application. The statute "is confusing, convoluted, and subject to endless debate about its requirements."[101] As a result, many developers are either unaware of the law or unsure about how it works. Many cities share this unfamiliarity and are resistant to attempts to limit their police powers when considering multifamily development applications. The current residential real estate market has begun to sharpen the focus of developers, cities, and practitioners with regard to this statute, and all parties should expect the Density Bonus Law to become a more integral component of the local multifamily housing projects entitlement process.

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ENDNOTES

1 *See, e.g.*, J.K. Dineen, *Peninsula Housing: If You Build It, They Will Rent*, S.F. Bus. Times, Aug. 26, 2011, *available at* http://www.bizjournals.com/sanfrancisco/print-edition/2011/08/26/peninsula-housing-if-you-build-it.html; Roger Vincent, *Apartments Are the Development Du Jour Among Builders*, L.A. Times, July 17, 2011, *available at* http://www.latimes.com/business/la-fi-commre-quarterly-apartments-20110717,0,4977484.print.story.

2 Cal. Gov't Code § 65915. All statutory references are to the California Government Code unless otherwise specified.

3 Defined as a "development project for five or more residential units." *Id.* § 65915(i).

4 Defined as "a density increase over the otherwise maximum allowable density as of the date of application" to the local agency. *Id.* § 65915(f).

5 A.B. 2280 Bill Analysis, at 8 (Cal. Apr. 21, 2008).

6 *Wollmer v. City of Berkeley*, 193 Cal. App. 4th 1329 (2011).

[hereinafter *Wollmer II*]. An earlier First District opinion involving Mr. Wollmer's challenge to the City of Berkeley's application of the Density Bonus Law to a different project is *Wollmer v. City of Berkeley*, 179 Cal. App. 4th 933 (2009) [hereinafter *Wollmer I*].

7 *Bldg. Indus. Ass'n v. City of Oceanside*, 27 Cal. App. 4th 744, 770 (1994); CAL. GOV'T CODE § 65582.1(f).

8 *Wollmer II*, 193 Cal. App. 4th at 1339.

9 CAL. GOV'T CODE § 65917.

10 *Friends of Lagoon Valley v. City of Vacaville*, 154 Cal. App. 4th 807, 824 (2007) (quoting *Shea Homes Ltd. P'ship v. County of Alameda*, 110 Cal. App. 4th 1246, 1263 (2003)).

11 *Friends of Lagoon Valley*, 154 Cal. App. 4th at 825.

12 Notes to Stats. 1979, ch. 1207, at 4738, sec. 3 (Cal. 1979).

13 A.B. 1866 Bill Analysis, at 3-4 (Cal. Aug. 28, 2002).

14 *Id.* at 4.

15 CAL. GOV'T CODE § 65918.

16 *Id.* § 65915(a).

17 CAL. HEALTH & SAFETY CODE § 50079.5.

18 *Id.* § 50105.

19 *Id.* § 50093.

20 *Wollmer II*, 193 Cal. App. 4th at 1339; *see* CAL. GOV'T CODE § 65915(b)(1)(A)-(D).

21 *See* discussion *infra* Part III.B.3.

22 *See* CAL. GOV'T CODE § 65915(d)(1).

23 Stats. 2005, ch. 496, sec. 3.

24 *Friends of Lagoon Valley v. City of Vacaville*, 154 Cal. App. 4th 807, 824 (2007).

25 *Id.* at 830.

26 *See* discussion *supra* Part III.A.1.

27 *Wollmer II*, 193 Cal. App. 4th at 1340.

28 *Id.* at 1343.

29 CAL. GOV'T CODE § 65915(f)(4).

30 *Id.* § 65915(f)(1).

31 *Id.* § 65915(f)(2).

32 *Id.* § 65915(f)(3).

33 *Id.* § 65915(b)(3).

34 *Id.* § 65915(n). The "[i]f permitted by local ordinance" limitation was added by AB 2280 in 2008. Both *Friends of Lagoon Valley*, 154 Cal. App. 4th at 826, and *Wollmer I*, 179 Cal. App. 4th at 944, analyzed the pre-AB 2280 version of section 65915(n) to hold that no implementing ordinance was required for a city to allow a greater number of density bonus units.

35 CAL. GOV'T CODE § 65915(d)(1).

36 *Wollmer I*, 179 Cal. App. 4th at 944.

37 CAL. GOV'T CODE § 65915(k).

38 The legislative analyses of SB 1818 indicate that the purpose of this provision was to "ensure that the incentives have some value. The intent of adding 'financially sufficient' is [to] ensure that value is more than nominal and actually of benefit to the developer." A.B. 1818 Bill Analysis, at 5 (Cal. Apr. 16, 2004).

39 CAL. GOV'T CODE § 65917.

40 *Id.* § 65915(l). The receipt of direct financial incentives provided under the Density Bonus Law, however, removes a rental housing project from the preemption provisions of the Costa Hawkins Act, as explained in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, 175 Cal. App. 4th 1396, 1402 (2009).

41 Mitchell B. Menzer & Svetlana G. Attestatova, *A Guide to California Government Code Section 65915: Density Bonuses and Incentives for Affordable Housing*, 23 CAL. REAL PROP. J., Spring 2005, at 6-7.

42 Moderate income units must be in a common interest development. CAL. GOV'T CODE § 65915(b)(1)(D).

43 *Id.* § 65915(d)(2).

44 *Id.* § 65915(p)(1).

45 *Id.*

46 *Id.* § 65915(d)(3).

47 Although not defined in section 65915, "substantial evidence" is generally defined as evidence of "ponderable legal significance . . . reasonable in nature, credible, and of solid value, and relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Young v. Gannon*, 97 Cal. App. 4th 209, 225 (2002) (internal citations omitted).

48 CAL. GOV'T CODE § 65915(d)(1).

49 A.B. 1866 Bill Analysis, at 5 (Cal. May 7, 2002); A.B. 1866 Bill Analysis, at 6 (Cal. Apr. 22, 2002); A.B. Bill Analysis, at 1 (Cal. Apr. 8, 2002).

50 *See Wollmer II*, 193 Cal. App. 4th at 1344.

51 *See* discussion *infra* Part V.

52 CAL. GOV'T CODE § 65589.5(j)(1).

53 *Wollmer II*, 193 Cal. App. 4th at 1349-50 (quoting CAL. GOV'T CODE § 65589.5(d)(2)).

54 *See* discussion *infra* Part VI.

55 CAL. GOV'T CODE § 65915(d)(3).

56 *Id.* § 65915(e)(1). The 2008 amendments added the references to "physically precluding" the construction of a density bonus project, and deleted subdivision (f), which read: "The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible." *See Wollmer II*, 193 Cal. App. 4th at 1346.

57 CAL. GOV'T CODE § 65915(o)(1).

58 *Id.* § 65915(e)(2).

59 *Id.* § 65915(e)(1). The statute does not identify any findings that may be applied to deny a density bonus request.

60 *Id.*

61 *Id.*

62 *Id.* § 65589.5.

63 *Id.* § 65589.5(b).

64 *N. Pacifica, LLC v. City of Pacifica*, 234 F. Supp. 2d 1053, 1057-58 (N.D. Cal. 2002).

65 The Housing Accountability Act defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." CAL. GOV'T CODE § 65589.5(h)(1).

66 *Id.* § 65589.5(d)(2); *see also id.* § 65915(d)(1).

67 *Id.* § 65589.5(h)(3).

68 *Id.* § 65915(b)(1)(A).

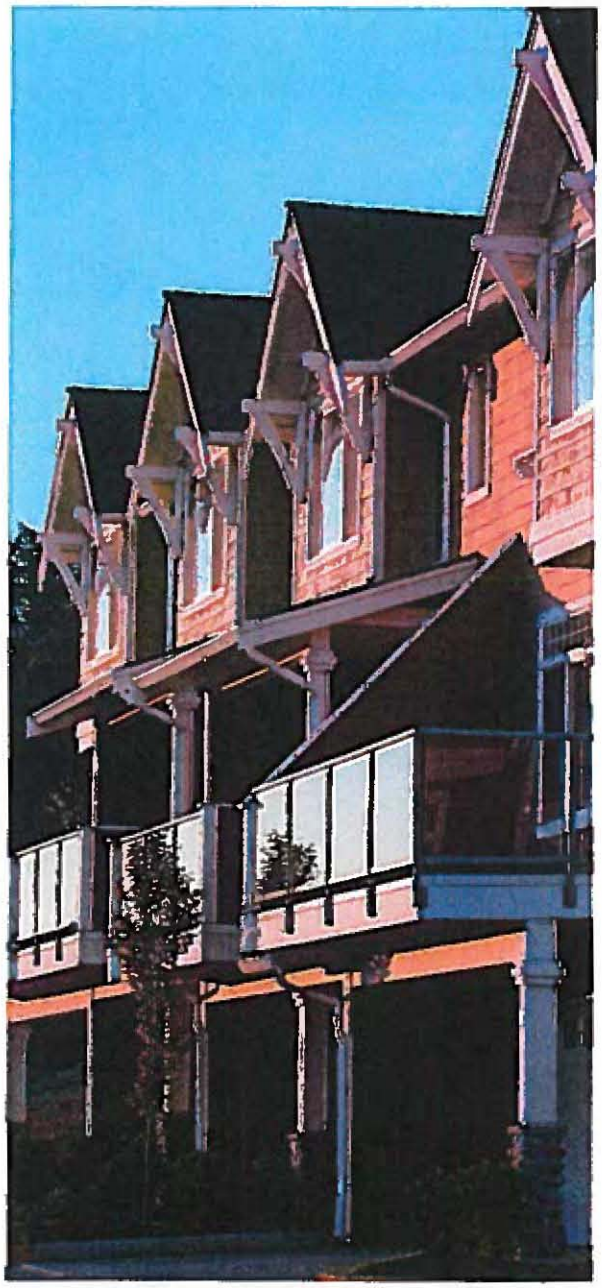
69 Similar to the definitions in subdivision (d)(2) and (d)(1)(B) of section 65915, a "specific, adverse impact" is defined as "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." *Id.* § 65589.5(j)(1).

70 *Id.* § 65589.5(j).
71 *N. Pacifica, LLC v. City of Pacifica*, 234 F. Supp. 2d 1053, 1060 (N.D. Cal. 2002).
72 *Id.* at 1059.
73 *Wollmer I*, 179 Cal. App. 4th 933 (2009); *Friends of Lagoon Valley v. City of Vacaville*, 154 Cal. App. 4th 807 (2007).
74 *Wollmer II*, 193 Cal. App. 4th at 1338.
75 *Id.* at 1342.
76 *Id.* at 1342-43.
77 *Id.* at 1344.
78 *Id.* at 1346.
79 *Id.* at 1347 (quoting *Wollmer I*, 179 Cal. App. 4th 933, 947 (2009)).
80 *Id.* at 1344-45.
81 *See* discussion *supra* Part IV.
82 CAL. GOV'T CODE § 65915(f)(5), (j).
83 CAL. CONST. art. XI, § 7.
84 *Cotta v. City & County of San Francisco*, 157 Cal. App. 4th 1550, 1557 (2007) (citing 8 WITKIN, SUMMARY OF CAL. LAW *Constitutional Law* § 784 (9th ed. 1988)).
85 *Richeson v. Helal*, 158 Cal. App. 4th 268, 277 (2007).
86 *See, e.g., Novi v. City of Pacifica*, 169 Cal. App. 3d 678, 682 (1985).
87 CAL. CONST. art. XI, § 7.
88 *Viacom Outdoor, Inc. v. City of Arcata*, 140 Cal. App. 4th 230, 236 (2006).
89 *See, e.g., Bldg. Indus. Ass'n v. City of Oceanside*, 27 Cal. App. 4th 744, 770 (1994); *Friends of Lagoon Valley v. City of Vacaville*, 154 Cal. App. 4th 807, 823-24 (2007); *Shea Homes Ltd. P'ship v. County of Alameda*, 110 Cal. App. 4th 1246, 1263 (2003); *Wollmer I*, 179 Cal. App. 4th at 940-41; *Wollmer II*, 193 Cal. App. 4th at 1339 .
90 *See* discussion *supra* Part III.B.3.
91 *Bldg. Indus. Ass'n*, 27 Cal. App. 4th at 770, 772.
92 *Friends of Lagoon Valley*, 154 Cal. App. 4th at 830.
93 CAL. GOV'T CODE § 65915(e)(1).
94 *Wollmer I*, 179 Cal. App. 4th at 936.
95 *Id.* at 937.
96 "If the project were not built, it goes without saying that housing units for lower-income households would not be built and the purpose of the density bonus law to encourage such development would not be achieved." *Wollmer II*, 193 Cal. App. 4th at 1347.
97 At least one trial court has ruled that the Density Bonus Law requires a city to approve a density bonus project where housing was otherwise entirely *prohibited*. *See* Lewis J. Soffer, *Does the Density Bonus Law (Gov. Code § 65915) Require Local Government to Approve Mixed Use and Housing Projects Where Local Zoning Does Not Allow Housing at All?*, 18 MILLER & STARR REAL ESTATE NEWSALERT, July 2008, at 2.
98 *See, e.g., Topanga Assoc. for a Scenic Cmty. v. County of Los Angeles*, 11 Cal. 3d 506, 515 (1974).
99 *Wollmer II*, 193 Cal. App. 4th at 1347.
100 *See* CAL. GOV'T CODE §§ 65584-65584.7.
101 A.B. 2280 Bill Analysis, Staff Comments, at 11 (Cal. Apr. 21, 2008).

Maximizing Density Through Affordability

A Developer's Guide to the California Density Bonus Law

By Jon E. Goetz and Tom Sakai



Savvy housing developers are taking advantage of California's Density Bonus Law, a mechanism which allows them to obtain more favorable local development requirements in exchange for offering to build affordable or senior units. The Density Bonus Law (found in California Government Code Sections 65915 – 65918) provides developers with powerful tools to encourage the development of affordable and senior housing, including up to a 35% increase in project densities, depending on the amount of affordable housing provided. The Density Bonus Law is about more than the density bonus itself, however. It is actually a larger package of incentives intended to help make the development of affordable and senior housing economically feasible. Other tools include reduced parking requirements, other incentives and concessions such as reduced setback and minimum square footage requirements, and the ability to donate land for the development of affordable housing to earn a density bonus. Often these other tools are even more helpful to project economics than the density bonus itself, particularly the special parking benefits. Sometimes these incentives are sufficient to make the project pencil out, but for other projects financial assistance is necessary to make the project feasible.

In determining whether a development project would benefit from becoming a density bonus project, developers also need to be aware that:

- The Density Bonus is a state mandate. A developer who meets the requirements of the state law is entitled to receive the density

bonus and other benefits. As with any state mandate, some local governments will resent the state requirement and will attempt to resist. But many local governments like the density bonus as a helpful tool to cut through their own land use requirements and local political issues.

- Use of a density bonus may be particularly helpful in those jurisdictions that impose inclusionary housing requirements for new developments.

How the Density Bonus Works

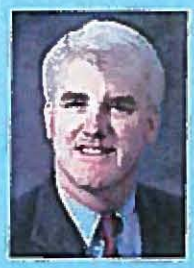
Projects Entitled to a Density Bonus

Cities and counties are required to grant a density bonus and other incentives or concessions to housing projects which contain one of the following:

- At least 5% of the housing units are restricted to very low income residents.
- At least 10% of the housing units are restricted to lower income residents.
- At least 10% of the housing units in a for-sale common interest development are restricted to moderate income residents.
- The project donates at least one acre of land to the city or county for very low income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- The project is a senior citizen housing development (no affordable units required).
- The project is a mobilehome park age-restricted to senior citizens (no affordable units required).

Density Bonus Amount

The amount of the density bonus is set on a sliding scale, based upon the percentage of affordable units at each income level, as shown in the chart on the following page.



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Density Bonus Chart*

Affordable Unit Percentage**	Very Low Income Density Bonus	Low Income Density Bonus	Moderate Income Density Bonus	Land Donation Density Bonus	Senior Density Bonus ***
5%	20%	-	-	-	20%
6%	22.5%	-	-	-	20%
7%	25%	-	-	-	20%
8%	27.5%	-	-	-	20%
9%	30%	-	-	-	20%
10%	32.5%	20%	5%	15%	20%
11%	35%	21.5%	6%	16%	20%
12%	35%	23%	7%	17%	20%
13%	35%	24.5%	8%	18%	20%
14%	35%	26%	9%	19%	20%
15%	35%	27.5%	10%	20%	20%
16%	35%	29%	11%	21%	20%
17%	35%	30.5%	12%	22%	20%
18%	35%	32%	13%	23%	20%
19%	35%	33.5%	14%	24%	20%
20%	35%	35%	15%	25%	20%
21%	35%	35%	16%	26%	20%
22%	35%	35%	17%	27%	20%
23%	35%	35%	18%	28%	20%
24%	35%	35%	19%	29%	20%
25%	35%	35%	20%	30%	20%
26%	35%	35%	21%	31%	20%
27%	35%	35%	22%	32%	20%
28%	35%	35%	23%	33%	20%
29%	35%	35%	24%	34%	20%
30%	35%	35%	25%	35%	20%
31%	35%	35%	26%	35%	20%
32%	35%	35%	27%	35%	20%
33%	35%	35%	28%	35%	20%
34%	35%	35%	29%	35%	20%
35%	35%	35%	30%	35%	20%
36%	35%	35%	31%	35%	20%
37%	35%	35%	32%	35%	20%
38%	35%	35%	33%	35%	20%
39%	35%	35%	34%	35%	20%
40%	35%	35%	35%	35%	20%

* All density bonus calculations resulting in fractions are rounded up to the next whole number.
** Affordable unit percentage is calculated excluding units added by a density bonus.
*** No affordable units are required for senior housing units to receive a density bonus.

Required Incentives and Concessions

In addition to the density bonus, the city or county is also required to provide one or more "incentives" or "concessions" to each project which qualifies for a density bonus (except that market rate senior citizen projects with no affordable units, and land donated for very low income housing, do not appear to be entitled to incentives or concessions). A concession or incentive is defined as:

- A reduction in site development standards or a modification of zoning code or architectural design requirements, such as a reduction in setback or minimum square footage requirements; or
- Approval of mixed use zoning; or
- Other regulatory incentives or concessions which actually result in identifiable and financially sufficient cost reductions.

The number of required incentives or concessions is based on the percentage of affordable units in the project:

- For projects with at least 5% very low income, 10% lower income or 10% moderate income units, one incentive or concession is required.
- For projects with at least 10% very low income, 20% lower income or 20% moderate income units, two incentives or concessions are required.
- For projects with at least 15% very low income, 30% lower income or 30% moderate income units, three incentives or concessions are required.

The city or county is required to grant the concession or incentive proposed by the developer unless it finds that the proposed concession or incentive is not required in order to achieve the required affordable housing costs or rents, or would cause a public health or safety problem, cause an environmental problem, harm historical property, or would be contrary to law. Financial incentives, fee waivers and reductions in dedication requirements may be, but are not required to be, provided by the city or county.

Other Forms of Assistance

A development qualifying for a density bonus also receives two additional forms of assistance which have important benefits for a housing project.

- **Waiver or Reduction of Development Standards.** If any other city or county development standard would physically prevent the project from being built at the permitted density and with the granted concessions/incentives, the developer may propose to have those standards waived or reduced. The city or county is not permitted to apply any development standard which physically precludes the construction of the project at its permitted density and with the granted concessions/incentives. The city or county is not required to waive or reduce development standards that that would cause a public health or safety problem, cause an environmental problem, harm historical property, or would be contrary to law. The waiver or reduction of a development standard does not count as an incentive or concession. Development standards which have been waived or reduced utilizing this section include setback requirements and lot coverage requirements. This ability to force the locality to modify its normal development standards is sometimes the most compelling reason for the developer to structure a project to qualify for the density bonus.

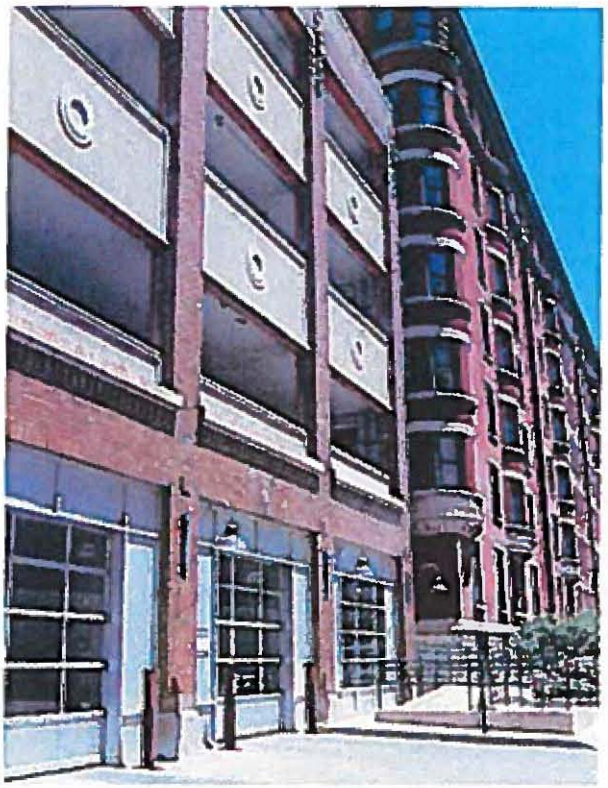
"This ability to force the locality to modify its normal development standards is sometimes the most compelling reason for the developer to structure a project to qualify for the density bonus."

- **Maximum Parking Requirements**. Upon the developer's request, the city or county may not require more than one onsite parking space for studio and one bedroom units, two onsite parking spaces for two and three bedroom units, and two and one-half onsite parking spaces for units with four or more bedrooms. Onsite spaces may be provided through tandem or uncovered parking, but not onstreet parking. Requesting these parking standards does not count as an incentive or concession, but the developer may request further parking standard reductions as an incentive or concession. This is one of the most important benefits of the density bonus statute. In many cases, achieving a reduction in parking requirements may be more valuable than the additional permitted units. In higher density developments requiring the use of structured parking, the construction cost of structured parking is very expensive, costing upwards of $20,000 per parking space. While this provision of the density bonus statute can be used to reduce excessive parking requirements, care must be taken not to impact the project's marketability by reducing parking to minimum requirements which lead to parking shortages.

"In many cases, achieving a reduction in parking requirements may be more valuable than the additional permitted units."

Affordable Housing Restrictions

- **Rental Units**. Affordable rental units must be restricted by an agreement which sets maximum incomes and rents for those units. The income and rent restrictions must remain in place for a 30 year term, or a longer period if required by the terms of other subsidies received by the project. Rents must be restricted as follows:



  - For very low income units, rents may not exceed 30% x 50% of the area median income for a household size suitable for the unit.
  - For lower income units, rents may not exceed 30% x 60% of the area median income for a household size suitable for the unit.
  - Area median income is determined annually by regulation of the California Department of Housing and Community Development, based upon median income regulations adopted by the U.S. Department of Housing and Urban Development.
  - Rents must include a reasonable utility allowance.
  - Household size appropriate to the unit means 1 for a studio unit, 2 for a one

bedroom unit, 3 for a two bedroom unit, 4 for a three bedroom unit, etc.

- A list of current affordable rent calculations and income limits for many California counties is available on the Kronick, Moskovitz, Tiedemann & Girard website at www.kmtg.com/publications.

- **For Sale Units.** Affordable for sale units must be sold to the initial buyer at an affordable housing cost. All housing related costs generally may not exceed 35% x 110% of the area median income for a household size suitable for the unit. Housing related costs include mortgage loan payments, mortgage insurance payments, property taxes and assessments, homeowner association fees, reasonable utilities allowance, insurance premiums, maintenance costs, and space rent.

  - Buyers must enter into an equity sharing agreement with the city or county, unless the equity sharing requirements conflict with the requirements of another public funding source or law. The equity sharing agreement does not restrict the resale price, but requires the original owner to pay the city or county a portion of any appreciation received on resale.

  - The city/county percentage of appreciation is the purchase price discount received by the original buyer, plus any down payment assistance provided by the city/county. (For example, if the original sales price is $200,000, and the original fair market value is $250,000, and there is no city/county down payment assistance, the city/county subsidy is $50,000, and the city/county's share of appreciation is 20%).

  - The seller is permitted to retain its original down payment, the value of any improvements made to the home, and the remaining share of the appreciation.

  - The income and affordability requirements are not binding on resale purchasers (but if other public funding sources or programs are used, the requirements may apply to resales for a fixed number of years).

  - A list of current affordable housing cost calculations and income limits for many California counties is available at the Kronick, Moskovitz, Tiedemann & Girard website at www.kmtg.com/publications.

How the Density Bonus Works for Senior Projects

As shown in the Density Bonus Chart above, a senior citizen housing development meeting the requirements of Section 51.3 or 51.12 of the Civil Code qualifies for a 20% density bonus. This is a very desirable option for senior housing developments. In jurisdictions where the local ordinances do not reduce the parking requirements for senior housing developments, the reduced parking requirements alone may justify applying for a density bonus.

"In jurisdictions where the local ordinances do not reduce the parking requirements for senior housing developments, the reduced parking requirements alone may justify applying for a density bonus."

How the Density Bonus Works for Condominium Conversion Projects

The density bonus statute provides for a density bonus of up to 25% for condominium conversion projects providing at least 33% for the total units to low or moderate income households or 15% of the units to lower income households. Many condominium conversion projects are not designed in a manner that allows them to take advantage of the opportunity to construct additional units, but some projects may find this helpful. While condominium conversions are not presently a viable development alternative, this provision may be of some value in limited situations in the future.

How the Density Bonus Works for Child Care

Housing projects that provide child care are eligible for a separate density bonus equal to the size of the child care facility. The child care facility must remain in operation for at least the length of the affordability covenants. A percentage of the child care spaces must also be made available to low and moderate income families. A separate statute permits cities and counties to grant density bonuses to commercial and industrial projects of at least 50,000 square feet, when the developer sets aside at least 2,000 square feet in the building and 3,000 square feet of outside space for a child care facility. See Government Code Section 65917.5 for additional details.

How to Obtain a Density Bonus Through Land Donation

Many market rate housing developers are uncomfortable with building and marketing affordable units themselves, whether due to their lack of experience with the affordable housing process or because of their desire to concentrate on their core market rate homes. Other developers may have sites that are underutilized in terms of project density. The density bonus law contains a special sliding scale bonus for land donation which allows those developers to turn over the actual development of the affordable units to local agencies or experienced low income developers. The density bonus is available for the donation of at least an acre of fully entitled land, with all needed public facilities and infrastructure, and large enough for the construction of a high density very low income project containing 10% of the total homes in the development. The parcel must be located within the boundary of the proposed development or, subject to the approval of the jurisdiction, and within one-fourth mile of the boundary of the proposed development. The more units that can be built on the donated land, the larger the density bonus. Because of the parcel size requirements, this option is only practical for larger developments. The land donation density bonus can be combined with the regular density bonus provided for the development of affordable units, up to a maximum 35% density bonus. A master planned community developer needs to carefully evaluate the land donation option as opposed to engaging an affordable housing developer to fulfill the project's affordable housing obligations. In many cases the master developer

will prefer to control the affordable component of the project through a direct agreement with the affordable housing developer, rather than allowing the local government to control the project.

How the Density Bonus Can Help in a Friendly Jurisdiction

While the density bonus law is often used by developers to obtain more housing than the local jurisdiction would ordinarily permit, it can also be a helpful land use tool in jurisdictions which favor the proposed project and want to provide support. Planners in many cities and counties may be disposed by personal ideology or local policy to encourage the construction of higher density housing and mixed use developments near transit stops and downtown areas, but are hampered by existing general plan standards and zoning from approving these sorts of projects. Elected officials often support these projects too, but may find it politically difficult to oppose neighborhood and environmental groups over the necessary general plan amendments, zoning changes and CEQA approvals.

"The density bonus can provide a useful mechanism for increasing allowable density without requiring local officials to approve general plan amendments and zoning changes."

The density bonus can provide a useful mechanism for increasing allowable density without requiring local officials to approve general plan amendments and zoning changes. A project that satisfies the requirements of the density bonus law often can obtain the necessary land use approvals through the award of the density bonus units and requested concessions and incentives, without having to amend the underlying land use requirements. Friendly local officials may encourage the use of the density bonus to "force" the jurisdiction to approve a desired project.

How the Density Bonus Law Can Help in a Hostile Jurisdiction

It is important to know that the density bonus is a state law requirement which is mandatory on cities and counties, even charter cities which are free from many other state requirements. A developer who meets the law's requirements for affordable or senior units is entitled to the density bonus and other assistance as of right, regardless of what the locality wants (subject to limited health and safety exceptions). The density bonus statute can be used to achieve reductions in development standards or the granting of concessions or incentives from jurisdictions that otherwise would not be inclined to grant those items. Examples might include a reduction in parking standards if those standards are deemed excessive by the developer, or other reductions in development standards if needed to achieve the total density permitted by the density bonus.

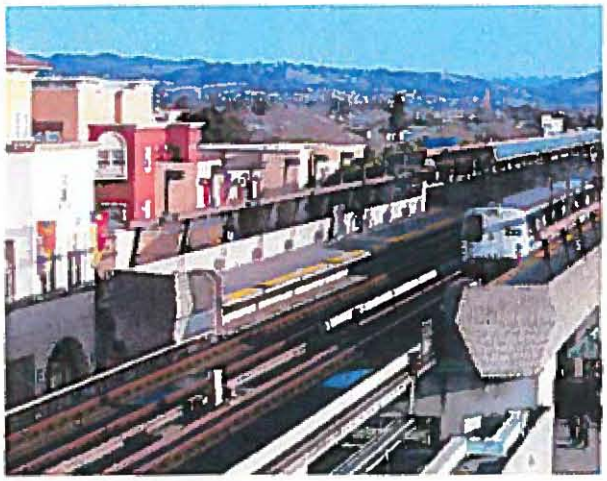
Developers who nonetheless encounter hostility from local jurisdictions are provided several tools to ensure that a required density bonus is actually granted. Developers are entitled to an informal meeting with a local jurisdiction which fails to modify a requested development standard. If a developer successfully sues the locality to enforce the density bonus requirements, it is entitled to an award of its attorneys' fees. The obligation to pay a developer's attorneys' fees is a powerful incentive for local jurisdictions to voluntarily comply with the state

"A developer who meets the law's requirements for affordable or senior units is entitled to the density bonus and other assistance as of right, regardless of what the locality wants."

law density bonus requirements, even when the jurisdiction is not in favor of its effects on the project.

CEQA Issues in Density Bonus Projects

Although there is no specific density bonus exemption from the California Environmental Quality Act, many density bonus projects are likely candidates for urban infill and affordable housing exemptions from CEQA. One commonly invoked exemption is the Class 32 urban infill exemption found in CEQA Guidelines Section 15332. That exemption is available if the project is consistent



with applicable general plan designation and zoning, the site is five acres or less and surrounded by urban uses, is not habitat for endangered, rare or threatened species, does not have any significant effects relating to traffic, noise, air quality or water quality, and is adequately served by utilities and public services. Other exemptions are available for high density housing projects near major transit stops (CEQA Guidelines Section 15195) and affordable housing projects of up to 100 units (CEQA Guidelines Section 15194).

A recent case, *Wollmer v. City of Berkeley*, clarified the use of the CEQA infill exemption for density bonus projects. In that case, an opponent of a Berkeley density bonus project challenged the City's use of the urban infill exemption on the grounds that the City's modifications and waivers of development standards, as required under the density bonus law, meant that the project was not consistent with existing zoning. The court rejected that argument, finding that the modifications required by the density bonus law did not disqualify the project from claiming the exemption.

Not all density bonus projects will qualify for one of these CEQA exemptions, however. Sometimes the additional density provided to non-exempt projects may bring the project out of the coverage of an existing CEQA approval for a general plan, specific plan or other larger project. For instance, if a previously approved environmental impact report analyzed a 100 unit project as the largest allowed under existing zoning, but the developer is able to qualify for 120 units with a density bonus, the existing EIR may not cover the larger project. The larger density bonus project may require additional CEQA analysis for approval.

Using the Density Bonus to Satisfy Inclusionary Housing Requirements

Many of California's cities and counties have adopted inclusionary housing ordinances, which typically require that a specified percentage of units in a new housing development be restricted as affordable units. The inclusionary requirements significantly reduce income from rental units and sales prices of for-sale homes. In today's tight housing market, compliance with local inclusionary requirements may make many projects economically infeasible. The density bonus provides one method for developers to improve the economics of their project while still complying with the inclusionary

housing requirements. While there are some local agencies which believe that inclusionary units do not qualify for density bonuses, it is generally understood that the density bonus is intended by state law to be a powerful financial tool to help developers achieve the inclusionary housing requirements.

"In today's tight housing market, compliance with local inclusionary requirements may make many projects economically infeasible. The density bonus provides one method for developers to improve the economics of their project while still complying with the inclusionary housing requirements."

Local inclusionary housing ordinances are currently in a state of uncertainty due to recent case law. One recent case, *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, 175 Cal. App. 4th 1396 (2009), held that inclusionary housing requirements violate the Costa-Hawkins Act, which allows owners of residential rental housing to establish the initial rental rates for housing units without being subject to government rent limits. However, there are exceptions to the Costa-Hawkins rent control prohibition for developers who receive assistance under the density bonus law or who receive direct financial assistance from a public agency. Localities with inclusionary housing ordinances may welcome a developer's use of the density bonus law because this will effectively prevent the developer from challenging the applicability of the inclusionary housing ordinance.

Density Bonus – A Flexible Tool

The Density Bonus Law can be a powerful tool for a variety of different types of development projects, whether they are traditional affordable housing projects, predominantly market rate housing developments, or senior projects. Obtaining greater density can help the developer of any type of project bring costs and financing sources into line by putting more homes on the land, reducing the per unit land costs. Use of the favorable parking requirements can reduce the amount of costly land needed for parking. The incentives and concessions to be provided by the local government can provide a helpful way to modify development requirements which may stand in the way of a successful project. Of course there is a price to pay for these benefits - the affordable units needed to earn the density bonus. Each developer will need to make a cost-benefit determination whether the cost of compliance is worth the benefits. But the Density Bonus Law is unquestionably a useful option for housing developers trying to make financial sense of their projects in today's economy.

Density Bonus Statutes

Please refer to pages 11 through 16.

Density Bonus Statutes

Government Code Sections 65915 – 65918. Effective as of January 1, 2012

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement.

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the down payment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any down payment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the

development unaffordable to low- and moderate-income households.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio,

an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5 (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of

floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures. For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make an application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for child care services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998 by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

65918. The provisions of this chapter shall apply to charter cities.

CITY OF RIO DELL
CHECK REGISTER

General Checking - US Bank of California

Check	Date	Vendor	Description	Check / Payment
0002675	4/10/2014	[0576] 101 AUTO PARTS	2 WIPER BLADES FOR 2004 FORD TRUCK	174.90
			12 QTS 10W30 OIL, GASKETMIRACLE WIPE, BULB,AI	
			PARK & TURN SIGNAL FOR 1993 GMC SONOMA TRUCK	
			FILE, SPRAY GREASE, RED N TA	
			2 HOOKS	
0002676	4/10/2014	[4109] ACCESS HUMBOLDT	ON BEHALF OF LFAs PER AGREEMENT OF JUNE 1, 20	270.00
0002645	4/03/2014	[0000] ADVANTAGE FINANCIAL SERVICES	MONTHLY PAYMENT FOR DOCSTAR 3.12	148.35
0002677	4/10/2014	[2203] AESTHETIC DESIGN & PHOTOGRAPHY	CREATING AND UPDATING PDF FILES, UPDATES TO P	20.00
0002701	4/18/2014	[5443] AIRGAS USA, LLC	CYLINDER RENTAL	16.64
0002702	4/18/2014	[2247] ANTHEM BLUE CROSS	HEALTH INSURANCE FOR MAY 2014	16,394.00
0002678	4/10/2014	[2224] AQUA BEN CORPORATION	CHEMICALS	598.56
0002703	4/18/2014	[5573] AQUAFIX	200# FILAMENT BUSTER, 60# VITASTIM LOW F:M, 1	3,036.47
0002679	4/10/2014	[3975] AT&T - 5709	PHONE EXPENSES FOR MARCH 2014	530.51
0002647	4/03/2014	[5528] AVERY ASSOCIATES, INC	HIRING COSTS FOR NEW CITY MANAGER	4,720.75
0002720	4/29/2014	[2237] BANK OF AMERICA BUSINESS CARD	GOTOMYPC MONTHLY PAYMENT	788.02
			AMAZON.COM - MIGHTY MULE DIGITAL KEYPAD FOR T	
			AMAZON.COM - RETURNED MIGHTY MULE DIGITAL KEY	
			AMAZON.COM - MIGHTY MULE BULLDOG	
0002648	4/03/2014	[2240] BAY WEST SUPPLY, INC.	3 CASES PAPER TOWELS, 2 CASES BATH TISSUE	277.52
0002680	4/10/2014	[3604] STEPHANIE N BEAUCHAINE	FINANCE CONSULTANT - MILEAGE, PER DIEM LODGI	622.29
0002704	4/18/2014	[4892] KEVIN T CALDWELL	MILEAGE, PER DIEM & LODGING FOR CODE ENFORCEM	838.80
0002681	4/10/2014	[4603] CALIF. BUILDING STANDARDS COMMISSION	PERMIT ASSESSMENT FEES FOR OCTOBER THROUGH DE	72.00
			PERMIT ASSESSMENT FEES FOR JANUARY THROUGH MA	
0002721	4/29/2014	[4937] CALIFORNIA DEPARTMENT OF TRANSPORTATION	SIGNALS & LIGHTING FOR JANUARY 2014 THROUGH M	617.52
0002674	4/03/2014	[3355] CALIFORNIA DEPT. OF PUBLIC HEALTH	WATER SYSTEM FEES: JULY 1, 2013 - DEC 31, 201	1,216.00
0002649	4/03/2014	[2261] CALIFORNIA STATE DISB UNIT	GARNISHMEENT CASE #200000001183524 FOR PPE 3/	81.69
0002705	4/18/2014	[2261] CALIFORNIA STATE DISB UNIT	GARNISHMENT CASE #200000001183524 FOR PPE 4/4	81.69
0002650	4/03/2014	[2277] CAMPTON ELECTRIC SUPPLY	2GRT EXTRING 4-1/2 HUBS, 1/2 X 3/4 MALL ENLAR	13.52
0002651	4/03/2014	[5330] CAPITAL ONE COMMERCIAL	2 OFFICE CHAIRS FOR WATER & WASTEWATER SUPER	239.19
0002706	4/18/2014	[5330] CAPITAL ONE COMMERCIAL	48 PK AAA BATTERIES	16.77
0002722	4/29/2014	[2285] CC MARKET (1)	BLEACH	15.85

CITY OF RIO DELL
CHECK REGISTER

General Checking - US Bank of California

Check	Date	Vendor	Description	Check / Payment
0002682	4/10/2014	[2293] CITY OF FORTUNA	POLICE DISPATCH SERVICES FOR APRIL 2014	3,442.00
			LAB TESTING SERVICES FOR JANUARY - MARCH 2014	
0002652	4/03/2014	[2303] COAST CENTRAL CREDIT UNION	POA DUES FOR PPE 3/27/2014	120.00
0002707	4/18/2014	[2303] COAST CENTRAL CREDIT UNION	POA DUES FOR PPE 4/4/2014	120.00
0002653	4/03/2014	[3461] CRIMESTAR CORPORATION	ANNUAL SUPPORT RENEWAL	1,500.00
0002654	4/03/2014	[2411] DEARBORN NATIONAL LIFE INSURANCE COMPANY	LIFE INSURANCE FOR APRIL 2014	232.00
0002683	4/10/2014	[5127] DELTA DENTAL	DENTAL INSURANCE FOR MAY 2014	1,947.68
0002684	4/10/2014	[2342] DEPT OF CONSERVATION DIVISION OF ADMIN.	STRONG MOTION INSTRUMENTATION & SEISMIC HAZAR	152.48
			STRONG MOTION INSTRUMENTATION & SEISMIC HAZAR	
0002685	4/10/2014	[5568] DIVISION OF THE STATE ARCHITECT	DISABILITY ACCESS & EDUCATION FEE REPORT FOR	72.60
			DISABILITY ACCESS & EDUCATION FEES FOR APRIL	
			DISABILITY ACCESS & EDUCATION FEES FOR JULY T	
			DISABILITY ACCESS & EDUCATION FEES FOR OCTOBE	
0002642	4/02/2014	[2366] EEL RIVER DISPOSAL INC	GARBAGE BAGS FOR MARCH 2014	544.20
0002686	4/10/2014	[4316] DUSTIN ELWAY	CUSTOMER DEPOSIT REFUND	27.60
0002687	4/10/2014	[2383] EUREKA OXYGEN CO., INC	NOZZLE, CENTERFIRE FOR WELDER	16.52
0002688	4/10/2014	[2385] EUREKA READYMIX	PU BASE	72.02
			PU BASE	
0002689	4/10/2014	[2386] EUREKA RUBBER STAMP CO.	NAME PLATES, NAME PLATE WITH WOOD BASE	63.48
0002690	4/10/2014	[2393] FASTENAL COMPANY	CIRCULAR SAW KIT, IMPACT WRENCH KIT, STD MAG	1,917.41
0002723	4/29/2014	[2393] FASTENAL COMPANY	MISC SUPPLIES	8.62
0002724	4/29/2014	[2394] FEDEX	SHIPPING CHARGES FOR CALIFORNIA STATE LANDS C	26.90
0002708	4/18/2014	[2405] FORTUNA ACE HARDWARE	OUTLET & GFI TESTER LESS $5 CERTIFICATE	8.96
0002725	4/29/2014	[2405] FORTUNA ACE HARDWARE	1" SXS SCH 40 COUPLE, 2- PVC40 ADAPTERS, 2- 9	25.93
0002691	4/10/2014	[5241] GE CAPITAL	XEROX COPIER RENTAL FOR APRIL 2014	475.49
0002709	4/18/2014	[0000] GHD, INC	ENGINEERING SERVICES FOR DOUBLE "S"	1,169.75
			PROFESSIONAL SERVICES REGARDING INFILTRATION	
			TAC MEETING	
			PROFESSIONAL SERVICES - EXPERT WITNESS FOR WA	
0002710	4/18/2014	[3603] JAMES LEE GOFF	CLOTHING ALLOWANCE REIMBURSEMENT FOR BOOTS	139.74
0002656	4/03/2014	[2437] HACH	2 - SENSOR CAP ASSY, 3 - AMMONIA TEST STRIP S	437.79
0002711	4/18/2014	[2501] HAJOCA CORPORATION	2 - 2 X 6 FULL CIRCLE REDI CLAMPS	210.49

CITY OF RIO DELL
CHECK REGISTER

General Checking - US Bank of California

Check	Date	Vendor	Description	Check / Payment
0002726	4/29/2014	[2501] HAJOCA CORPORATION	2 - AYM VALVES, 2 - AYM FEMALE FLARE, 2 - LEA 2 - ROMAC FULL CIRCLE RPR CLAMPS W/1" IP TAP 12 - ROMAC CLAMPS	1,203.55
0002657	4/03/2014	[2474] HUMMEL TIRE & WHEEL, INC	TIRE REPAIR FOR MOWER	93.92
0002658	4/03/2014	[2485] INDUSTRIAL ELECTRIC	LABOR AND MATERIALS TO REWIND GOULDS 2HP PUMP	999.13
0002659	4/03/2014	[5446] JOHNSON, GORDON	REIMBURSEMENT FOR LODGING & MILEAGE TO L.O.C.	250.32
0002643	4/02/2014	[2502] KEMP INSPECTION SERVICE	INSPECTION SERVICES FOR MARCH 2014	487.27
0002727	4/29/2014	[5454] LAPERRIERE, JOSEPH	CUSTOMER DEPOSIT REFUND	25.23
0002660	4/03/2014	[2521] LEAGUE OF CALIF. CITIES	REDWOOD EMPIRE DIVISION GENERAL MEETING (COUN	48.00
0002712	4/18/2014	[4212] LEC CORPORATION	TANK CLEANING SERVICE PER PROPOSAL PLUS - ADDIT	4,865.00
0002692	4/10/2014	[2546] MERCER FRASER CO., INC.	3.57 TONS ASPHALT CONCRETE	341.56
0002713	4/18/2014	[4908] MITCHELL BRISSO DELANEY &VRIEZE	PROFESSIONAL SERVICES FOR MARCH 2014 PROFESSIONAL SERVICES FOR MARCH 2014 PROFESSIONAL SERVICES FOR MARCH 2014 PROFESSIONAL SERVICES FOR MARCH 2014 PROFESSIONAL SERVICES FOR MARCH 2014 PROFESSIONAL SERVICES FOR MARCH 2014	4,702.24
0002661	4/03/2014	[2410] NORTH COAST CLEANING SERVICES, INC.	MONTHLY CLEANING SERVICE FOR MARCH 2014	471.00
0002662	4/03/2014	[2569] NORTH COAST LABORATORIES, INC.	COLIFORM QUANTI-TRAY	50.00
0002728	4/29/2014	[2569] NORTH COAST LABORATORIES, INC.	COLIFORM QUANTI-TRAY	50.00
0002693	4/10/2014	[5101] NORTH VALLEY LABOR COMPLIANCE SERVICES	WWTP LABOR COMPLIANCE SERVICE FOR MARCH 2014	1,577.00
0002644	4/02/2014	[4393] NYLEX.NET	MONTHLY MAINTENANCE: MARCH 15TH THROUGH APRIL	900.00
0002729	4/29/2014	[4393] NYLEX.NET	NETGEAR 8-PORT GB SWITCH	76.85
0002663	4/03/2014	[4548] PAPE' MACHINERY EXCHANGE	FORKLIFT REPAIR FORKLIFT REPAIR	601.27
0002730	4/29/2014	[4548] PAPE' MACHINERY EXCHANGE	1000 HR SERVICE FOR JD310 SJ	869.57
0002694	4/10/2014	[2603] PG&E	UTILITY EXPENSES FOR MARCH 2014	14,323.74
0002714	4/18/2014	[3343] PITNEY BOWES RESERVE ACCOUNT	POSTAGE PURCHASE FOR RESERVE	400.00
0002664	4/03/2014	[4338] QUILL CORPORATION	2 PKGS POST-IT FLAGS, 3 BOXES WINDOW SECURITY 1 PKG MONITOR WIPES	226.32
0002715	4/18/2014	[4338] QUILL CORPORATION	15 PACK AVERY HIGH VISIBILITY LABELS 1 BOX RUBBER BANDS, PENTEL PENCILS, 1 DOZEN Y 1 BOX CLASP CATALOG ENVELOPES, 1 BOX EASY PE	130.50
0002731	4/29/2014	[5222] R.J. RICCIARDI, INC	PROFESSIONAL SERVICES IN CONNECTION WITH AUDI	6,027.50

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Check	Date	Vendor	Description	Check / Payment
0002665	4/03/2014	[5580] REDI-RENTS	BARRETO TRACK TRENCHER RENTAL	161.25
0002732	4/29/2014	[3029] REDWOOD COFFEE SERVICE	COFFEE	63.00
0002666	4/03/2014	[2657] RIO DELL EMPLOYEES ASSOC	DUES FOR QUARTER ENDING 3/31/2014	98.00
0002667	4/03/2014	[2659] RIO DELL PETTY CASH	PROPANE	30.51
0002733	4/29/2014	[2662] RIO DELL/SCOTIA CHAMBER OF COMMERCE	HEADWATERS FUND GRANT 12-GF-14, IN KIND CONTR	3,125.00
0002695	4/10/2014	[5092] BRANDI ROCK	CUSTOMER DEPOSIT REFUND	70.00
0002668	4/03/2014	[2742] SCOTIA TRUE VALUE HARDWARE	BUTANE FUEL, SUPER GLUE, BUTANE TORCH, TOILET 2 - 10# PICTURE HANGERS, 8" RECYCLED SCISSORS FLUSH VALVE/FLAPPER HEX NUTS	63.96
0002696	4/10/2014	[2742] SCOTIA TRUE VALUE HARDWARE	CRIMPING TOOL, ADJ PIST NOZZLE, GT HOT WATER 20G LIQ PRO SUPER GLUE, 2- 49" 32W WRAP FLU 4 - GE 2 PK 32W 48" FLUO LAMPS REPL FUEL CAN SPOUT, 5 GAL DIESEL CAN 1 - 80# CONCRETE MIX 2 - 80# CONCRETE MIX	228.06
0002716	4/18/2014	[2742] SCOTIA TRUE VALUE HARDWARE	150' GLO LIME FLAG TAPE 10 - 80# CONCRETE MIX 1" GALV PLUG 3/4 X 5 CAP SCREW, 3/4 NUT NYLOK	85.64
0002734	4/29/2014	[2742] SCOTIA TRUE VALUE HARDWARE	CITRUS POWER REMOVER, OOPS REMOVER, 3 IN ONE	17.01
0002717	4/18/2014	[2694] SHELL OIL CO.	PD FUEL EXPENSES FOR MARCH 2014 PW FUEL EXPENSES FOR MARCH 2014 PD FUEL EXPENSES FOR APRIL 2014 PW FUEL EXPENSES FOR APRIL 2014	2,845.17
0002697	4/10/2014	[4525] SHERLOCK RECORDS MGMT	STORAGE SERVICES FOR APRIL 2014	185.39
0002698	4/10/2014	[2682] SMALL CITIES ORGANIZED RISK EFFORT (SCORE)	APRIL - JUNE 2014 QUARTERLY PREMIUM FOR WORKE	15,633.00
0002669	4/03/2014	[2710] STARPAGE	PAGING SERVICES FOR APRIL 2014	12.95
0002735	4/29/2014	[2715] STEWART TELECOMMUNICATION	LABOR & MATERIALS TO NSTALL 16EA CAT6 DATA CA	5,132.88
0002670	4/03/2014	[2319] SUDDENLINK COMMUNICATIONS	MONTHLY BROADBAND SERVICES FOR APRIL 2014	244.04
0002736	4/29/2014	[2319] SUDDENLINK COMMUNICATIONS	MONTHLY BROADBAND SERVICES FOR MAY 2014	194.90
0002699	4/10/2014	[2735] TIMES-STANDARD	CLASSIFIED ADVEERTISING FOR QUALIFIED CONTRAC	1,250.30
0002671	4/03/2014	[2757] US POSTMASTER	ANNUAL FEE FOR FIRST CLASS PRESORT	220.00
0002737	4/30/2014	[2757] US POSTMASTER	POSTAGE FOR APRIL 2014 FOR UTILITY BILLING	355.42
0002672	4/03/2014	[2481] VANTAGEPOINT TRANSFER AGENTS-304361	RETIREMENT FOR PPE 3/21/2014	6,612.75
0002718	4/18/2014	[2481] VANTAGEPOINT TRANSFER AGENTS-304361	RETIREMENT FOR PPE 4/4/2014	6,612.75
0002700	4/10/2014	[2772] WENDT CONSTRUCTION, INC	VEHICLE REPAIRS	2,016.09

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Check	Date	Vendor	Description	Check / Payment
0002719	4/18/2014	[2772] WENDT CONSTRUCTION, INC	PICK UP AND DELIVER BUCKET TRUCK, MANLIFT TRU	680.00
0002673	4/03/2014	[2779] WILDWOOD SAW	TRIMMER LINE, 3 - AUTO CUT HEADS	148.14
			Total Checks/Deposits	**128,328.88**