Atascadero City Council
Staff Report - City Clerk

Referendum Petition Concerning Creek Setbacks
Resolution No. 2007-022
General Plan Amendment #2006-0017

(Council to decide whether to repeal General Plan Amendment or call for an election.)

RECOMMENDATIONS:

Council:

1. Receive the Certificate of Sufficiency from the City Clerk, certifying the “Referendum Against a Resolution Passed by the City Council, Resolution #2007-022,” that was filed with the City Clerk on June 7, 2007; and,
2. Take one of the following actions:
   a. Adopt Draft Resolution A, to repeal Resolution No. 2007-022, removing the General Plan Amendment 2006-0017, which amended the Land Use, Open Space, and Conservation Element of the Atascadero General Plan; and give staff direction on how the City Council wants to proceed on a permanent creek setback ordinance; or,
   b. Adopt Draft Resolution B, to call for an election to submit Resolution No. 2007-022 to the voters, and direct the City Clerk to consolidate the ballot measure election with the next general municipal election on November 4, 2008; or,
   c. Adopt Draft Resolution B, to call for a Special Election to submit Resolution No. 2007-022 to the voters, and direct the City Clerk to consolidate the Special Election with the February 5, 2008 Presidential Primary; or,
   d. Adopt Draft Resolution B, to call for a Special Election to submit Resolution No. 2007-022 to the voters, and direct the City Clerk to consolidate the Special Election with the June 3, 2008 Statewide Direct Primary; or,
   e. Adopt Draft Resolution C, to call for a stand-alone Special Election to submit Resolution No. 2007-022 to the voters, and direct the City Clerk to schedule the stand-alone Special Election on a date specific, not less than 88 days from July 24, 2007 (October 21, 2007 and beyond), and on a Tuesday.
DISCUSSION:

The City Council adopted Resolution No. 2007-022, approving General Plan Amendment 2006-0017, amending the Land Use, Open Space, and Conservation Element of the Atascadero General Plan. This General Plan Amendment consisted of text amendments to the portions of the General Plan concerning setbacks along creek reservations, blueline creeks, and the Salinas River.

Referendum is defined as the power of the voters to nullify an ordinance or resolution adopted by a legislative body. Proponents of a referendum must circulate the petition protesting the adoption of the ordinance or resolution within 30 days of the adoption.

The referendum petition must be signed by not less than 10 percent of the registered voters of the City. The number of registered voters is determined by the San Luis Obispo County Clerk/Recorder's last official report of registration to the Secretary of State.

The number of registered voters for the City of Atascadero, as per the report of registration to the Secretary of State, is 16,108. Therefore, a referendum petition needs 1,611 (10%) valid signatures to be sufficient.

Proponents circulated the “Referendum Against a Resolution Passed by the City Council, Resolution #2007-022” (Creek Setback Petition) and submitted it to the City Clerk on June 7, 2007. The California Elections Code (CEC) requires that the signatures be verified.

The Petition contained an unofficial prima facie count of 2,505 signatures. Due to a few invalid circulators, the count was reduced to 2,424. The number of signatures reviewed was 2,106. The number of signatures found to be insufficient was 478, and the number of signatures found to be sufficient was 1,628.

The CEC states that if the City Clerk finds the petition to be sufficient, she shall certify the results to the City Council. The City Council is to accept the Certificate of Sufficiency and take one of the following two actions:

- **Repeal the Resolution**
  - Repeal of the Resolution prevents the amended language from taking effect in the General Plan. The City Council cannot adopt the same Resolution for a period of one year after the date of its repeal.
  - If the proposed General Plan Amendment does not go into effect then the existing General Plan Policy 8.2 will remain. Since the existing policy included a sunset date that has expired, General Policy 8.2.2. will revert back to the original 2002 standard (see policy below). The 2002 policy provided for an interim 20-foot setback along Atascadero Creek and Graves Creek measured from the creek reservation. Boulder Creek will be considered a fork of Graves Creek and subject to the 20-foot setback consistent with the
2002 General Plan Land Use Diagram. The General Plan language after the sunset clause expires is listed below:

**2007 General Plan Language after Sunset Clause Expires**

**Policy 8.2:** Establish and maintain setbacks and development standards for creek side development.

**Program:**

1. Adopt and maintain a creek setback ordinance that will establish building setbacks and development standards along the banks of Atascadero Creek, Graves Creek, blue line creeks and the Salinas River to ensure the uninterrupted natural flow of the streams and protection of the riparian ecosystem with flexible standards for the downtown area.

   Responsibility: CDD, Planning Commission, City Council

2. Prior to adoption of a creek setback ordinance an interim 35-foot creek setback shall be in effect along Atascadero Creek and Graves Creek until March 1, 2005. All other 7.5 min USGS quadrangle blue line creeks shall have an interim 20-foot setback. The interim setbacks shall be subject to the following:

   a) On Atascadero Creek and Graves Creek setbacks shall be measured from the edge of the creek reservation.

   b) All other blue line creek setbacks shall be measured from ordinary high water mark.

   c) The Planning Commission may approve exceptions to the interim creek setbacks in the form of a Conditional Use Permit if the finding can be made that creeks, riparian areas and site improvement will not be negatively impacted by the exception.

If the City Council decides to repeal the Resolution, staff will ask for direction on how the Council wants to proceed on a permanent creek setback ordinance.

- **Call for an election**
  
  o Any election must be not less than 88 days after the call for an election by the City Council, and must be scheduled on a Tuesday.
  
  o The City Council has four options if they call for an election:
    1. Call for an election to submit Resolution No. 2007-022 to the voters, and direct the City Clerk to consolidate the ballot measure election with the next general municipal election on November 4, 2008; or,
    2. Call for a Special Election to submit Resolution No. 2007-022 to the voters, and direct the City Clerk to consolidate the Special Election with the February 5, 2008 Presidential Primary; or,
    3. Call for a Special Election to submit Resolution No. 2007-022 to the voters, and direct the City Clerk to consolidate the Special Election with the June 3, 2008 Statewide Direct Primary; or,
    4. Call for a stand-alone Special Election to submit Resolution No. 2007-022 to the voters, and direct the City Clerk to schedule the stand-alone
Special Election on a date specific, not less than 88 days from July 24, 2007 (October 21, 2007 and beyond), and on a Tuesday.

If the City Council calls for an election, a ballot measure will be placed on the ballot, asking the voters (approximate wording):

```
“Shall Resolution No. 2007-022, which approved General Plan Amendment 2006-0017, amending the Land Use, Open Space, and Conservation Elements of the Atascadero General Plan, concerning setting creek setbacks, be adopted?”
```

The CEC allows for the City Council to direct the City Clerk to transmit a copy of the measure to the City Attorney to prepare an impartial analysis of the measure. Also, the proponents may file a written argument opposing the Resolution and the City Council may submit a written argument in favor of the Resolution. The impartial analysis and the arguments would be included in the sample ballot.

Except for the impartial analysis and arguments, the City, including City Council and employees, must remain neutral concerning this issue until after the election. Public funds must not be used to advocate for or against the ballot measure. The City Clerk recommends that the City Council seek legal advice on the City holding workshops and distributing printed information on this issue.

**FISCAL IMPACT:**

<table>
<thead>
<tr>
<th>OPTIONS</th>
<th>ESTIMATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repeal Resolution</td>
<td>$ 0</td>
</tr>
<tr>
<td>Regular municipal election of November 4, 2008</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Special election consolidated with County on February 5, 2008</td>
<td>$50,000.00</td>
</tr>
<tr>
<td>Special election consolidated with County on June 3, 2008</td>
<td>$35,000.00</td>
</tr>
<tr>
<td>Special stand-alone election on a date specific</td>
<td>$70,000.00</td>
</tr>
</tbody>
</table>

These are estimates received from the County Clerk/Recorder and election consultants. These estimates do not include the hiring of temporary employees to assist with election duties and other miscellaneous costs.

Please note that the consolidation with the County in February 2008 is more expensive than the consolidation with the County in June 2008. This is because the February election is only a Presidential Primary, paid for by the State, and the City would have to split the costs with the State. The June election is a Direct Primary and would be split among the City, County and State.

**ALTERNATIVES:**

The Council must repeal the Resolution or call for an election.
ATTACHMENTS:

1. Certificate of Sufficiency
2. Resolution No. 2007-022, amending General Plan
3. Draft Resolution A
4. Draft Resolution B
5. Draft Resolution C