

Judge Kawaichi's Specific Recommendations by Topic

- I. Steering Committee functions and obligations (1a)
 - A. A specific individual or group should be appointed as liaison to major projects with responsibility to communicate effectively with city officials and the community steering committee, meeting regularly with and reporting to both.
 - B. An updated packet of information for Steering Committees should be maintained for all major city projects containing current legislation, applicable city policies, relevant seismic and other studies, and a complete set of requirements from initiation to completion, including, if applicable, various funding possibilities, potential additional liabilities and bonding requirements.

- II. Engineer of Work – Development of plans, bid specifications and cost estimates (1c)
 - A. Because of the pending litigation between the City of Piedmont and the Engineer of work on the PHUUD project, substantive and procedural recommendations are premature.
 - B. As a related recommendation, since there is no current job description for the City Engineer, one should be developed and included in the City Charter and Personnel Manual definitions.
 - C. As a process only, the following recommendations are made:
 - i. Closely monitor the litigation in Contra Costa County as well as any other litigation or action which may develop involving any party.
 - ii. Gather all public information, such as the pleadings, the discovery responses and any motions (subject in each case to any confidentiality agreements or

orders) and make that information available to residents.

- iii. Monitor the degree of success of the project in obtaining desired outcomes.
- iv. Draft a plan for determination of legal responsibility for the bids, plans, specifications, and costs for the project.
- v. Hold public meetings as necessary to take additional testimony and make findings.
- vi. Review and finalize recommendations to the Council regarding the Engineer of Work for future projects.

III. Legal obligations of the city and financial exposure under current law (1d)

- A. Again, to a large degree, the final recommendations will depend on the litigation and its final outcome. The Preliminary Report describes some estimates of cost on pages 20-21. The expense of litigation should also be taken into account. The anticipated cost of discovery, motions, expert designation, expert discovery, jury selection and costs, stenographic expense, expert fees, witness fees, attorney fees, consultants' fees, and potential appellate review expenses should all be estimated and taken into account.
- B. In any case, the City Attorney and other city staff with appropriate consultation, have the duty to advise the Council of risk management and potential liability issues at the beginning of each project. Once the current litigation is complete, more will be known about any acts or failures to act by the City Attorney and other staff.
- C. If there is insufficient experience within the existing city staff, outside expert advice should be sought to assure that the Council is fully advised before embarking on any major project.
- D. The Council should be made aware of the experience of other municipalities with the type of project involved, including any disputes, claims, litigation or other matters

which will assist the Council in making decisions and policy.

- E. To the extent applicable, bidding requirements, use of technology, financial market conditions, and other circumstances should be reviewed and updated regularly.

IV. Explanation of the engineering process for the district (why were multiple firms involved?) (2a)

- A. This is another question the answer to which should be clarified by the litigation.
- B. The short answer from discussion with other city staff is that the original bid by Harris could not be performed by Harris (notice was allegedly given to the City). Robert Gray Associates assumed the role of Engineer of Work sometime prior to July 1, 2009. Coastline was retained as a consultant on the same date. The exact details should emerge from the pending litigation.
- C. Bidding requirements should be reviewed and updated.
- D. The process for reviewing bids and standards for accepting or rejecting bids should be continuously updated. Any review of the bids should be undertaken by an independent individual or entity.

V. Additional Recommendations

- A. Composition of the Audit Subcommittee. Since this report, primarily due to pending litigation, cannot draw conclusive findings or make final recommendations, its membership should be expanded so that non-Council members do not constitute a majority of the members. This can easily be accomplished by adding any of the very active residents who have already been examining

B Assure that the primary goals of the Council are met by the final report of the Audit Subcommittee. I understood the primary goal of the Subcommittee was to produce a report and recommendations which would address prevention of any experience in the future similar to the experience with PHUUD. In hearings so far, it is clear that some members of the community are seeking to attribute blame or fault to individuals or groups, rather than suggesting ways in which changes can be made to reduce the chance of more negative experiences in the future. The focus should be on a rational process which results in recommendations to the Council for change which will reduce the chances of any future negative results with projects.