

**AGENDA
CITY OF FERNDALE – HUMBOLDT COUNTY CALIFORNIA – U.S.A.
SPECIAL CITY COUNCIL MEETING**

Location:	City Hall	Date:	July 12, 2010
Posted: 7/9/10	834 Main Street Ferndale CA 95536	Time:	2:00 pm

We welcome you to the meeting. Members of the Public may be heard on any business item on this Agenda before or during the City Council consideration of the item. The public may also directly address the City Council on any item of interest to the public that is not on the Agenda during the public comment time; however, the City Council generally cannot take action on an item not on the agenda. A person addressing the City Council will be limited to five (5) minutes unless the Mayor of the City Council grants a longer period of time. While not required, we would appreciate it if you would identify yourself with your name and address when addressing the Council. This City endeavors to be ADA compliant. Should you require assistance with written information or access to the facility, or a hearing amplification, please call 786-4224 24 hours prior to the meeting. **TO SPEAK ON ANY ISSUE, BE ACKNOWLEDGED BY THE MAYOR BEFORE PROCEEDING TO THE PODIUM, STATE YOUR NAME AND ADDRESS FOR THE RECORD (optional), AND DIRECT YOUR COMMENTS ONLY TO THE COUNCIL.**

1. CALL MEETING TO ORDER – Mayor
2. PLEDGE ALLEGIANCE TO THE FLAG
3. ROLL CALL – City Clerk
4. ---
5. MODIFICATIONS TO THE AGENDA
6. ---
7. PUBLIC COMMENT. (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. Items requiring Council action not listed on this agenda will be placed on the next regular agenda for consideration, unless a finding is made by at least 2/3rds of the Council that the item came up after the agenda was posted and is of an urgent nature requiring immediate action. This portion of the meeting will be approximately 30 minutes total for all speakers, with each speaker given no more than five minutes.) Page 2
8. ---
9. ---
10. ---
11. BUSINESS
 - a. Resolution No. 2010-39 Authorizing the opening of an account at NVB for electronic funds transfers between USDA and the City for the WWTP Page 3
 - b. Resolution No. 2010-35 Article 34 Election Page 5
 - c. Resolution No. 2010-40 Awarding the WWTP Contract to Wahlund Construction..... Page 12
12. ---
13. ---
14. ---
15. ---
16. ADJOURN Page 14

This notice is posted in compliance with Government Code §54954.2. The next Regular Meeting of the Ferndale City Council will be held on THURSDAY August 5, 2010 in the Auditorium, City Hall at 7:00pm

Section 1

Call Meeting to Order

Section 2

Pledge Allegiance

Section 3

Roll Call

Section 5

Modifications to the Agenda

Section 7

PUBLIC COMMENT

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.

Items requiring Council action not listed on this agenda will be placed on the next regular agenda for consideration, unless a finding is made by at least 2/3rd of the Council (three of the five members) that the item came up after the agenda was posted and is of an urgent nature requiring immediate action.

This portion of the meeting will be approximately 30 minutes total for all speakers, with each speaker given no more than five minutes.

Please state your name and address for the record. (This is optional.)

Section 11

BUSINESS

Meeting Date:	July 8, 2010	Agenda Item Number	11a
Agenda Item Title:	Resolution No. 2010-39 Authorizing the opening of an account at NVB for electronic funds transfers between USDA and the City for the WWTP		
Presented By:	Jay Parrish, City Manager		
Type of Item:	x	Action	Discussion
Action Required:		No Action	x

RECOMMENDATION:

Adopt Resolution No. 2010-39 Authorizing the opening of an account at NVB for electronic funds transfers between USDA and the City for the WWTP and direct staff to forward said Resolution to the North Valley Bank

BACKGROUND:

The USDA requires a separate account for the use of funding transfers between the USDA and the City of Ferndale.

FINANCIAL IMPLICATIONS:

None

RESOLUTION NO. 2010-39

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FERNDALE
AUTHORIZING THE OPENING OF AN ACCOUNT
AT NORTH VALLEY BANK FOR THE USE OF USDA FUNDING
FOR THE WASTEWATER TREATMENT PLANT**

WHEREAS, the City Council of the City of Ferndale desires an account be opened for the use of electronic funds transfers between USDA and the City of Ferndale for the Wastewater Treatment Plant; and

WHEREAS, North Valley Bank in the City of Ferndale has opened said account; and

WHEREAS, the City Council has appointed four people as signators on this account: Jeffrey Farley, Stuart Titus, Jay Parrish and Nancy Kaytis-Slocum; and

WHEREAS, the North Valley Bank requires a resolution from the City Council.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Ferndale, that an electronic funds transfer account be opened at the North Valley Bank, Ferndale Branch for the use of fund transfers between USDA and the City of Ferndale for the Wastewater Treatment Plant.

PASSED AND ADOPTED by the City Council of the City of Ferndale on July 12, 2010 by the following vote:

- Ayes:
- Noes:
- Abstain:
- Absent:

Attest:

Jeffrey Farley, Mayor

Nancy Kaytis-Slocum, City Clerk

Meeting Date:	July 8, 2010	Agenda Item Number	11b
Agenda Item Title:	Resolution 2010-35 Approving an Article 34 Election regarding Navy Housing acquisition		
Presented By:	Jay Parrish, City Manager		
Type of Item:	<input checked="" type="checkbox"/> Action	<input type="checkbox"/> Discussion	<input type="checkbox"/> Information
Action Required:	<input type="checkbox"/> No Action	<input checked="" type="checkbox"/> Voice Vote	<input type="checkbox"/> Roll Call Vote

RECOMMENDATION:

Adopt Resolution No. 2010-35 (or one of the other versions) Approving an Article 34 Election regarding Navy Housing acquisition.

1. Staff and consultant recommend the following language for the ballot:

Authorization for Housing for Low- and Moderate-Income Seniors and Working Families

Without increasing local taxes, and in a manner consistent with Ferndale’s General Plan and zoning ordinance, shall the City of Ferndale be authorized to acquire and rehabilitate the former Navy housing complex to provide housing affordable to low- and moderate-income seniors, working families and individuals?

2. The council could also review and consider the following Alternatives for the ballot measure.

Alternative Language: Version A

Authorization for Housing for Low- and Moderate-Income Seniors and Families

The City of Ferndale shall be empowered to acquire and rehabilitate the former Navy housing facility to be used for housing for low- and moderate-income seniors and families.

Alternative Language: Version B

Authorization for Housing Affordable to Low- and Moderate-Income Seniors and Working Families

Do the voters authorize the City of Ferndale to acquire and rehabilitate the former Navy housing facility to be used for housing for Low- and – moderate income seniors, individuals and families?

Alternative Language: Version C

Authorization for Housing Affordable to Low- and Moderate-Income Seniors and Working Families

Do voters authorize the potential acquisition and rehabilitation of the former Navy housing complex to provide housing affordable to low- and moderate-income citizens, including seniors, working families and individuals and people with disabilities?

BACKGROUND:

The Humboldt County CAO's office requires that the ballot measure wording be included in the Resolution asking the county to hold an Article 34 Election. Our consultant, Elizabeth Conner, has researched that wording and included it in the following resolution. Printed below is a report regarding the Article 34 Election.

Report to Ferndale City Council

From: Elizabeth Conner, Housing Specialist

Date: June 23, 2010

Subject: Discussion of Article 34 of California Constitution: Analysis of Necessity of Election

If the City Council decides to proceed with the project, the decision to hold an Article 34 election must be made before July 12 in order to request a consolidated election in November from the County Elections Dept. This request is in the form of the resolution before your Council.

1. What is Article 34?

Article XXXIV of the California Constitution ("Article 34") requires that voter approval be obtained before any "state public body" develops, constructs or acquires a "low rent housing project." Article 34 raises a number of issues, addressed below, regarding a local agency's participation in the development of low- and moderate-income housing.

Because public agencies are often reluctant to undertake the delay, uncertainty and potential additional expense of a local election, the scope of the election requirement is the first topic discussed below. It is often possible to confine the agency's role in a housing development, or plan the development, so that no Article 34 election is required. This section then continues with a description of the required form of election, and discusses the relationship among Article 34, use of a redevelopment agency's Housing Fund, and satisfaction of a redevelopment agency's Project Area Housing Production Requirement.

2. Applicability of Article 34 to Ferndale

A redevelopment agency is a "state public body" for purposes of Article 34. Cities, counties and housing authorities also fall within the definition of "state public body." As a result, if a redevelopment agency (or other public body) participates in development of a "low rent housing project" and that participation rises to the level of development, construction, or acquisition of the project by the agency, approval by the electorate pursuant to Article 34 is required for the project.

3. Definition of "Low Rent Housing Project"

Not all low- and moderate-income housing is a "low rent housing project."

For example, if a development is being developed, owned and operated by a non-profit corporation and the only public agency assistance is provided by a federal agency (such as an elderly housing

development receiving a HUD 202 capital grant and no funding from a state or local agency such as HOME), Article 34 authority is not required.

California statutory and case law permits development of many kinds of low-and moderate-income housing that will not be characterized as a "low rent housing project", and thus will not require Article 34 voter authorization.

To clarify the requirements of Article 34, the Legislature has enacted the Public Housing Election Implementation Law (Section 37000 et seq.). The legislation specifically exempts each of the following types of developments from the requirement of voter approval:

- a. Privately owned housing which is not exempt from property taxation (unless fully reimbursed to all taxing entities) or is exempt from property taxation pursuant to the provisions of Revenue and Taxation Code 214(f) or (g) (applicable to specified housing developments operated by nonprofit entities), and in which not more than 49% of the units are occupied by low-income persons;
- b. Privately owned housing which is not exempt from property taxation by reason of any public ownership and is not financed with direct long-term financing from a public body;
- c. Housing that is intended for owner-occupancy (which may include cooperative or condominium ownership) rather than rental occupancy;
- d. Housing consisting of newly constructed, privately owned, one-to-four family dwellings not located on adjoining sites;
- e. Housing that consists of existing units leased by a state public body from a private owner;
- f. Rehabilitation, reconstruction or replacement of an existing low rent housing project, or a project previously or currently occupied by lower-income households; and
- g. Acquisition, rehabilitation, reconstruction or improvement of a low rent housing development subject to a contract for federal or state public body assistance for the purpose of providing affordable housing if the development maintains or enters into a contract for federal or state public body assistance for the purpose of providing affordable housing.

The California Supreme Court upheld the Legislature's general authority to adopt definitions applicable under Article 34 in *California Housing Finance Agency v. Patitucci*, 22 Cal. 3d 171 (1978). Because only a portion of the provisions listed above had then been enacted in the present form, only that portion of the listed provisions bears the Supreme Court's direct seal of approval.

Other types of public agency assisted housing development, although not statutorily exempted from the voter approval requirement, may still be exempt depending on their particular circumstances, such as the nature of the housing, the type and income mix of tenants, the nature of agency assistance, the degree of agency control over the development, and other factors.

4. Definition of "Develop, Construct or Acquire"

Not all public agency activities in connection with a "low rent housing project" can be characterized as development, construction, or acquisition of a low rent housing project. If a redevelopment agency or other public body were to construct housing directly, of course, its action would constitute development, construction, or acquisition. In addition, if agency loans money for a project and the loan is conditioned on typical government agency requirements such as review and approval of plans, project financing, operation and maintenance standards and occupancy, the agency will generally be deemed to have developed or constructed the project.

For instance, in *California Housing Finance Agency v. Elliott*, 17 Cal. 3d 575 (1976), the California Supreme Court concluded that California Housing Finance Agency ("CHFA") activities in the course of making a loan for a project constituted "development" by a public body. Those activities included, among other things: assessment of economic feasibility, review of management plans, review of location, design and construction plans; restrictions on rent and occupancy; certification of tenant incomes on an annual basis; implementing financial standards; monitoring relocation requirements; inspecting buildings and records; supervising construction, operation and maintenance; and designation of a tenant grievance procedure. Government activities in connection with a "low rent project" more limited than those undertaken by CHFA in *Elliott* conceivably could be interpreted as not constituting development. For instance, a loan for a project which does not involve the agency in review of plans for or operations of the project may not constitute development or construction of the project by the agency. However, that is by no means clear. "Development" may consist of merely imposing, as a condition of agency assistance, occupancy requirements which have the effect of making a project a "low rent project."

The Legislature has undertaken to define specific exclusions from the meaning of "develop, construct or acquire," although the California Supreme Court has not ruled on the validity of those sections. Pursuant to such legislation, the words "develop, construct or acquire" do not apply if the agency's activity is limited to any of the following:

- a. The agency provides financing secured by a deed of trust, or obtains title temporarily through foreclosure or a deed in lieu with the intent to resell to a private owner;
- b. The agency acquires land or makes improvements to land which it anticipates will be ground leased to a private owner prior to its development so long as:
 1. The land and improvements are not exempt from property taxation by reason of public ownership for more than five years after agency acquisition; or
 2. After five years the agency fully reimburses the affected taxing entities;
- a. The agency leases units from a private owner provided that the lease does not result in a decrease of property tax;
- b. The agency provides assistance to a private owner or occupant of existing housing which enables the occupant to live in decent, safe and sanitary housing at a rent he or she can afford;

- c. The agency provides assistance to a development prior to its becoming a low rent housing project without intending or expecting that the development will become a low rent housing project;
- d. The agency provides assistance and monitors construction and compliance with the conditions of assistance to the extent of:
 1. Carrying out routine governmental functions;
 2. Performing conventional activities of a lender; or
 3. Imposing constitutionally mandated or statutorily authorized conditions accepted by the recipient of the assistance.

The last category listed is potentially the most widely applicable, but legally open to the greatest doubt. This list is not exhaustive and does not authoritatively define development, construction or acquisition. In each individual case an agency must examine its role and the extent of its involvement to determine if those actions fall inside or outside the definition.

5. Limitation of Time for Article 34 Challenge

Section 36000 et seq. requires that an Article 34-based challenge to a local or state agency's approval of (or funding commitment for) a housing development be brought within sixty days of the date of approval (or funding commitment). Given the questions about how specific fact situations may be affected by Article 34, this provides an important assurance, particularly where no election is held. Moreover, the Supreme Court in *Davis* appeared to recognize the Legislature's right to establish this statute of limitations period. This does not mean, however, that communities can completely ignore Article 34 and then rely on the sixty day statute of limitations with impunity. If the community did not have a reasonable basis to believe that a project fell under one of the statutory exceptions set forth above, a court may not allow the public agency to willfully and knowingly violate Article 34 and then rely on the relatively short statute of limitations to prevent any substantively meritorious litigation challenge.

6. Practical Issues of Structuring to Avoid Article 34 Election

This subsection discusses how structuring a transaction to comply with Article 34 can affect an agency's compliance with its Regional Housing Needs Allocation (RHNA) requirements and produce very low and lower income units in proportion to community need.

For instance, in a typical example, a nonprofit developer may be planning to build a 100-unit development in which all the units will be occupied by very low income households, and which will receive an allocation of federal low income housing tax credits. In order to avoid the necessity for an Article 34 election, the nonprofit asks the agency to provide Housing Funds to the development, but to regulate only 49% of the units as very low income. The developer is willing to have the agency regulate the balance of the units so that they are affordable to median or moderate income households. By using this approach, it is the general consensus that the development would not be a "low rent housing project" because it would fall under the exemption of "privately owned, exempt from property taxes only under Revenue and Taxation Code Section 214[g], with not more than 49% of the units required by

the redevelopment agency to be occupied by lower income [or, in this case, very low income] households.”

Because only 49 % of the units will subject to an agency regulatory agreement requiring them to be very low income, only those 49 units can be counted toward meeting the agency's RHNA for very low income units. The balance can qualify toward the low- and moderate-income portion of the production requirement. This result may seem strange because all the units will in fact be very low income and will be subject to a thirty-year regulatory agreement under federal tax law. However, to meet Article 34 limitations, the agency can take credit for only 49 very low income units and an additional 51 low- and moderate-income units.

7. Will Ferndale need an Article 34 Election?

Unless we decide to restructure the project differently, the analysis shows it would be prudent for the City to hold an Article 34 election. If we structure the project so that the City merely acts as “pass-through” owner to a private non-profit company, we could avoid conducting an election. We could do this by using a double escrow process at closing, whereby the City both receives ownership of and disposes of the property in essentially the same transaction, would be the surest way to avoid necessity of the election. The use of the property and its cash flow would be protected and controlled by use of CC&R's and other deed restrictions.

RESOLUTION NO 2010-35

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FERNDALE
REQUESTING A CONSOLIDATED ELECTION**

WHEREAS, the City Council of the City of Ferndale desires to hold an Article 34 election to allow the city of Ferndale to acquire the Navy Housing Property; and

WHEREAS, state law permits consolidation of a municipal election with County elections; and

WHEREAS, the ballot shall read:

Authorization for Housing for Low- and Moderate-Income Seniors and Working Families

Without increasing local taxes, and in a manner consistent with Ferndale’s General Plan and zoning ordinance, shall the City of Ferndale be authorized to acquire and rehabilitate the former Navy housing complex to provide housing affordable to low- and moderate-income seniors, working families and individuals?

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Ferndale, that the County of Humboldt is requested to hold a consolidated election for an Article 34 vote.

PASSED AND ADOPTED by the City Council of the City of Ferndale on July 12, 2010 by the following vote:

- Ayes:
- Noes:
- Abstain:
- Absent:

Attest:

Jeffrey Farley, Mayor

Nancy Kaytis-Slocum, City Clerk

Meeting Date:	July 8, 2010	Agenda Item Number	11c
Agenda Item Title:	Resolution No. 2010-40 Awarding the WWTP Construction Contract to Wahlund Construction		
Presented By:	Jay Parrish, City Manager		
Type of Item:	x	Action	Discussion
Action Required:		No Action	x
			Information
			Roll Call Vote

RECOMMENDATION:

Adopt Resolution No. 2010-40 Awarding the WWTP Construction Contract to Wahlund Construction

BACKGROUND:

The USDA has approved the awarding of the WWTP construction contract to Wahlund Construction. The following resolution memorializes the approval.

FINANCIAL IMPLICATIONS:

Base bid of \$8,106,088 and an alternative bid of \$159,000

RESOLUTION 2010-40
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FERNDALE AWARDING THE
WASTEWATER TREATMENT PLANT (WWTP) CONSTRUCTION CONTRACT
TO WAHLUND CONSTRUCTION

WHEREAS, The City Council of the City of Ferndale has authority, pursuant to (cite statute) XXXXXXXX, to enter into contracts for services with other entities; and

WHEREAS, Pursuant to (cite statute) XXXX, formal bids were taken for the construction of the project known as the Wastewater Treatment Plant (WWTP); and

WHEREAS, Wahlund Construction was the lowest responsible bidder for the project, in the amount of a base bid of \$8,106,088 and an alternative bid of \$159,000, with the bid tabulation attached hereto as Exhibit A; and

WHEREAS, the construction will conform to plans and specifications issued by the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Ferndale enters into a contract on behalf of the City of Ferndale and Wahlund Construction as the lowest responsible bidder for the WWTP in the amount of a base bid of \$8,106,088 and an alternative bid of \$159,000 and further authorizes the City Manager to execute any change orders to said contract or budgeted amount.

PASSED AND ADOPTED by the City Council of the City of Ferndale on July 12, 2010, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

 Jeffrey Farley, Mayor

Attest:

 Nancy Kaytis-Slocum, City Clerk

Section 16

ADJOURNMENT