

January 15, 2008 Regular City Council Meeting

BENICIA CITY COUNCIL MEETING

REGULAR AGENDA

City Council Chambers

January 15, 2008

7:00 P.M.

I. CALL TO ORDER:

II. CLOSED SESSION:

To be held at 6:00 p.m., prior to the regular meeting.

III. CONVENE OPEN SESSION:

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. REFERENCE TO FUNDAMENTAL RIGHTS OF THE PUBLIC

IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/ PROCLAMATIONS:

A. ANNOUNCEMENTS:

1. Announcement of Closed Session, if any.

2. Openings on Boards and Commissions:

Sky Valley Open Space Committee:

-Two unexpired terms to September 30, 2010

Open Government Commission:

-One full term to November 30, 2011

Historic Preservation Review Commission

-Two full terms to February 28, 2011

3. Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4210 or by email acardwell@ci.benicia.ca.us.

B. APPOINTMENTS:

Open Government Commission:

[George Delacruz](#) - One full term to November 30, 2011

C. PRESENTATIONS:

D. PROCLAMATIONS:

V. ADOPTION OF AGENDA:

VI. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN

B. PUBLIC COMMENT

VII. CONSENT CALENDAR:

Items listed on the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal or explanation is received from a Council Member, staff or member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

**A. Approval of minutes of [November 27, 2007, December 6, 2007, and December 18, 2007](#).
(City Clerk)**

B. [Purchase of two replacement backwash pump systems for the Water Treatment Plant.](#) (Public Works Director)

This action authorizes the purchase of two high-efficiency backwash pump systems for the Water Treatment Plant to replace the original systems from 1971. The cost of these systems is budgeted and sufficient funds are available in the Water Enterprise Fund.

Recommendation: Adopt a resolution authorizing the purchase of two replacement backwash pump systems for the Water Treatment Plant from G3 Engineering, Inc. in the amount of \$26,315.47.

C. Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.

VIII. PUBLIC HEARINGS:

NONE

IX. ACTION ITEMS:

A. [Review of Water Purchase Opportunity with Solano Irrigation District.](#) (Public Works Director)

The City has an opportunity to purchase, in perpetuity, Solano Project water (Lake Berryessa). City staff is asking Council for confirmation of interest before proceeding with the proposal from Solano Irrigation District. This action is not a commitment by the City to ultimately enter into an agreement.

Recommendation: By motion, direct staff to continue with its efforts to potentially purchase Solano Project water (Lake Berryessa) from Solano Irrigation District.

B. [Authorize developer Request for Qualifications and beginning of community involvement process for the City-owned E Street lot.](#) (Economic Development Manager)

The City of Benicia owns the "E Street lot", an area comprised of two separate parcels plus City right of way, totaling about two acres at East 2nd and East E Streets. As noted in the recently approved Downtown Mixed Use Master Plan, this site is an asset to be leveraged by the City to contribute to downtown vitality. Staff recommends that the City Council authorize issuing a Request for Qualifications (RFQ) to find a development partner; the selected firm will start predevelopment work beginning with a community involvement process.

Recommendation: Direct staff to issue a Request for Qualifications for a development partner, who will lead the community involvement process, for the City-owned E Street lot.

C. [Amendment of Resolution No. 07-103 approving the Benicia Views \("Raffanti Project"\) tentative subdivision map \(East H and East I Streets east of East Sixth Street\) to augment buffer language.](#) (City Attorney)

On September 4, 2007, the City Council approved a Tentative Subdivision Map to subdivide four vacant residential parcels (one low density and three medium density) into seven single-family lots along East H and East I Streets east of East Sixth Street. One of the findings in the resolution approving the Tentative Subdivision Map was a finding that H Street provides an adequate buffer to conform with the General Plan requirements. This finding was challenged. In settlement of the potential lawsuit, the developers have agreed to additional mitigations regarding a buffer. This requires amendment of the resolution.

Recommendation: Adopt the resolution amending finding (j) in Resolution No. 07-103 regarding buffers between residential and industrial zoning and existing uses from new potentially incompatible uses.

D. Clarification of City Council direction regarding the commitment for a new skate park south of Highway 780. (Parks & Community Services Director)

At the November 20, 2007 City Council meeting the City Council took the following action: 1) Directed staff to close the Willow Glen Skate Park until funding can be identified to demolish the skate park asphalt and concrete and replace with turf and landscaping. 2) Commit to identify an alternative site to be located south of Highway 780 for a new skate park designed for younger users. The commitment of November 20th was not a formal action by the City Council. 3) Identify funding to lay a gravel roadway to the Benicia Dog Park at the Benicia Community Park. After hearing testimony at the December 4, 2007 City Council meeting regarding the closure of the Willow Glen Skate Park, the City Council wanted this item brought back to clarify their direction regarding the development of a new skate park south of Highway 780.

Recommendation: To the extent desired by City Council, clarify the direction given on November 20, 2007 regarding the development of a new skate park south of Highway 780. (Note: There is a related item under Comments from Council Members, per the request of Mayor Patterson.)

X. COMMENTS FROM COUNCIL MEMBERS:

A. Request to reconsider Willow Glenn Skate Park. (Mayor Patterson)

Mayor Patterson has requested that the City Council reconsider Willow Glenn Skate Park closure. It is intended to keep the "safety fence" installed during the following process and information gathering. Such reconsideration would be for the following:

1) Convene a community professionally facilitated conversation about the Willow Glen Skate Park that specifically includes noticing all the neighbors and all those who have spoken at PRCC; and 2) City Council to review and discuss the following:

- a. A report by a qualified skate park specialist about the condition of the pavement and the insurance risk actual cost estimates for repair past problems and how to avoid based on safety and insurance information;
- b. Consider reopening enforcement (measures that could be used and consequences);
- c. Improvements to current park, including small fence to prevent spill over onto sidewalk Taco Bell's responsibility with trash, private property surveillance cameras to protect property owners from fence, car, mailbox and other vandalism; and
- d. Potential new sites, including estimated cost and estimated time to have on-line.

Recommendation: Consider agendaizing this item for a future City Council meeting.

XI. INFORMATIONAL ITEMS:

A. Reports from City Manager:

B. Council Member Committee Reports:

(Council Members serve on various internal and external committees on behalf of the City. Current agendas, minutes and meeting schedules, as available, from these various committees are included in the agenda packet. Oral reports by Council Members are made only by exception.)

1. Mayor's Committee Meeting. (Mayor Patterson)

Next Meeting Date: January 16, 2008

2. Association of Bay Area Governments (ABAG). (Mayor Patterson & Vice Mayor Campbell)

Next Meeting Date: April 24, 2008 – Spring General Assembly

3. Audit & Finance Committee. (Vice Mayor Campbell & Council Member Schwartzman)

Next Meeting Date: February 8, 2008

4. League of California Cities. (Mayor Patterson & Council Member Schwartzman)

Next Meeting Date: January 16-18, 2008 - New Mayors & Council Members Academy

5. School Liaison Committee. (Council Members Iokimedes & Hughes)

Next Meeting Date: March 13, 2008

6. Sky Valley Open Space Committee. (Vice Mayor Campbell & Council Member Iokimedes)

Next Meeting Date: February 6, 2008

7. Solano EDC Board of Directors (Mayor Patterson & Council Member Iokimedes)

Next Meeting Date: January 17, 2008

8. Solano Transportation Authority (STA) (Mayor Patterson & Council Member Schwartzman)

Next Meeting Date: February 13, 2008

9. Solano Water Authority/Solano County Water Agency (Mayor Patterson & Council Member Schwartzman)

Next Meeting Date: February 14, 2008

10. Traffic, Pedestrian and Bicycle Safety Committee (Vice Mayor Campbell & Council Member Hughes)

Next Meeting Date: January 17, 2008

11. Tri-City and County Regional Parks and Open Space (Vice Mayor Campbell & Council Member Hughes)

Next Meeting Date: February 20, 2008 – Citizen’s Advisory Committee

12. Valero Community Advisory Panel (CAP) (Council Member Hughes)

Next Meeting Date: January 24, 2008

13. Youth Action Task Force (Council Members Iokimedes & Schwartzman)

Next Meeting Date: January 23, 2008

14. ABAG/CAL FED Task Force/Bay Area Water Forum (Mayor Patterson)

Next Meeting Date: February 11, 2008

XII. ADJOURNMENT:

Public Participation

The Benicia City Council welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Dan Pincetich, the ADA Coordinator, at (707

746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council.

/Agenda0115.08

 [IV-B Appointment Delacruz.pdf](#)

 [VII-A Minutes.pdf](#)

 [VII-B Purchase Pump Systems.pdf](#)

 [IX-A Water Purchase.pdf](#)

 [IX-B E Street Lot.pdf](#)

 [IX-C Amendment Benicia Views.pdf](#)

 [IX-D Clarification New Skate Park.pdf](#)

 [X-A Willow Glen Skate Park.pdf](#)

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
CONFIRMING THE MAYOR'S APPOINTMENT OF GEORGE DELACRUZ TO THE
OPEN GOVERNMENT COMMISSION TO A FULL TERM ENDING NOVEMBER 30,
2011**

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that the appointment of George Delacruz to the Open Government Commission by Mayor Patterson is hereby confirmed.

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 15th day of January 2008 and adopted by the following vote:

Ayes:

Noes:

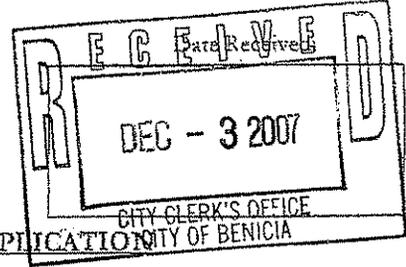
Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

APPLICATION



BOARD, COMMITTEE AND COMMISSION APPLICATION

It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all geographical, social, environmental and economic sectors of the community and to avoid potential conflicts of interest. (Resolution No. 04-9, Exhibit A, Section IV.A)

Board, Committee or Commission: Open Government Commission

Name: George Delacruz

Address: _____

Home Ph: _____ Work Ph: _____

E-mail: georgedelacruz@sbcglobal.net FAX: _____

Job Title: _____ Employer: Retired

Employer Address: _____

Do you reside in Benicia? Yes No If so, how long? 4 years

Please indicate any particular times/days that you are unavailable for meetings:

Please submit a statement on a separate sheet that includes the following:

- Your education (please include name of institution(s) and discipline(s) studied) and prior governmental and nongovernmental experience.
- Include any city/county/state committees or commissions you have served on. Please describe its function, where, when and for how long did you serve.
- Include any community groups or organizations you are or were affiliated with, as well as any office you hold or previously held.
- Why you desire to serve— your own goals and objectives for your term of office.

Applicant Signature: *George Delacruz* Date: December 3, 2007

Please return completed applications to the City Clerk's Office at 250 East L Street, Benicia
- Applications may also be faxed to 707-747-8120 -
Please note that your completed application is a public document that may be included in a
City Council Meeting Agenda Packet.
It will also be available to members of the public upon request.

STEVE MESSINA, Mayor
Members of the City Council
ALAN M. SCHWARTZMAN, Vice Mayor • MARK C. HUGHES • ELIZABETH PATTERSON • BILL WHITNEY

JIM ERICKSON, City Manager
VIRGINIA SOUZA, City Treasurer
LISA WOLFE, City Clerk

Monday, December 03, 2007.max

Personal History
George Delacruz

- Graduated Fremont High School, Oakland California 1948
- Two year Course, Welding Sciences 1954-55 Laney College, Oakland California
- Retired B & B Grading and Paving, Concord California 1993
- Appointed by Supervisor Tom Torlakson, Bay Point Project Area Committee (redevelopment) 1993 through 2001
- Appointed by Supervisor Tom Torlakson, Bay Point Traffic Advisory Committee 1992-2000
- Appointed by Senator Richard Rainey, 1999; reappointed 2000 by Senator Tom Torlakson, committee to rewrite the Recreation and Park Codes of the State of California
- Appointed by Supervisor Joe Canciamilla, Contra Costa County Library Commission 1999-2000
- Elected Bay Point Municipal Advisory Council, 1994; Reelected 1998
- Elected, Ambrose Recreation and Park District Board of Directors 1996; Reelected 2000
- President, Clocktower Grove Homeowners Association Benicia reelected September 2007

It is my fervent desire that government be open and visible to the people it serves. I dedicate myself to that end so the people may know what their elected officials and public employees are doing on their behalf.

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
NOVEMBER 27, 2007

The special meeting of the City Council of the City of Benicia was called to order by Vice Mayor Schwartzman at 6:00 p.m. on Tuesday, November 27, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, and Whitney

Absent: Mayor Messina (arrived at 6:02 p.m.)

PLEDGE OF ALLEGIANCE:

Vice Mayor Schwartzman led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

ANNOUNCEMENT OF CLOSED SESSION:

Lisa Wolfe, City Clerk, read the announcement of Closed Session.

OPPORTUNITY FOR PUBLIC COMMENT:

None

CLOSED SESSION:

**A. CONFERENCE WITH LABOR NEGOTIATOR
(Government Code Section 54957.6 (a))**

Agency negotiators: City Manager, Bill Avery, Assistant to the City Manager

Employee organizations: Benicia Senior Management Group, Benicia Middle Management Group, Local 1, Benicia Public Service Employees' Association (BPSEA)

ADJOURNMENT:

Vice Mayor Schwartzman adjourned the meeting at 6:02 p.m.

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MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
DECEMBER 6, 2007

The special meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 5:00 p.m. on Thursday, December 6, 2007, in the Commission Room, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson
Absent: Vice Mayor Campbell (arrived at 5:07 p.m.)

PLEDGE OF ALLEGIANCE:

Mayor Patterson led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Commission Room per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

OPPORTUNITY FOR PUBLIC COMMENT:

None

INFORMATIONAL ITEMS:

New Council Organization & Planning Meeting:

Direction to Staff discussed:

- Boundaries discussed – 15 minute rule
- Inquiries to department heads or via City Manager – City Manager to advise Staff to let him know if there is a problem and to review issue and advise Council of there is a problem. Reinforce existing system.

Representation on Boards and Commissions:

- Representing personal view or City view to be discussed later

Emergency exercise with Council per Jim Erickson:

Policy regarding employment help request needed:

- Code of conduct/resolution

Fema Training Schedule:

- Requested

Agenda Management:

- Consider noting upcoming items on agendas

DRAFT

- Description of consent calendar and note when it will appear if pulled
- Timing for speaking – variable if there are a lot of speakers – decide after polling audience

15 Minute “Rule”

- Reviewed Council’s policy

Records of Minutes from old days:

- Commissions need back-up in Library or note where to find them on City’s website
- Expand retention for tapes of meetings

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 8:45 p.m.

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
DECEMBER 18, 2007

The special meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 6:30 p.m. on Tuesday, December 18, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Patterson led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

OPPORTUNITY FOR PUBLIC COMMENT:

None

ANNOUNCEMENT OF CLOSED SESSION:

Mayor Patterson read the announcement of Closed Session

CLOSED SESSION:

- A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section §54956.8)
City owned property (East 4th and East L Streets): APN 88-124-130
Negotiating parties: City Manager and Economic Development Manager**

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 6:33 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
DECEMBER 18, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:02 p.m. on Tuesday, December 18, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Absent: Council Member Campbell (arrived immediately after roll call)

PLEDGE OF ALLEGIANCE:

Mayor Patterson led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Mayor Patterson announced that Council discussed the issue of City-owned property and gave direction to Staff.

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:
Three unexpired terms to September 30, 2010
- Open Government Commission:
One full term to November 30, 2011

Mayor Patterson announced that she would maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4210 or by email acardwell@ci.benicia.ca.us.

APPOINTMENTS:

RESOLUTION 07-143 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF CRAIG SNYDER TO THE SKY VALLEY OPEN SPACE COMMITTEE TO AN UNEXPIRED TERM ENDING SEPTEMBER 30, 2010

The above Resolution was adopted, on roll call by the following votes:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

PRESENTATIONS:

None

PROCLAMATIONS:

- Recognition of Virginia Souza as Treasurer Emeritus

ADOPTION OF AGENDA:

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the Agenda was adopted as presented, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Rick Ernst – Mr. Ernst wanted to discuss an item that was on the agenda. Mayor Patterson informed Mr. Ernst that he would need to wait until the item was up for discussion to make his comments.
2. Bill Royal – Mr. Royal discussed a project of his that began in 2005 and the complications he experienced with the City with regards to that project. He would like to have the issue of the City removing the \$18,000 lien on his property on the next agenda.

Ms. McLaughlin confirmed that in order for an item to be placed on an agenda, it would require a Council Member to request the item be placed on an agenda. Mr. Erickson requested Mr. Royal submit his request in writing so Staff could evaluate the request. Mr. Royal confirmed he would submit his written request to Mr. Erickson.

3. Fred Snyder – Mr. Snyder expressed his appreciation for his recent appointment to the Sky Valley Open Space Committee.
4. Jon Van Landschoot – Mr. Van Landschoot discussed his desire for the City to get rid of the single-family home exemption from design review in the Historic District.

Mayor Patterson asked Mr. Erickson to discuss the process for dealing with the recommendation from the HPRC regarding the single-family home exemption.

Mr. Erickson discussed the meeting that Council would be having on January 29th to discuss policies and priorities. That would be a prime opportunity to deal with issues regarding changes in policy.

CONSENT CALENDAR:

Council pulled items VII-C, VII-D, VII-E, and VII-H.

Council approved the Minutes of December 4, 2007.

Council approved the 2008 City Council regular meeting schedule.

RESOLUTION 07-144 - A RESOLUTION ACCEPTING THE PUBLIC IMPROVEMENTS AND OFFERS OF DEDICATION OF RIGHTS-OF-WAY AND EASEMENTS FOR THE SOUTHAMPTON UNIT D-6 SUBDIVISION

RESOLUTION 07-145 - A RESOLUTION APPROVING THE JOB DESCRIPTION AND SALARY RANGE FOR HUMAN RESOURCES ASSISTANT

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the Consent Calendar was adopted as amended, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of a consultant contract for the BHS Traffic Signal and Entrance Circulation Improvement Project:

Council and Staff discussed expediting the process, public safety, using the wholeness approach, installing interim measures until the traffic signal is completed, outreach steps, using it as a potential gateway to the community, working on the City's gateways, having more frequent Traffic, Pedestrian and Bicycle Safety Committee meetings, looking for grant money for the project, having BUSD on board with the project, and using the phased approach.

RESOLUTION 07-146 - A RESOLUTION APPROVING A CONSULTANT AGREEMENT IN THE AMOUNT OF \$86,000 WITH FEHR AND PEERS FOR PROFESSIONAL ENGINEERING SERVICES FOR BENICIA HIGH SCHOOL TRAFFIC SIGNAL AND ENTRANCE CIRCULATION IMPROVEMENT PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT ON BEHALF OF THE CITY

On motion of Council Member Schwartzman, seconded by Vice Mayor Campbell, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

Acceptance of completed work, release of contract and award of new contract for the West 2nd Street Sewer Improvement Project.

Council and Staff discussed the damage to homes in the area, assurances that the proposed contractor will not experience performance issues, steps being taken to deal with the former contractor for the project, and the possibility of developing guidelines for addressing the reputation of the contractors.

Public Comment:

1. Rick Ernst – Mr. Ernst discussed the current bid process.

RESOLUTION 07-147 - A RESOLUTION ACCEPTING THE WORK COMPLETED BY BAY PACIFIC PIPELINES FOR A PORTION OF THE WEST 2ND STREET SEWER IMPROVEMENT PROJECT FOR A FINAL COST OF \$31,284.29, RELEASING BAY PACIFIC PIPELINES FROM THE REMAINING OBLIGATIONS OF THE CONTRACT, AUTHORIZING THE CITY MANAGER TO SIGN THE SETTLEMENT AGREEMENT AND NOTICE OF PARTIAL COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAID NOTICE WITH THE SOLANO COUNTY RECORDER

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 07-148 - A RESOLUTION AWARDED A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$342,200 TO HESS CONCRETE CONSTRUCTION FOR THE REMAINING WORK ON THE WEST 2ND STREET SEWER IMPROVEMENT PROJECT AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

Approval of Task Order #2 of the 2007-2008 Sanitary Sewer Flow Monitoring Project:
Council and Staff discussed the timing of the project.

RESOLUTION 07-149 - A RESOLUTION APPROVING TASK ORDER #2 FOR SFE GLOBAL, IN A NOT-TO-EXCEED AMOUNT OF \$89,000 FOR THE 2007-2008 SANITARY SEWER FLOW MONITORING PROJECT

On motion of Council Member Schwartzman, seconded by Vice Mayor Campbell, the above Resolution was adopted, on roll call by the following vote:

DRAFT

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

Approval of California Air Resources Board Transit Fleet Rule Settlement Agreement and release of payment:

Council and Staff discussed the City's past non-compliance with the reporting aspects of the plan, delay in finding out that the City's assumptions were incorrect, current compliance with the plan, lack of notification from the State of California on the City's non-compliance, and the grant that was secured to pay for the retrofit to the fleet.

RESOLUTION 07-150 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SETTLEMENT AGREEMENT AND RELEASE WITH THE CALIFORNIA AIR RESOURCES BOARD

On motion of Council Member Hughes, seconded by Council Member Schwartzman, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

PUBLIC HEARINGS:

None

ACTION ITEMS:

Update Mills Act Program and Approve Mills Act contracts for properties at 224 West I Street, 1025 West Second Street, 120 West D Street, 171 West H Street, 270 West H Street, 441 West J Street, 242 West I Street, 392-396 East H Street, 141 West H Street, and 140 East G Street:

Charlie Knox, Community Development Director, reviewed the staff report.

Council and Staff discussed the State statute that relates to the Mills Act, the current \$30,000/year (for two years) revenue loss from property tax, factoring in costs for Staff time, possibly setting a limit on the cost, fairness factor, tax savings, scheduling a study session on the Mills Act, revisiting the current criteria, maintenance only Mills Act contracts, upcoming HPRC meeting on January 24, 2008, and contributors and landmarks.

Public Comment:

1. Steven Stark – Mr. Stark discussed the cost of materials to do the work on historic homes, tax savings, encouraging reconstruction, and revitalization in the City.

Mayor Patterson requested that the City post a notice that Council would be attending the January 24, 2008 HPRC meeting.

RESOLUTION 07-151 - RESOLUTION APPROVING AMENDMENTS TO THE MILLS ACT PROGRAM

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 07-152 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 224 WEST I STREET IN THE CITY OF BENICIA

On motion of Council Member Schwartzman, seconded by Vice Mayor Campbell, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 07-153 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 1025 WEST SECOND STREET IN THE CITY OF BENICIA

On motion of Council Member Schwartzman, seconded by Council Member Ioakimedes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 07-154- A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 120 WEST D STREET IN THE CITY OF BENICIA

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Schwartzman, and Mayor Patterson

Noes: None

Abstain: Council Member Ioakimedes

RESOLUTION 07-155 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 171 WEST H STREET IN THE CITY OF BENICIA

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None
Abstain: Vice Mayor Campbell

RESOLUTION 07-156 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 270 WEST H STREET IN THE CITY OF BENICIA

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 07-157 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 441 WEST J STREET IN THE CITY OF BENICIA

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 07-158 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 242 WEST I STREET IN THE CITY OF BENICIA

On motion of Council Member Schwartzman, seconded by Council Member Ioakimedes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 07-159 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 392-396 EAST H STREET IN THE CITY OF BENICIA

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Schwartzman, and Mayor Patterson

Noes: None

Abstain: Council Member Ioakimedes

RESOLUTION 07-160 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 141 WEST H STREET IN THE CITY OF BENICIA

On motion of Council Member Hughes, seconded by Council Member Ioakimedes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Abstain: Council Members Schwartzman and Campbell

RESOLUTION 07-161 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 140 EAST G STREET IN THE CITY OF BENICIA

On motion of Council Member Hughes, seconded by Council Member Ioakimedes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Abstain: Council Members Schwartzman and Campbell

INFORMATIONAL ITEMS:

Reports from City Manager:

Mr. Erickson announced the 1/29 Council Priority Workshop.

Council Member Committee Reports:

1. Mayors' Committee Meeting (Mayor Patterson) - Next Meeting Date: December 19, 2007.
2. Association of Bay Area Governments (ABAG) (Mayor Patterson and Vice Mayor Campbell) - Next Meeting Date: April 24, 2008 – Spring General Assembly.
3. Audit & Finance Committee (Vice Mayor Campbell and Council Member Schwartzman) Next Meeting Date: February 8, 2008
4. League of California Cities (Mayor Patterson and Council Member Schwartzman) - Next Meeting Date: January 16-18, 2008 - New Mayors & Council Members Academy
5. School District Liaison (Council Members Ioakimedes and Hughes) - Next Meeting Date: March 13, 2008
6. Sky Valley Area Open Space (Vice Mayor Campbell and Council Member Ioakimedes) - Next Meeting Date: January 2, 2008
7. Solano EDC Board of Directors (Mayor Patterson and Council Member Ioakimedes) - Next Meeting Date: January 17, 2008
8. Solano Transportation Authority (STA) (Mayor Patterson and Council Member Schwartzman) - Next Meeting Date: January 9, 2008
9. Solano Water Authority/Solano County Water Agency (Mayor Patterson and Vice Mayor Campbell) - Next Meeting Date: January 10, 2008

DRAFT

10. Traffic, Pedestrian and Bicycle Safety Committee (Vice Mayor Campbell and Council Member Hughes) - Next Meeting Date: January 17, 2008
11. Tri-City and County Regional Parks and Open Space (Vice Mayor Campbell and Council Member Hughes) - Next Meeting Date: February 20, 2008 – Citizen's Advisory Committee
12. Valero Community Advisory Panel (CAP) (Council Member Hughes) - Next Meeting Date: January 24, 2008
13. Youth Action Task Force (Council Members Ioakimedes and Schwartzman) - Next Meeting Date: January 22, 2008
14. ABAG/CAL FED Task Force/Bay Area Water Forum (Mayor Patterson) - Next Meeting Date: January 14, 2008

COMMENTS FROM COUNCIL MEMBERS:

Request to pay off the Valero Property Tax Settlement at an accelerated rate:

Vice Mayor Campbell discussed the City's Reserve Fund, its portfolio, and paying the Valero property tax settlement at an accelerated rate.

Council and Staff discussed sending this issue to the Audit and Finance Committee and having it provide feedback to Council.

Public Comment:

1. Rick Ernst – Mr. Ernst spoke in support of the current tax settlement payment and sending the issue to the Audit and Finance Committee for discussion.

Council recommended this item be referred to the Audit and Finance Committee for discussion.

Vice Mayor Schwartzman inquired about the current balance in the City's budget reserve. Staff confirmed that the City expected the year to end with \$6.3 million in the budget reserve.

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 8:58 p.m.

AGENDA ITEM
CITY COUNCIL MEETING: JANUARY 15, 2008
CONSENT CALENDAR

DATE : December 13, 2007

TO : City Manager

FROM : Director of Public Works 

SUBJECT : **PURCHASE OF TWO REPLACEMENT BACKWASH PUMP SYSTEMS FOR THE WATER TREATMENT PLANT**

RECOMMENDATION:

Adopt a resolution authorizing the purchase of two replacement backwash pump systems for the Water Treatment Plant from G3 Engineering, Inc. in the amount of \$26,315.47.

EXECUTIVE SUMMARY:

This action authorizes the purchase of two high-efficiency backwash pump systems for the Water Treatment Plant to replace the original systems from 1971. The cost of these systems is budgeted and sufficient funds are available in the Water Enterprise Fund.

BUDGET INFORMATION:

The total cost to purchase two replacement backwash pump systems is \$26,315.47. Sufficient funds are available in Account No. 594-8259-9960 (Water System Replacement.)

SUMMARY:

The Water Treatment Plant's backwash pumps move water from the mixing well to the backwash tanks to clean the plant's main water treatment filters. The two primary backwash pump systems were installed in 1971 during construction of the Water Treatment Plant. Additionally, the plant has a larger, stand-by backwash pump that was installed during the 1989 plant expansion. The original systems are comprised of a Floway vertical turbine pump with discharge head and a 5-horse-powered motor. These systems have reached the end of their useful life and are due for replacement as identified in the water system replacement schedule.

Floway is the only manufacturer that makes a backwash pump system that will fit within the plant's existing piping configuration. G3 Engineering, Inc. is the only authorized sales representative for Floway; therefore, this purchase must be sole-sourced. In accordance with Benicia Municipal Code Section 3.08.090C, City staff does not need to follow bid procedures when the commodity can only be obtained via sole source procurement.

Floway will manufacture two new systems each being comprised of a Floway vertical turbine pump with discharge head and new high-efficiency 5-horse-powered motor. The systems will come with a one-year warranty. City staff will install the backwash pump systems and work with G3 Engineering, Inc. to do start-up testing. Because these new pumps must be incorporated into existing plant operational parameters, it was not feasible to look into alternative energy sources with this purchase. Staff fully intends to research options with future capital improvements, as appropriate and provide that information to Council for consideration.

Staff, therefore, recommends purchasing two replacement backwash pump systems from G3 Engineering, Inc. in the amount of \$26,315.47.

cc: City Attorney
Assistant Director of Public Works

Attachment:

- Proposed Resolution

PROPOSED RESOLUTION

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
AUTHORIZING THE PURCHASE OF TWO REPLACEMENT BACKWASH PUMP
SYSTEMS FOR THE WATER TREATMENT PLANT FROM G3 ENGINEERING, INC.
IN THE AMOUNT OF \$26,315.47**

WHEREAS, the two existing primary backwash pump systems have reached the end of their useful life and are due for replacement as identified in the water system replacement schedule; and

WHEREAS, Floway is the only manufacturer of a backwash pump system that will fit within the plant's existing piping configuration; and

WHEREAS, G3 Engineering, Inc. is the only authorized sales representative for Floway; therefore, this purchase must be sole-sourced; and

WHEREAS, in accordance with Benicia Municipal Code Section 3.08.090C, City staff does not need to follow bid procedures when the commodity can only be obtained via sole source procurement.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia approves the purchase of two replacement backwash pump systems for the Water Treatment Plant from G3 Engineering, Inc. in the amount of \$26,315.47.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 15th day of January, 2008, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING: JANUARY 15, 2008
ACTION ITEM

DATE : January 8, 2008
TO : City Manager
FROM : Director of Public Works
SUBJECT : **REVIEW OF WATER PURCHASE OPPORTUNITY WITH
SOLANO IRRIGATION DISTRICT**

RECOMMENDATION:

By motion, direct staff to continue with its efforts to potentially purchase Solano Project water (Lake Berryessa) from Solano Irrigation District.

EXECUTIVE SUMMARY:

The City has an opportunity to purchase, in perpetuity, Solano Project water (Lake Berryessa). City staff is asking Council for confirmation of interest before proceeding with the proposal from Solano Irrigation District. This action is not a commitment by the City to ultimately enter into an agreement.

BUDGET INFORMATION:

There is no budget impact associated with this action.

BACKGROUND:

The City has an opportunity to purchase, in perpetuity, Solano Project water (Lake Berryessa). City staff, along with staff members of the cities of Fairfield and Vallejo, have met with staff of the Solano Irrigation District (District) over the past several months to craft principles as the basis for a potential water purchase agreement. The attached letter addressed to the Public Works Directors of the three interested cities outlines those efforts, the District's offer, and includes the draft set of Principles of Agreement. Collectively, the Cities are at a point in the process where confirmation of interest is needed from the respective governing bodies before proceeding further. With the Council's direction, City staff can move forward to finalize negotiations and determine the impacts on the City's water enterprise fund. The formal agreement will then return for Council consideration within the next several months.

Purchasing this water is extremely important and advantageous to the City for the following reasons:

- Water quality – The North Bay Aqueduct (NBA) takes water from Barker Slough. Barker Slough has been documented as having very poor water quality due to high organic carbon and turbidity, particularly during rainy periods and often well into the late spring and early summer months. In addition to the poor quality, the City often experiences rapid changes in the quality, rendering control of an effective treatment process extremely difficult.

While efforts are underway through the Solano County Water Agency to develop an alternate intake to the NBA, this process is expected to take several years and is expensive. Costs are estimated at \$150 million in 2003 dollars. In the meantime, the City will continue to address the quality issues by wintertime blending of source waters. The City blends high quality Solano Project (Lake Berryessa) water with the State Water Project water. Currently, the City's allotment of Solano Project water is obtained through a 1962 agreement with the City of Vallejo. The agreement allows for the purchase of up to 1,100 acre feet annually and expires in 2025. There have been a number of times over the last several years the City has found the allotment of 1,100 acre feet to be inadequate to address blending needs. Thus far City staff has been successful in negotiating short-term, limited increases in the 1,100 acre feet with Vallejo, but Vallejo has not been interested in increasing the allotment on a long-term basis. In some years, we also have been successful in negotiating similar short-term purchases from the Solano Irrigation District.

- Supply diversity – This purchase would supplement the amount of Solano Project water available to the City, which, as stated above, is currently limited to 1,100 acre feet. As outlined in the City's Urban Water Management Plan (UWMP), the City's current annual contract supply amounts total 28,800 acre feet, not including Lake Herman and the 7,500 acre feet stored in Mojave. The City uses between 12,000 and 13,000 acre feet annually. Each of these supply sources are of varying reliability, with the State Water Project contract amount of 17,200 acre feet being the least reliable, 44% at buildout during multiple dry years. The Solano Project has the highest reliability factor, 92% at buildout even during multiple dry years. Additionally, during planned (maintenance) and unplanned (power interruptions, equipment failures) outages at the Barker Slough pumping plant to the NBA, the City must rely on alternate water supplies, either Lake Herman or Solano Project. Since we operate Lake Herman as an emergency source, we first look to utilize Solano Project water, which, in turn, diminishes the amount available for water quality blending.

The analysis contained in the City's UWMP demonstrates sufficient supply under multiple dry year conditions. Moreover, it is important to note that staff will continue, as part of the City's active public education programs and the Countywide water conservation efforts, to emphasize demand management measures as outlined in the UWMP. However, it is prudent to further diversify the City's supply in light of recent court rulings limiting State Water Project pumping to reduce impacts to the endangered

fish species delta smelt. Two other changes have occurred since the UWMP analysis that, while not changing the overall conclusion reached, further underscore the need to supplement and diversify supply for drought protection and availability during planned and unplanned outages of the NBA. These are: 1) due to increased costs, the Water Reuse Project is not proceeding, and 2) due to the cancellation of the agreement, the City is unable to add to the amounts it has in storage with the Mojave Water agency.

The City's UWMP also references the California Water Plan Update 2005 (Water Plan), which was prepared by the California Department of Water Resources. It is considered a resource for water managers and decision-makers statewide on water planning. Amongst the strategies outlined by the Water Plan to meet water management objectives is the recommendation for water portfolio diversification. The proposed purchase would be consistent with that recommendation.

As a final note, a comparison to the Water Reuse Project is helpful to put the proposed cost of the water in perspective. The Water Reuse Project, if it proceeded as anticipated, would offset 2,240 acre feet of water demand annually. The project capital costs are currently estimated at \$40 million with \$500 per acre foot annual maintenance costs. City staff has given preliminary indications to SID that the City would be interested in purchasing 2,000 acre feet annually under the proposed agreement. The cost of the water would be \$5 million upfront, with \$60 annual costs per acre foot, adjusted each year by the CPI-W.

Staff is recommending, therefore, Council direct that negotiations continue within the proposed Principles of Agreement.

cc: City Attorney
Assistant Director of Public Works

Attachment:

- Solano Irrigation District letter dated October 16, 2007

SOLANO IRRIGATION DISTRICT LETTER

OFFICERS

DIRECTORS
ROBERT HANSEN
PRESIDENT - DIV. #5
GUIDO E. COLLA
VICE PRESIDENT - DIV. #4
ROBERT S. CURREY
DIV. #1
BOB BISHOP
DIV. #2
GLEN GRANT
DIV. #3

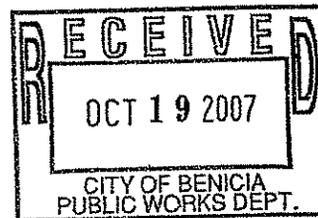


MICHAEL R. SCHAEFER
GENERAL MANAGER

SUMMERS ENGINEERING
DISTRICT ENGINEER

MINASIAN, SPRUANCE MEITH,
SOARES & SEXTON
ATTORNEYS

October 16, 2007



Dan Schiada, Public Works Director
City of Benicia
250 East L Street
Benicia, CA 94510

Gary Leach, Public Works Director
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

Gene Cortright, Director of Public Works
City of Fairfield
Fairfield City Hall
1000 Webster Street
Fairfield, CA 94533

Re: Potential Purchase from Solano Irrigation District of Solano Project Water

Gentlemen:

The staffs of the Solano Irrigation District and of your City have been meeting to consider possible means by which small amounts of the District's contractual and legal entitlement of Solano Project water could be made available to your respective Cities. Consideration of any undertaking of this nature requires that periodically, before preliminary or final decisions occur, the parties mutually review whether such a program is achievable and feasible. In addition, the requirements of the California Environmental Quality Act (CEQA) will have to be met before either the Solano Irrigation District or your respective Cities could make a binding commitment. Therefore, this letter is simply asking: (i) whether the respective City Council bodies believe that the staffs of SID and the respective Cities are on the right track? (ii) whether your City has the required funding? and (iii) whether your City is willing to perform the action required to have this proposition acted upon and finalized before March 31, 2008?

This letter does not constitute the granting of an option or first right of refusal; nor is a response to this letter by any City a binding legal commitment by either the respective Cities or Solano Irrigation District. Each party would reserve the right, consistent with all legal requirements, to provide for changes, modification, or to elect not to proceed forward.

IX-A-5

The District's Offer

1. The proposals, as our staffs have discussed them, are as follows:

1.1 Prior to March 31, 2008, CITY shall pay DISTRICT \$2,500 for each acre-foot of contract water supply as a lump sum initial payment. In addition, by the end of January each year (beginning regularly in 2009), DISTRICT shall invoice CITY for the annual payment of the contract water supply. The annual payment shall be due by March 1 of each year. Following receipt of the lump sum initial payment and the annual payment, DISTRICT shall make the contract water supply available to CITY during the water year beginning March 1.

1.2 The annual payment proposed by the District for the 2007 water year was \$60 for each acre-foot of contract water supply. Each year following 2007, the annual payment amount shall be adjusted in accordance with the Consumer Price Index as computed and published by the Bureau of Labor Statistics of the U.S. Department of Labor, or successor office, known as the "Consumer Price Index for Urban Wage Earners and Clerical Workers, United States Average (1967 adjusted)" (CPI-W) on December 31 of the prior year, starting with December 31, 2006 as the base CPI-W.

1.3 There would be individual contracts with each City.

2. Solano Irrigation District, with the approval of the Solano County Water Agency, would forego small amounts of delivery entitlement from the Solano Project aggregating up to 5,000 acre-feet per year.

2.1 Solano Irrigation District's contractual rights to water service from Lake Berryessa storage are subject to certain percentage reductions provided a drought occurs, and certain levels of Berryessa storage are experienced. As the reservoir goes down, the contractual yield is reduced by certain percentage amounts. That same percentage reduction would apply to each acre-foot of water transferred by SID to your City, and the City would undertake the same obligations that SID has appurtenant to the transferred water. To refresh your memory in this regard, we include a table based on the Solano Project Members' Agreement as to Drought Measures and Water Allocation. The table presents the reservoir levels and the delivery curtailments to be retained in Lake Berryessa, known as restricted carryover, that urban contractors and the District agreed to at that time. The monetary formula amounts in section 1 above would be paid on the total amount of acre-feet of entitlement transferred under this agreement, and the monetary payment would not be reduced for carryover amounts retained in storage per the Drought Measures agreement.

2.2 The recipient City would pay all charges appurtenant to the water to the Solano County Water Agency.

3. Solano Irrigation District does not have more water than its landowners and water users need. In order to make a quantity of water available for sale, the District would be required to take the proceeds payable by your City and invest them in projects which would be designed to conserve water or increase the available supply. The choice of those projects would be the District's. Without money to expend, the timing of the benefits of those projects cannot be assured. Therefore the lump sum initial payment is essential.

The District risks are increased by entering into a contract such as the one proposed. The Cities would not be asked to pay more for water if the District construction projects were not successful. Even with money to invest our users may, in fact, be risking a reduced water supply. Damage to wells installed to make water available to cities could be prohibitively expensive to repair, or power availability might be cut back due to drought or shortages. Therefore an overall reduction in the quantities of water available to our users could remain. Of course there is a risk that water may be temporarily unavailable due to events such as power outages, drought and earthquake.

4. The costs of undertaking the environmental and physical investigations of the feasibility and potential environmental impacts of the water supply projects and their alternatives could be large and would be the responsibility of the District. In addition, how your City would utilize the water is important to consider for the purposes of fulfilling the requirements of CEQA. The costs of this CEQA or other legal process such as general plan review would be borne by your City. For the purposes of the SID CEQA review, if the water would support growth that is addressed in the General Plan, the impacts of that growth would presumably have been addressed in the General Plan EIR, which would simplify our analysis. If not, the analysis would be more complex. The District has been asked to bear the cost of the CEQA process in regard to its methods of making water available, but obviously cannot be responsible for examining the impacts or potential impacts arising from utilization of the water without knowing exactly how the City would propose to utilize the water.

Questions for your City

1. We need to know (i) how much Solano Project water entitlement you would propose to purchase; and (ii) the earliest date upon which you could exercise and elect to purchase water, provided that the CEQA process has been completed. Obviously, if you do not foresee that the purchase price would be available for five or ten years, it could make quite a difference in whether or not the project can proceed as to the portion of the water you may wish to acquire.

2. Attached you will find a draft set of Principles of Agreement which have been discussed among the staffs. Please review these principles and indicate whether any of them give your Council pause or concern.

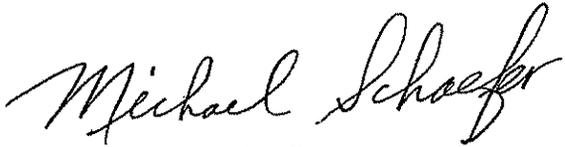
3. The Solano Irrigation District and your Cities are aware of the recent developments in water demand south of the Sacramento-San Joaquin River Delta where spot prices are in the range of \$500 per acre-foot and long-term agreements are in the range of \$300 per acre-foot or more. SID's principal interest is in cooperating with the communities within Solano County and our neighbors. We would not be interested in seeing an agreement entered into between your City and the District and then observing attempts being made directly or indirectly by our

neighboring Cities through foregoance and transfer of State Water Project water or water rights from other sources in order to profit monetarily. Therefore, we would ask that you carefully examine your needs and indicate your willingness to proceed only if you truly need the water on a continuous and long-term basis and can assure us you would not enter into this Agreement in order to try to free up water to sell outside of Solano County.

Conclusion

We hope this letter will be helpful in examining your policy-making and thinking process of this proposal. We look for your interest by providing us your thoughts and valuable information as to whether you believe this discussion process should continue, and whether you are committed to funding such a purchase in accordance with all legal requirements, including CEQA.

Very truly yours,
SOLANO IRRIGATION DISTRICT



Michael R. Schaefer
General Manager

Enclosures

Table of Drought-Induced Curtailments of Solano Project Deliveries
Principles of Agreement

**Solano Project Members' Agreement
as to Drought Measures and Water Allocation**

Table of Drought-Induced Curtailments of Solano Project Deliveries

<i>Storage in Lake Berryessa, in acre-feet</i>		800,000 - 1,600,000	550,000 - 800,000	450,000 - 550,000	less than 450,000
<i>% of Annual Entitlement to be Restricted</i>		0%	5%	10%	0%
<i>% of Annual Entitlement Available</i>		100%	95%	90%	100%
<i>Annual Entitlement in acre-feet</i>					
<i>Solano Project Participating Agency</i>	<i>Entitlements to Annual Deliveries</i>				
Solano Irrigation District	141,000	141,000	133,950	126,900	141,000
Fairfield	9,200	9,200	8,740	8,280	9,200
Vacaville	5,600	5,600	5,320	5,040	5,600
Suisun City	1,600	1,600	1,520	1,440	1,600
Maine Prairie	15,000	15,000	14,250	13,500	15,000
Vallejo	14,750	14,750	14,013	13,275	14,750
Total	187,150	187,150	177,793	168,435	187,150
<i>Restricted Carryover in acre-feet</i>					
Solano Irrigation District		0	7,050	14,100	0
Fairfield		0	460	920	0
Vacaville		0	280	560	0
Suisun City		0	80	160	0
Maine Prairie		0	750	1,500	0
Vallejo		0	738	1,475	0
Total		0	9,358	18,715	0

PRINCIPLES OF AGREEMENT

Potential Purchase from Solano Irrigation District of Solano Project Water

1. Each City will have an identical contract with SID for water, except for the quantity and associated payment.
2. Each City will contract for a set amount of water, measured in acre-feet per year (AF/yr), mutually agreeable to SID and the City. The water will be from SID's available water supplies, subject to the conditions of the SID Solano Project contract and the "Solano Project Members' Agreement as to Drought Measures and Water Allocation."
3. Each City will pay SID a \$2,500 one-time Initial Payment per AF of water contracted for (the Contract Water Amount), said payment to be due upon contract execution for water to be made available to that City starting in the initial year of the contract.
4. In addition, SID will invoice each City by the end of January each year for water to be made available from SID to the City in the water year starting March 1 of that year. This Annual Payment will be due to SID by the end of February. The initial Annual Payment as of February 2008 will be \$60 per AF/yr purchased. Following receipt of the Initial and Annual Payments, SID shall make the Contract Water Amount available to the City during the water year beginning March 1. Each year thereafter, the Annual Payment will be increased or decreased in accordance with the Consumer Price Index as computed and published by the Department of Labor of the United States, or successor office, known as the "Consumer Price Index for Urban Wage Earners and Clerical Workers, United States Average (1967 adjusted)" (CPI-W), on December 31 of the prior year, starting with December 31, 2007 as the base CPI-W. Payments are for the Contract Water Amount and are due whether water is taken by the City or not.

If the City desires to take water after March 1 of the first year of its contract (i.e. the contract is signed within the first water year), the City will pay the annual per-acre-foot water charge for the amount of water delivered from the District to the City, up to the City's Contract Water Amount.

5. A City may assign its contract, all or in part, to another City in the Solano Project service area with 90 days written notice to SID.
6. A City may terminate its contract, all or in part, by written notice to SID and payment of a Termination Payment equal to three (3) times the Annual Payment for the Contract Water Amount as of the date of termination. The water supply to that City will cease to the extent it has terminated the contract, and the City will have no further obligation to pay for that water supply.

7. SID may not terminate a contract with a City, in whole or in part, as long as the City continues to make the payments for water required by that contract.
8. SID will be lead agency under CEQA for this contract. Each City will be a responsible agency. Each City will provide or pay the cost of providing any required CEQA analysis or mitigation regarding indirect impacts on that city and its environment. SID will pay all other CEQA costs.

**AGENDA ITEM
CITY COUNCIL MEETING: JANUARY 15, 2008
ACTION ITEMS**

DATE : January 3, 2008

TO : City Manager

FROM : Economic Development Manager

SUBJECT : **AUTHORIZE DEVELOPER REQUEST FOR QUALIFICATIONS
AND BEGINNING OF COMMUNITY INVOLVEMENT PROCESS
FOR THE CITY-OWNED E STREET LOT**

RECOMMENDATION:

Direct staff to issue a Request for Qualifications for a development partner, who will lead the community involvement process, for the City-owned E Street lot.

EXECUTIVE SUMMARY:

The City of Benicia owns the "E Street lot", an area comprised of two separate parcels plus City right of way, totaling about two acres at East 2nd and East E Streets. As noted in the recently approved Downtown Mixed Use Master Plan, this site is an asset to be leveraged by the City to contribute to downtown vitality. Staff recommends that the City Council authorize issuing a Request for Qualifications (RFQ) to find a development partner; the selected firm will start predevelopment work beginning with a community involvement process.

BUDGET INFORMATION:

No budget impact at this time.

DISCUSSION:

The City of Benicia owns the "E Street lot", an area comprised of two separate parcels plus City right of way, totaling about two acres at East Second and East E Streets. The gravel lot is used as public parking. The E Street lot is one of the City's last significant land assets in the downtown/marina area. It is designated Town Core in downtown's new form-based code, which allows a two-and-a-half story building that may have retail and service uses on the ground floor and residential or service uses on the upper floors.

According to the June 2004 Downtown Parking Survey prepared by Fehr and Peers, the parking lot is generally underutilized, even during the lunchtime peak of 11:30 a.m. to 2:00 p.m. The City Council was asked in November 2004 to consider the options for moving forward with a development process for the site. At that time, the Council directed staff to prepare a recommendation for a process involving the community in determining development options, and return to the Council with a plan. Due to the staff vacancy in Economic Development, the project did not advance from that point. Since then, a comprehensive Downtown Master Plan

process and form-based code has been completed, resulting in a new community vision for the area and a new land use designation for the E Street lot.

The Downtown Master Plan recommends mixed-use development for the site, and it states that new buildings in the Town Core district should "enhance the vibrant, pedestrian-oriented character" downtown. Parking facilities are allowed with a use permit. Although the Downtown Parking Study also analyzed future parking supply and demand, and determined that even at downtown's total buildout there would still be a 179-space parking surplus, the Downtown Master Plan notes that there should be some amount of public parking on the E Street lot; the plan also notes that a community process is necessary for any project at this site.

Back in 2004, staff started to explore residential development at the site because of its relationship to the existing downtown/marina residential neighborhood, and for its value for bringing in more residents who can support downtown businesses and restaurants. Staff previously had taken the idea of a residential project with a significant (around 100 spaces) public parking component to two local developers to get a better sense of market feasibility; both companies gave an informal opinion that the general concept was feasible. The higher the residential density, the higher the possibility that the City might generate some revenue as well, which could be used to support other community objectives.

Although the market has changed, interest in downtown revitalization remains high and the City receives regular inquiries about the E Street lot from both residential and commercial developers. Given the long lead time for developing a project on the site, residential units would not be brought to market before 2010 at the very earliest, which might be far enough in the future to be a more robust residential market.

This site is an asset to be leveraged by the City to contribute to downtown vitality. Staff recommends that the City Council direct staff to issue an RFQ to find a qualified development partner. An exclusive negotiating rights agreement with the recommended developer would return to the Council for approval, after which the developer would begin due diligence. That phase would encompass an inclusive community involvement process, environmental compliance, geotechnical study, economic feasibility analysis, the street vacation process, real estate transaction, tentative/final map, offsite improvements, planning entitlements, design review, and construction cost estimates. If the predevelopment work leads to a prospective development project that works for the City, community, and the developer, there would be a negotiated Purchase and Sale Agreement and Development Agreement for the Council's approval.

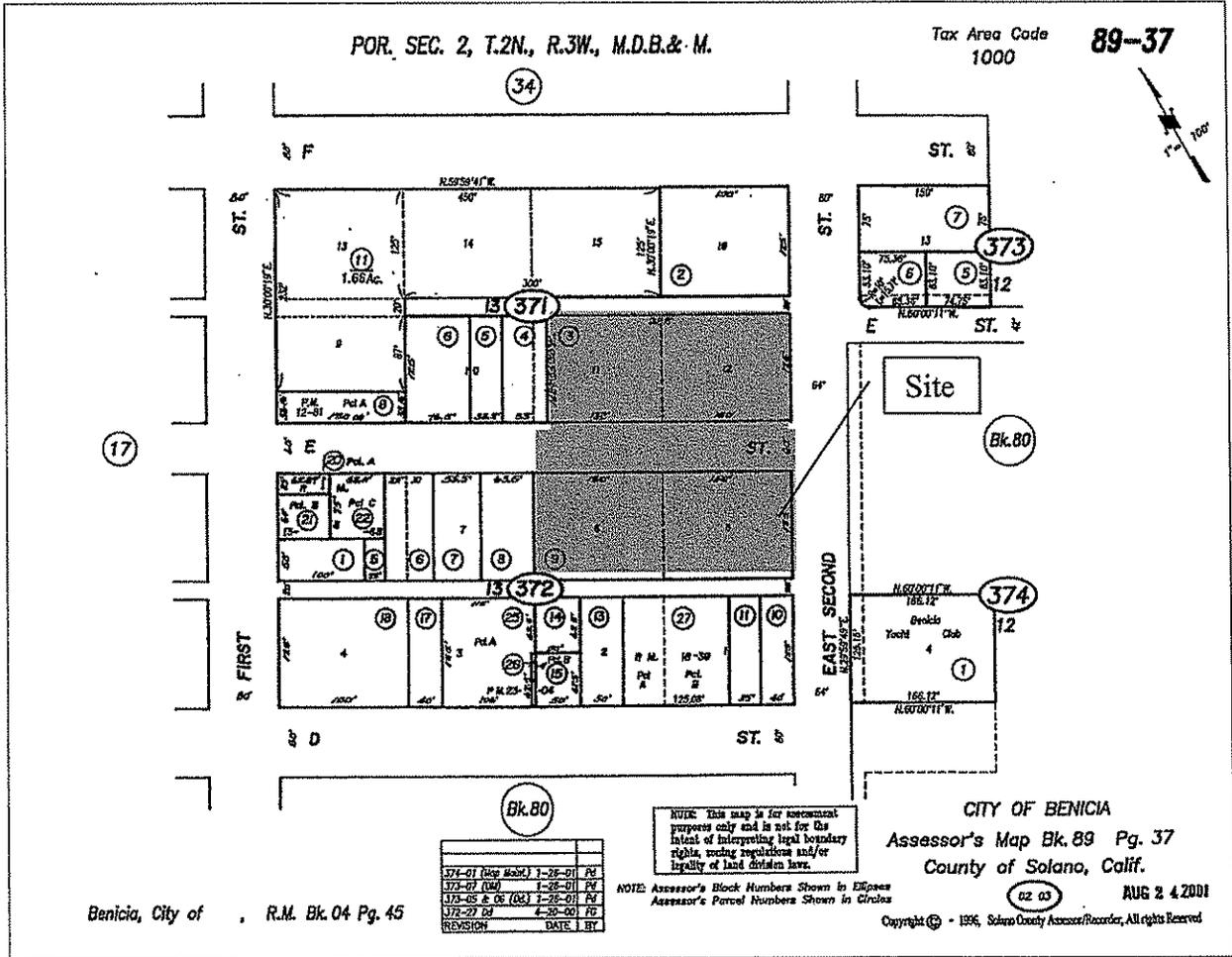
This is a necessarily long process with many opportunities for delays, but at this point, if the RFQ is authorized, staff anticipates receiving responses by February 29, reviewing them and interviewing firms as needed in March, negotiating the agreement in April, and bringing it to Council in May.

Attachments:

- Plat map of E Street Lot
- Draft Request for Qualifications

ATTACHMENTS

ATTACHMENT – E STREET LOT PARCEL MAP





**CITY OF BENICIA
REQUEST FOR QUALIFICATIONS
REAL ESTATE DEVELOPER – E STREET LOT**

I. INTRODUCTION

The City of Benicia, California (“City”) seeks statements of qualifications from developers who are interested in the responsibilities and opportunities involved in the development of the City-owned E Street lot. The City’s needs are outlined in this Request for Qualifications (RFQ). The City intends to follow a schedule that should result in the selection of a firm in May 2008.

Anticipated Schedule:

Issue RFQ January 22, 2008
Deadline for Submittal of Responses..... February 29, 2008
Agreement Approved.....May 6, 2008

The City will host a conference call about this RFQ on February 1, 2008 at 10 AM. The project manager is Economic Development Manager Amalia Lorentz (alorentz@ci.benicia.ca.us, 707-746-4215).

II. BACKGROUND

The City of Benicia owns the "E Street lot", an area comprised of two separate parcels plus City right of way, totaling about two acres at East Second and East E Streets in Downtown Benicia. The gravel lot is used as public parking. The E Street lot is one of the City’s last significant land assets in the downtown/marina area. It is designated “Town Core” in downtown’s new form-based code, which allows a two-and-a-half story building that may have retail and service uses on the ground floor and residential or service uses on the upper floors.

According to the June 2004 Downtown Parking Survey prepared by Fehr and Peers, the parking lot is generally underutilized, even during the lunchtime peak of 11:30 a.m. to 2:00 p.m. The City Council was asked in November 2004 to consider the options for moving forward with a development process for the site. At that time, the Council directed staff to prepare a recommendation for a process involving the community in determining development options, and return to the Council with a plan. Due to a staff vacancy in Economic Development, the project did not advance from that point. Since then, a comprehensive Downtown Master Plan with a form-based code has been completed, resulting in a new community vision for the area and the Town Core land use designation for the E Street lot.

The Downtown Master Plan recommends mixed-use development for the site, and it states that new buildings in the Town Core district should "enhance the vibrant, pedestrian-oriented character" downtown. Parking facilities are allowed with a use permit. Although the Downtown Parking Study also analyzed future parking supply and demand, and determined that even at downtown's total buildout there would still be a 179-space parking surplus, the Downtown

Master Plan notes that there should be some amount of public parking on the E Street lot; the plan also notes that a community process is necessary for any project at this site. It is near a variety of building types, including small-scale single-family houses and buildings with historic significance.

Back in 2004, staff started to explore residential development at the site because of its proximity to existing residential, and for the benefit of bringing in more residents to support downtown businesses. Although the housing market has changed, interest in downtown remains high and the City receives regular inquiries about the site from both residential and commercial developers.

The responses to this RFQ will create a short list of qualified developers, which the staff selection committee will rank. The subsequent steps to be taken, with each dependent on the successful completion of the prior step, are:

- Negotiation of an Exclusive Negotiating Rights Agreement (ENRA) with the first-ranked developer, with a probable initial term of 180 days.
- City Council approval of the ENRA.
- Predevelopment/due diligence work undertaken by selected developer, including but not necessarily limited to community involvement, environmental compliance, geotechnical study, economic feasibility analysis, the street vacation process, real estate transaction, tentative/final map, offsite improvements, planning entitlements, design review, and construction cost estimates. City staff will work cooperatively with the selected developer throughout this process.
- Negotiation of a Purchase and Sale Agreement and Development Agreement.
- City Council approval of the Purchase and Sale Agreement and Development Agreement.

If at any point, the first-ranked developer declines to proceed, the City may at its discretion enter into a new ENRA or other agreement with the second-ranked developer, and so on. The City will require the rights to all studies prepared under an agreement with the City for the site.

The City of Benicia does not have a redevelopment agency; direct financial assistance is not available. General goals for the ultimate project are: to not negatively impact the General Fund, to contribute to downtown's ongoing economic vitality, and to be an attractive addition to the urban landscape.

All respondents should be familiar with the site and Downtown Benicia. A summary of site information follows.

Ownership: Two parcels owned by City of Benicia in fee simple (APNs 89-371-03 and 89-372-09), and City right-of-way.

Size: 90,750 square feet.

General Plan designation: Downtown Commercial.

Zoning: Town Core. Height limit: 40'. Parking: For ground floor uses under 3,000 square feet, none required, 1 space per 500 square feet for uses above 3,000 square feet.

For upper stories, .5 space per residential studio, 1 space per other residential unit, and 1 space per 1,000 square feet of other uses. See the Downtown Mixed Use Master Plan for more site development regulations.

Surroundings:

- North - Single-family homes (across alley)
- South - Single-family homes, some buildings converted to multi-family/offices (across alley)
- East - Condominiums, surface parking lot, yacht club with parking lot (across street)
- West - Single-family homes.

III. INSTRUCTIONS TO PROPOSERS

1. Responses must be received by 5:00 p.m. on February 29, 2008. No faxed or oral responses will be accepted. Five unbound copies should be sent to Amalia Lorentz, Economic Development Manager, City of Benicia, 250 East L Street, Benicia, CA 94510.

2. Response Contents: Responses should be prepared simply and economically, providing a concise description of the firm's qualifications to satisfy the requirements of the request. Special bindings, colored displays, promotional materials, etc., are not desired. Use of recycled paper and both sides of the sheets is desirable. Responses do not need to be in a specific format, but they should provide the following information. They do not need to be lengthy.

- A. The name, structure, corporate background, and general local experience (with emphasis on past five years) of the company.
- B. The names, qualifications, and general local experience of each principal individual (the "Principal") who will be working on the City's project, and their areas of responsibility. Indicate who will be the day-to-day contact for the City; include an organizational chart for the company. Include contact information for the Principal responsible for the RFQ response. This person should be able to make representations on behalf of the company.
- C. A vision statement outlining the development team's general approach to the project. The vision does not need to include site plans, elevations, development program specifics (for example, number of units, amount of retail square footage, etc.), or other details about the eventual project. The vision statement should answer the question, Why is this company interested in the E Street lot project, and where do they think it's headed?
- D. Details on prior experience of the company and the Principal(s) with infill mixed-use development of this scale. The projects should be completed or very close to completion; include information on their location, the role of the entity/Principal, current status, community involvement, dollar value, financing sources, and environmental issues and solutions. The most relevant projects are likely to be recent, involve public/private partnerships, and be in a downtown setting. Please limit the response to no more than four examples per company and Principal.
- E. The financial qualifications of the company are important insofar as it has the resources to conduct appropriate predevelopment studies and analysis, as well as ultimately acquire the property and construct a project under terms to be agreed upon with the City.

This will be shown by recent financial statements, relationship letters, and details of past projects' performance. Include a statement of how the company typically funds, and at this point would expect to fund in the case of the E Street lot project, predevelopment work, acquisition, and construction. Prior to entering into an ENRA with the selected developer, the City will conduct a detailed financial review of the company.

- F. At least three current references, who have personal knowledge of the development team's ability to manage complete similar projects, should be provided (name, title, phone number, and description of project and relationship with development team).
- G. Other comments about the RFQ, this project, or process.

3. There will be a conference call on Friday, February 1, 2008 at 10 AM, which all prospective submitters are encouraged to join. Staff from multiple departments will participate. To receive the call-in number, request it via an email to alorentz@ci.benicia.ca.us by 5 PM on January 30, 2008.

4. Other: The eventual sale agreement will contain provisions against speculation. The City of Benicia has an inclusionary housing requirement (see BMC 17.70.320 for more information).

IV. SELECTION PROCESS

The City will evaluate all responses received by the due date. Selected respondents may be invited to an interview. Only information that is received in response to the RFQ or any subsequent interview will be evaluated. A committee of City staff will rank the responses and make a recommendation for the most qualified developer based on the following criteria:

- Experience: Demonstrated commercial real estate development experience, and history of high-quality completed projects. Experience with public sector partners is also valuable.
- Financial and technical capability: The company's financial resources to develop a project and the skills of the key individuals managing the project are crucial. The ability and willingness to fund predevelopment work will be evaluated. Availability of team and proximity of office to the site should be covered.
- Overall quality of proposal: Responsiveness to this RFQ.

V. CONDITIONS OF REQUEST

General Conditions: The City reserves the right to cancel or reject all or a portion or portions of the RFQ without notice. Further, the City makes no representations that any agreement will be awarded to any firm submitting a response. The City reserves the right to reject any and all responses submitted in response to this request or any addenda thereto. The City also reserves the right to reject any subconsultant or individual working on a team and to replace the subconsultant or individual with a mutually acceptable replacement. Any change to the RFQ requirements will be made by written addendum.

Liability of Costs and Responsibility: The City shall not be liable for any costs incurred in response to this RFQ. All costs shall be borne by the person or organization responding to the

request. The person or organization responding to the request shall hold the City harmless from any and all liability, claim or expense whatsoever incurred by or on behalf of that person or organization. All submitted material becomes the property of the City of Benicia. The selected developer will be required to assume responsibility for all services offered in the proposal whether or not they possess them within their organization. The selected developer will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

Validity: The responder agrees to be bound by its proposal for a period of sixty (60) days commencing on the due date for responses, during which time the City may request clarification or correction of the response for the purpose of evaluation. Amendments or clarifications shall not affect the remainder of the response, but only the portion so amended or clarified.

Permits and Licenses: The selected developer, and all of its subconsultants, at its and/or their sole expense, shall obtain and maintain during the term of any agreement, all appropriate permits, certificates and licenses including, but not limited to, a City of Benicia Business License, which will be required in connection with the performance of services hereunder.

Oral and Written Explanations: The City will not be bound by oral explanations or instructions given at any time during the review process. Oral explanations given during the review process become binding when confirmed in writing by an authorized City official. Written responses to question(s) asked by one responder will be provided to all responders who received RFQs.

Authorized Representative: The person signing the response must be a legal representative of the firm authorized to bind the firm to an agreement in the event of the award.

Insurance: General liability, automobile, professional liability, and workers' compensation insurance will be required in the minimum amount of \$1,000,000.

Public Information: All documents and correspondence between the City and developers are public information subject to the laws and regulations that govern the City, with exceptions only as provided for in those laws and regulations.

Site Condition: The City makes no representation as to the condition of the property. Developers are urged to review records and conduct investigations as they see fit.

VI. COMPENSATION

Compensation will be determined by the final negotiated agreement.

VIII. AVAILABILITY OF DOCUMENTS

More relevant information on this property is online at www.ci.Benicia.ca.us.

Downtown Mixed Use Master Plan (2006)

Zoning Code

Demographics

Exhibit A: Site Map

**AGENDA ITEM
CITY COUNCIL MEETING: JANUARY 15, 2008
ACTION ITEMS**

DATE : January 7, 2008

TO : City Council

FROM : City Attorney 

SUBJECT : **AMENDMENT OF RESOLUTION NO. 07-103 APPROVING THE BENICIA VIEWS (“RAFFANTI PROJECT”) TENTATIVE SUBDIVISION MAP (EAST H AND EAST I STREETS EAST OF EAST SIXTH STREET) TO AUGMENT BUFFER LANGUAGE**

RECOMMENDATION:

Adopt the resolution amending finding (j) in Resolution No. 07-103 regarding buffers between residential and industrial zoning and existing uses from new potentially incompatible uses.

EXECUTIVE SUMMARY:

On September 4, 2007, the City Council approved a Tentative Subdivision Map to subdivide four vacant residential parcels (one low density and three medium density) into seven single-family lots along East H and East I Streets east of East Sixth Street. One of the findings in the resolution approving the Tentative Subdivision Map was a finding that H Street provides an adequate buffer to conform with the General Plan requirements. This finding was challenged. In settlement of the potential lawsuit, the developers have agreed to additional mitigations regarding a buffer. This requires amendment of the resolution.

BUDGET INFORMATION:

There is no new fiscal impact from these changes.

BACKGROUND:

On September 4, 2007, the City Council adopted Resolution No. 07-103 approving the Yuba Heights project. Finding “j” of the resolution provides that: “The project is consistent with the General Plan requirement for buffers between residential and industrial uses because H Street provides such a buffer to an adequate extent”. AMPORTS put the City and the developers on notice that it intended to file a CEQA lawsuit to challenge the project. Since that time, the City, the developers and AMPORTS have been working to come up with an acceptable proposal that would allow the project to go forward.

The settlement agreement provides for a number of things including the City amending Resolution No. 07-103 to augment the findings regarding a buffer that meets the General Plan requirements. The following items address the buffer:

1. The width of H Street,
2. The difference in height between the AMPORTS' property and the proposed subdivision,
3. The requirement for construction standards including windows with a STC rating of 35 or above, whole house ventilation systems, and Best Available technologies regarding noise and odors.
4. Recordation of a nuisance easement to provide notice about the industrial uses nearby.

Adoption of the resolution will allow the City, the developers and AMPORTS to avoid the time and expense of extended litigation. Because the time for filing the lawsuit has approached, AMPORTS has filed the suit which will be dismissed once all of the developer parties have returned to the United States and signed the settlement agreement.

Attachments:

- Proposed Resolution
- Settlement Agreement

PROPOSED RESOLUTION

RESOLUTION NO. 08-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING RESOLUTION NO. 07-103 WHICH APPROVED THE "YUBA HEIGHTS" TENTATIVE SUBDIVISION MAP FOR THE SUBDIVISION OF FOUR VACANT RESIDENTIAL PARCELS INTO SEVEN RESIDENTIAL PARCELS LOCATED ON EAST H AND EAST I STREETS EAST OF EAST SIXTH STREET, AND ADOPTING THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION FOR THE PROPOSED SUBDIVISION

WHEREAS, the Planning Commission at a regular meeting on July 12, 2007 recommended approval of the proposed tentative subdivision map and the Initial Study/Mitigated Negative Declaration to the City Council; and

WHEREAS, the City Council adopted Resolution No. 07-103 approving the Yuba Heights project at a regular meeting of the City Council held on September 4, 2007 after duly noticed public hearings on August 21, 2007 and September 4, 2007; and

WHEREAS, Resolution No. 07-103's finding in subdivision (j) states, "The project is consistent with the General Plan requirement for buffers between residential and industrial uses because H Street provides such a buffer to an adequate extent"; and

WHEREAS, the City of Benicia, the Project Applicants and AMPORTS, adjacent property owner, have entered into a Settlement Agreement and Mutual Release, which calls for, among other things, the recordation of a "Nuisance Easement and Dispute Resolution Covenant" on all parcels within the Yuba Heights Subdivision; and

WHEREAS, the City Council wishes to amend the finding as set forth in Resolution No. 07-103's subdivision (j) in full as set forth hereafter.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Benicia hereby adopts this amendment to Resolution No. 07-103 as follows:

The finding set forth in subdivision (j) – shall be modified in full to read:

"The project is consistent with General Plan requirements for (1) buffers between residential and industrial zoning and (2) protection of existing uses from encroachment by incompatible uses, through incorporation of all of the following factors combined, no one of which is sufficient on its own;

- a) The particular topography of the Project site and surrounding area including H Street;
- b) The use of protective construction standards as specified in section IV. A. of the Settlement Agreement;

- c) The recordation of the "Nuisance Easement and Dispute Resolution Covenant" against the Yuba Heights Property and/or any component thereof.

On motion of _____, seconded by _____, the above resolution was approved by the City Council of the City of Benicia at a regular meeting held on the _____, 2008, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release of all Claims ("Agreement") is made by and between APS West Coast, Inc., doing business as AMPORTS, Inc., a California corporation (hereafter, "AMPORTS") and Anthony Investments, Tracy Anthony; and Herbert P. Jenkins; Daniel G. Raffanti; and their respective heirs, representatives, successors, assigns, executors, administrators and representatives or any other persons or entities acting on their behalf or in active concert with them, and each of them (hereinafter the "Yuba Heights parties") and the City of Benicia, City Council of The City of Benicia (hereafter, the "City"). The parties to this agreement are referred to collectively as the "Parties."

I. DEFINITIONS

"AMPORTS" shall refer to APS West Coast, Inc., doing business as AMPORTS, Inc., a California corporation duly organized and existing under and by virtue of the laws of the State of California and including, but not limited to its executors, administrators, trustees, trustees, beneficiaries, predecessors, successors, assigns, indemnities, partners, partnerships, parent, subsidiary, affiliated and related entities, officers, directors, principals, agents, employees, servants, representatives, and all persons, firms, associations and/or corporations connected with them (including but not limited to all consultants, engineers, trade contractors, subcontractors, material suppliers, title officers, sales persons and sales organizations), who are or may ever become liable to them, including, without limitation, their insurers, sureties and attorneys;

"City" shall refer to the City of Benicia – a municipal corporation located in Solano County California. The City is the lead agency with respect to approval of the subject project and is responsible for complying with provisions of local law and the California Environmental Quality Act (CEQA.)

"Daniel Raffanti" shall refer to an individual and self-identified as project applicant with a contractual interest in real property within the Benicia Views Subdivision.

"Tracy Anthony" shall refer to an individual and is the project applicant as listed in the Initial Study and in the Agenda Item for the City Council Meeting on September 4, 2007, Public Hearing.

"Herbert P. Jenkins" shall refer to an individual and is the project applicant listed on the Initial Study and in the Agenda Item for the City Council Meeting on September 4, 2007, Public Hearing.

"Project" shall refer to the properties located at Solano County APN 89-074-020, 89-074-080, 89-074-090 and 89-074-100, the legal descriptions are attached and incorporated herein by reference. The Project is known as the Yuba Heights subdivision, also known as Benicia Views, which consists of the subdivision of four vacant residential parcels into seven residential parcels. Two parcels would be 6,250 square feet each and five parcels would be 7,500 square feet each. Additionally, a 300 foot section of the alley right-of-way located off East Sixth Street, between East H and East I Streets would be asphalted.

“Industrial Activities” shall refer to those activities, carried out by AMPORTS, which may generate annoying effects including but not limited to: noxious odors, truck, shipping and rail traffic, vibrations, noise, lights, glare, dust, vapors, smoke, electrical disturbances and other impacts, including but not limited to trespasses of the foregoing or the like at levels and during hours that residents may find disturbing or harmful or create serious difficulties in residential functions, including sleeping, eating and relaxation; and may increase in number and intensity in the future, and may require the passage of even more significant numbers of commercial trucks and other commercial vehicles, including cargo ships, traffic from which occurs 24 hours a day, seven days a week, with much of that activity occurring at night and during weekends and holidays.

II. RECITALS

- A. On or about March 15, 2007, Tracy Anthony and Herbert Jenkins requested environmental review and approval of a tentative subdivision map for the Project.
- B. On or about July 6, 2007, the city released an initial study/mitigated negative declaration for the project.
- C. On or about July 12, 2007, the Planning Commission at a regular meeting recommended approval of the proposed tentative subdivision map with conditions and the initial study/mitigated negative declaration to the City Council.
- D. The mitigated negative declaration and tentative subdivision map and various actions necessary for approval of the Project and related testimony were considered by the City Council at a public hearing on August 21, 2007 and September 4, 2007.
- E. On or about September 4, 2007, the City Council approved a tentative subdivision map, found the initial study/mitigated negative declaration legally adequate, and approved the Project.
- F. On or about September 26, 2007, the City caused a notice of determination regarding the approval of the Project to be filed and posted.
- G. On or about October 9, 2007, as amended on November 27, 2007 AMPORTS sent the City a notice of Intent to file a Petition for Writ of Mandate regarding its September 4, 2007 approvals and associated action pertaining to the Project.
- H. On or about October 25, 2007, and as amended on or about November 21, 2007, the Parties entered into a tolling agreement (“the Tolling Agreement”) which allowed for the tolling of applicable statutes for the filing of a Petition for Writ of Mandate until January 4, 2008 pertaining to the Project’s findings and related actions.
- I. There is a current and ongoing dispute and controversy that presently exists between the Parties. The Parties wish to resolve all disputes between them and avoid litigation

by entering into this Settlement Agreement with each other with respect to the facts, circumstances, and events of the above-referenced claims and available claims, subject to the terms and conditions of herein. This Agreement is entered into between the Parties to bring to a close all disputes, controversies and/or claims regarding the Industrial Activities and the Project, and the Parties and all litigation and claims arising therefrom, and any potential future claims or complaints in any way related to the current and future Industrial Activities on the current and future use of the Project.

NOW, THEREFORE, IN CONSIDERATION OF THE TERMS AND CONDITIONS SET FORTH IN THIS MUTUAL AGREEMENT, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

III. INCORPORATION OF RECITALS

The recitals above, and all defined terms in such recitals and the introductory paragraph, are hereby incorporated into this Agreement as if set forth herein in full.

IV. COVENANTS

A. In full and final settlement of the claims asserted by the AMPORTS and for other good and valuable consideration, receipt of which is hereby acknowledged, the Yuba Heights Parties agree as follows:

1. Yuba Heights parties shall incorporate the following into its building specifications for each of the Project's residences and any outbuildings where people may spend substantial time (collectively "units"):
 - a. Each unit shall have windows with an STC rating of 35 or above of laminated safety glass, or the equivalent.
 - b. Each unit shall have central air cleaners that provide "whole-house" ventilation systems sufficient for the size of the residence to maintain healthful air quality within each particular residence, given the proximity of the Project's location to Industrial Activities.
 - c. Each unit shall incorporate and install other best available technology and materials in its building design and construction so that noise and/or odors emanating from AMPORTS' Industrial Activities are reduced to the greatest extent possible.
 - d. The Parties shall execute and cause to be recorded on the title of each parcel the "Nuisance Easement and Dispute Resolution Covenant," as attached hereto and incorporated herein by this reference as Exhibit A.

B. Subject to any and all rights of the public and procedures required under the City's Municipal Code, including without limitation rights to appeal and public hearing, the City

agrees as follows:

1. As soon as practicable and to the extent required by law, the City shall conduct a public hearing to consider amending Resolution No. 07-103 on the limited issue of the evidence supporting the City's finding set forth in subdivision (j) -- that H Street provides an adequate buffer between residential and industrial uses. The City Council shall review the basis upon which the finding in subdivision (j) of Resolution No. 07-103 was made and determine what additional facts and evidence support amending the finding in subdivision (j), including but not limited to: recordation of the attached "Nuisance Easement and Dispute Resolution Covenant;" the construction standards set forth herein in paragraph (A)(1); the distance of the width of H Street; and the difference in the elevation between the Project and AMPORTS' Industrial Activities. (See Exhibit B as attached hereto, as a Draft Resolution Amending the Finding in subdivision (j).)
2. The City's Community Development Director shall recommend to the City Council that the above facts and evidence as stated in (B)(1) support amending the City's finding set forth in subdivision (j) of Resolution No. 07-103.

C. This Settlement Agreement is contingent upon the City's adoption of an amendment to Resolution 07-103 subdivision (j) to the satisfaction of AMPORTS. Adoption of Draft Resolution Amending the findings in subdivision (j) in substantial compliance with Exhibit B shall be deemed satisfactory.

D. Amended Tolling Agreement.

The Tolling Agreement is hereby incorporated by reference and amended as follows:

1. The statute of limitations for filing a petition for writ of mandate pursuant to Code of Civil Procedure sections 1085, 1094.5, Public Resources Code section 21000 *et seq.*, shall be extended until 30 days after the City has held the hearing and considered findings as contemplated in Section IV (B)(1) of the Agreement.

E. Mutual Releases.

1. Except as explicitly stated in this Agreement, the Parties themselves and on behalf of their present and former agents, members, employees, employers, heirs, spouses, children, issue, estates, beneficiaries, representatives, executors, administrators, attorneys, insurers, mortgagors, predecessors and successors-in-interest, assigns, and each of them and all those claiming by, through, under or in concert with them or any of them (the "Releasing Parties") agree to release and discharge each other from any and all claims, contentions, rights, debts, liabilities, demands, accounts, reckonings, obligations, duties, promises, costs, expenses

(including, but not limited to, attorneys' fees and costs), liens, subrogation rights, indemnification rights, damages, losses, actions, and causes of action, of any kind whatsoever (collectively, the "Claims"), whether due or owing in the past, present or future, and whether based upon contract, tort, statute, or any other legal or equitable theory of recovery, and whether known or unknown, suspected or unsuspected, fixed or contingent, matured or unmatured, with respect to, pertaining to, or arising from any matters, acts, commissions, events, conduct or occurrences relating to the Action.

2. The Releasing Parties further waive all rights and benefits which any of them may have under section 1542 of the Civil Code of the State of California which states as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

The Releasing Parties warrant and represent that the significance and effect of the waiver of rights under section 1542 of the California Civil Code is understood.

3. The Parties hereto knowingly acknowledge that there is a risk in that, subsequent to the execution of this Agreement, they may incur, suffer or sustain injury, loss, damage, cost, attorneys' fees, expenses, or any of these, which are in some way caused by and/or connected with the Project and/or any disputes related to the Property, and which are unknown and unanticipated at the time this Agreement is signed, and which are not presently capable of being ascertained. The Parties thereto further acknowledge that there is a risk that such damages as are known may become more serious than any of them now expect or anticipate. Nevertheless, the Parties hereto acknowledge that this Agreement has been negotiated and agreed upon in light of those realizations and each of them hereby expressly waives all rights each may have in such unsuspected claims and damages. Accordingly, this release shall remain in full force as a complete release of such Claims notwithstanding the discovery or existence of any such additional or different Claims or facts before or after the date of this Agreement.
4. In entering into this Agreement, the parties acknowledge that they have been given the opportunity to obtain independent legal advice and have relied on their own investigation with respect to the advisability of making the settlement provided herein. The parties acknowledge that they have read this Agreement and are fully aware of the contents of the Agreement

and its legal effect. This Agreement is entered into voluntarily and without any coercion by or undue influence on the part of any person, firm or corporation. The mere fact that any party is not represented by counsel of the sole choice of such party and shall not anyway be deemed to nullify, void, or alter the Agreement and enforcement of the Agreement in any way.

5. Releasing Parties represent and warrant further that this release is executed voluntarily and without duress or undue influence on the part of or on behalf of any other Party or any other person or entity whatsoever. Releasing Parties further agree to refrain from asserting or pursuing, or supporting another party in asserting or pursuing, in a local or judicial forum, any claim or action solely for purposes of harassing a party to this Agreement.

F. This Agreement is a compromise and settlement of disputed claims among the Parties and shall not be construed as an admission of liability by any of the parties hereto. It is expressly understood and agreed by the Parties that this Agreement is the result of a compromise of disputed claims and that the Parties deny any liability whatsoever to each other, but in executing this Agreement, it is the intention of the Parties to fully and finally dispose of any and all claims which exist or may hereafter exist arising out of or in any manner connected with or related to the claims or the lawsuit resulting therein.

G. The parties hereby represent, warrant and agree as follows:

The Parties have made no statement, representation, or promise, other than as set forth herein, to the opposing parties in entering into this Agreement which has been relied upon in entering into or executing Agreement; any representation, warranty, promise, or condition, whether written or oral, not specifically incorporated herein shall not be binding upon any of the parties hereto; the parties acknowledge that in entering into the Agreement they have not relied upon any representation, promise, or conditions not specifically set forth herein; and that the parties have the full legal right and authority to enter into this Agreement and fully authorize and release the matters referred to herein.

H. Nothing in this agreement is intended as or shall be construed by the Parties as a basis to delay construction of the Project.

I. The Agreement may be executed in one or more counter parts, each of which shall be deemed an original, and which taken together, shall constitute one and the same instrument. If the Parties sign this Agreement on different dates, then the latest date of signing by a Party shall be the Effective Date.

J. The Parties acknowledge and agree that the drafting of this Agreement has been a joint effort by the parties and that the Agreement shall not be deemed prepared or drafted by any one of the Parties.

K. This Agreement constitutes a single, integrated, written contract and expresses the

entire agreement of the Parties hereto with respect to the subject matter of this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the Parties hereto.

L. This Agreement constitutes the entire agreement between the Parties and it is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect or particular whatsoever except by a writing duly executed by authorized representatives of the Parties. The Parties hereby agree and acknowledge that they will not claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character. There are not oral understandings, statements, or stipulations bearing upon the effect of this Agreement, which have not been incorporated herein.

M. The invalidity or unenforceability of any provision of this Agreement, or any part of any such provision, as determined by a court of competent jurisdiction, shall in no way affect the validity or enforceability of any other provision of this Agreement or the remainder of such provision.

N. This Agreement is made, and shall be construed and enforced in accordance with the laws of the State of California. Nothing contained herein shall be construed so as to require the commission of any acts contrary to law, and wherever there appears a conflict between any provision of this Agreement and any present or future statute, law, ordinance or regulation, operation of this Agreement shall be curtailed and limited only to the extent necessary to make it comply with such statute, law, ordinance or regulation.

O. Paragraph and section headings within this settlement agreement are of no legal force and effect, but are provided solely for convenience.

V. DISPUTE RESOLUTION

A. Should a dispute arise over performance of any obligation set forth in this Agreement, the party claiming the breach shall give the other party written notice of the alleged breach ("Agreement Claim"), itemizing each obligation it disputes and the manner in which it contends the other party has failed to perform. Following receipt of such notice, the Parties or their representatives shall, within thirty (30) business days of receipt of the notice, personally meet and confer to attempt to resolve the Agreement Claim. Agreement Claim(s) shall be sent to:

City of Benicia

Heather McLaughlin, City Attorney
250 E "L" Street
Benicia, CA 94510

West Coast APS, Doing Business As, AMPORTS, Inc.

AMPORTS, Inc.
c/o Law Offices of Dana Dean
835 First Street
Benicia, CA 94510

Tracy Anthony and Anthony Investments, Inc.

Tracy Anthony
P.O. Box 745
Layfayette CA 94549

Herbert P. Jenkins

Herbert P. Jenkins
6273 Spinnaker Ridge Lane
Clinton, WA 98236

Daniel Raffanti

Dan Raffanti
125 Ardmore Way
Benicia CA 94510

If any and all of the Parties to the Agreement Claim cannot resolve the Agreement Claim through the meet and confer process discussed above, any party may seek enforcement of this Agreement through the following:

- a. If a dispute concerning this Agreement is not resolved informally within thirty (30) calendar days, then any complaining party shall submit the matter to mediation before a retired judge or justice or other agreed mediator.
- b. If mediation is unsuccessful, any complaining party must submit the matter to binding, mandatory arbitration before a single, neutral arbitrator, under the default AAA rules and procedures (although not through AAA unless agreed to by the Parties.) The complaining party shall provide the entire cost of arbitration itself, including arbitrator fees, room rental .etc. The prevailing party in any arbitration shall be entitled to recover its reasonable attorney's fees and arbitration costs.

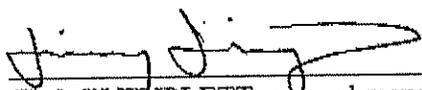
VI. ATTORNEY FEES AND COSTS

- A. Each party agrees to bear its own attorneys fees and costs in the drafting of this document.
- B. In the event of any controversy, claim or dispute between or among any of the parties arising out of this Agreement, the prevailing party, as defined by California Code of Civil Procedure section 1032(4), except that the prevailing party may be

determined in mediation, by the arbitrator or by a court and such prevailing party shall be entitled to recover from the losing party or parties its reasonable attorneys' fees and costs after mediation, arbitration and/or court.

WHEREFORE, the Parties hereto have executed this Agreement the day and year indicated below.

Date: 9 December, 2007 AMPORTS, Inc.

By: 
JIMMY TRIPLETT, general manager

Date: _____, 2007 Daniel Raffanti

By: _____
DANIEL RAFFANTI

Date: _____, 2007 Tracy Anthony

By: _____
TRACY ANTHONY

Date: _____, 2007 Herbert J. Jenkins

By: _____
HERBERT J. JENKINS

Date: _____, 2007 City of Benicia, California

By: _____
JAMES ERICKSON
CITY COUNCIL OF THE CITY OF BENICIA and
CITY OF BENICIA.

determined in mediation, by the arbitrator or by a court and such prevailing party shall be entitled to recover from the losing party or parties its reasonable attorneys' fees and costs after mediation, arbitration and/or court.

WHEREFORE, the Parties hereto have executed this Agreement the day and year indicated below.

Date: _____, 2007 AMPORTS, Inc.

By: _____
JIMMY TRIPLETT, general manager

Date: JANUARY 3rd, ^{2008 DR}~~2007~~ Daniel Raffanti

By: *Daniel Raffanti*
DANIEL RAFFANTI

Date: _____, 2007 Tracy Anthony

By: _____
TRACY ANTHONY

Date: _____, 2007 Herbert J. Jenkins

By: _____
HERBERT J. JENKINS

Date: _____, 2007 City of Benicia, California

By: _____
JAMES ERICKSON
CITY COUNCIL OF THE CITY OF BENICIA and
CITY OF BENICIA.

determined in mediation, by the arbitrator or by a court and such prevailing party shall be entitled to recover from the losing party or parties its reasonable attorneys' fees and costs after mediation, arbitration and/or court.

WHEREFORE, the Parties hereto have executed this Agreement the day and year indicated below.

Date: _____, 2007 AMPORTS, Inc.

By: _____
JIMMY TRIPLETT, general manager

Date: _____, 2007 Daniel Raffanti

By: _____
DANIEL RAFFANTI

Date: 1-3, 2008, 2007 Tracy Anthony

By: 
TRACY ANTHONY

Date: _____, 2007 Herbert J. Jenkins

By: _____
HERBERT J. JENKINS

Date: _____, 2007 City of Benicia, California

By: _____
JAMES ERICKSON
CITY COUNCIL OF THE CITY OF BENICIA and
CITY OF BENICIA.

determined in mediation, by the arbitrator or by a court and such prevailing party shall be entitled to recover from the losing party or parties its reasonable attorneys' fees and costs after mediation, arbitration and/or court.

WHEREFORE, the Parties hereto have executed this Agreement the day and year indicated below.

Date: _____, 2007 AMPORTS, Inc.

By: _____
JIMMY TRIPLETT, general manager

Date: _____, 2007 Daniel Raffanti

By: _____
DANIEL RAFFANTI

Date: _____, 2007 Tracy Anthony

By: _____
TRACY ANTHONY

Date: _____, 2007 Herbert J. Jenkins

By: _____
HERBERT J. JENKINS

Date: 01/07/08, ~~2007~~ City of Benicia, California

By: 
JAMES ERICKSON
CITY COUNCIL OF THE CITY OF BENICIA and
CITY OF BENICIA.

Date: 1/4/08, 2007 Approved as to form:

CITY OF BENICIA

By: 
HEATHER MCLAUGHLIN

Attorney for CITY COUNCIL OF THE CITY OF BENICIA
and CITY OF BENICIA.

Date: _____, 2007 Approved as to form:

LAW OFFICES OF DANA DEAN

By: _____
DANA DEAN
Attorney for AMPORTS

Date: _____, 2007 Approved as to form:

CITY OF BENICIA

By: _____

HEATHER MCLAUGHLIN
Attorney for CITY COUNCIL OF THE CITY OF BENICIA
and CITY OF BENICIA.

Date: 1/9, 2007 Approved as to form:

~~LAW OFFICES OF DANA DEAN~~

By: _____

DANA DEAN
Attorney for AMPORTS

EXHIBIT A

Recording requested by:

Dana Dean, Attorney at Law

When recorded mail to:

Amports, Inc.

c/o Law Offices of Dana Dean

835 First Street

Benicia, California 94510

(707) 747-5206

Space above this line for recorder's use

NUISANCE EASEMENT AND DISPUTE RESOLUTION COVENANT

DEFINITIONS

"PROPERTY" shall refer to units within the Yuba Heights Project (or any derivation thereof), Solano County APN 89-074-020, 89-074-080, 89-074-090 and 89-074-100, located on East Sixth Street between East H and East I Streets, in Benicia, California, legal descriptions of which are attached as Exhibit 1 through 4 inclusive, and which are incorporated herein by reference.

"Industrial Activities" shall refer to those activities carried out by AMPORTS, its executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, indemnities, partners, partnerships, parent, subsidiary, affiliated and related entities, officers, directors, principals, agents, employees, servants, representatives, and all persons, firms, associations and/or corporations connected with them (including but not limited to all consultants, engineers, trade contractors, subcontractors, material suppliers, title officers, sales persons and sales organizations), who are or may ever become liable to them, including, without limitation, their insurers, sureties and attorneys, which may generate annoying effects including but not limited to: noxious odors, truck, shipping and rail traffic, vibrations, noise, lights, glare, dust, vapors, smoke, electrical disturbances and other impacts at levels and during hours that residents may find disturbing or harmful or create serious difficulties in residential functions, including sleeping, eating and relaxation; and may increase in number and intensity in the future, and may require the passage of even more significant numbers of commercial trucks and other commercial vehicles, including cargo ships, traffic from which occurs 24 hours a day, seven days a week, with much of that activity occurring at night and during weekends and holidays.

"AMPORTS" shall refer to APS West Coast, Inc., doing business as AMPORTS, Inc., a California corporation duly organized and existing under and by virtue of the laws of the State of California and including, but not limited to its executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, indemnities, partners, partnerships, parent, subsidiary, affiliated and related entities, officers, directors,

NUISANCE EASEMENT AND DISPUTE RESOLUTION COVENANT - YUBA HEIGHTS

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IX-C-21

principals, agents, employees, servants, representatives, and all persons, firms, associations and/or corporations connected with them (including but not limited to all consultants, engineers, trade contractors, subcontractors, material suppliers, title officers, sales persons and sales organizations), who are or may ever become liable to them, including, without limitation, their insurers, sureties and attorneys.

“City” shall refer to the City of Benicia – a municipal corporation located in Solano County California. The City is the lead agency with respect to approval of the subject project and is responsible for complying with provisions of local law and the California Environmental Quality Act (CEQA.)

“Daniel Raffanti” shall refer to an individual and self-identified as project applicant with a contractual interest in real property within the PROPERTY.

“Tracy Anthony” shall refer to an individual and is the project applicant as listed in the Initial Study and in the Agenda Item for the City Council Meeting on September 4, 2007, Public Hearing pertaining to the PROPERTY.

“Herbert P. Jenkins” shall refer to an individual and is the project applicant listed on the Initial Study and in the Agenda Item for the City Council Meeting on September 4, 2007, Public Hearing pertaining to the PROPERTY.

PREAMBLE

The intent of this deed restriction is to ensure compliance with Benicia General Plan goals, and maintain the industrial integrity and operations of AMPORTS’ Industrial Activities and related activities located near the Project in Benicia, despite residential development in the neighboring areas, including but not limited to the residential units planned for construction at the PROPERTY.

The Nuisance Easement and Dispute Resolution Covenant herein are directed towards maintaining AMPORTS’ Industrial Activities, while simultaneously facilitating residential uses by consenting and informed individuals who wish to reside or otherwise occupy the PROPERTY adjacent to AMPORTS’ Industrial Activities, despite its industrial character and effects.

THIS DECLARATION is made by and between Dan Raffanti, Herbert Jenkins and Tracy Anthony, and their respective heirs, executors, administrators, trustors, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated and related entities, officers, directors, principals, agents, employees, servants, representatives and attorneys, (“Grantor”) and AMPORTS (“Grantee”).

WHEREAS, Grantor owns certain real Property, “the PROPERTY” as herein referenced, legal descriptions of which are attached and incorporated; and

WHEREAS, Grantee is the owner of certain neighboring real property zoned for industrial purposes, legal descriptions of which are attached and incorporated herein, and may come to own other neighboring real property of similar zoning, and

WHEREAS, Grantor desires to construct a residential development on the PROPERTY which is currently vacant land neighboring property owned by Grantee; and

WHEREAS, Grantor intends by this Nuisance Easement and Dispute Resolution Covenant to establish restrictions, limitations, and covenants that run with the land and be binding on all parties, and their successors, having or acquiring any right, title, or interest in the PROPERTY, and shall be enforceable by Grantee; and

WHEREAS, it is Grantor and Grantee's intention that this Nuisance Easement and Dispute Resolution Covenant, and all of the terms and conditions hereof, shall be binding on and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

NOW THEREFORE, Each leasee, grantee of a conveyance, or purchaser under a contract or agreement of sale covering any right, title, or interest in the PROPERTY, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all of the restrictions, covenants, and limitations set forth herein.

1. NUISANCE EASEMENT

Grantor hereby grants to Grantee a Nuisance Easement over the PROPERTY so that Grantee may continue to pursue its Industrial Activities, regardless of any residential or any other use of the PROPERTY. This Nuisance Easement shall be construed as an easement appurtenant and shall attach to all industrially zoned property owned by Grantee and all similarly zoned property which Grantee acquires in the future, such properties' legal description to be incorporated by reference at the time of acquisition.

This document shall be prima facie evidence of Grantor or his assigns acknowledgement and acceptance of AMPORTS' industrial activities. This document shall be admissible in any Court of law and, mediation or arbitration as a binding agreement made with valuable consideration between the parties.

2. DISPUTE RESOLUTION COVENANT

The Parties agree that any and all disputes regarding this Agreement shall be handled through the dispute resolution provisions of this Agreement as follows:

- a. In any dispute concerning this Agreement, the Parties shall initially attempt to resolve the dispute by informal negotiations;
- b. If a dispute concerning this Agreement is not resolved informally within thirty

(30) calendar days of written notice of such disputes, then any party shall submit the matter to mediation before a retired judge or justice or other agreed mediator.

c. If mediation is unsuccessful, any complaining party must submit the matter to binding, mandatory arbitration before a single, neutral arbitrator, under the default AAA rules and procedures (although not through AAA unless agreed to by the Parties.) The complaining party shall provide the entire cost of arbitration itself, including arbitrator fees, room rental .etc. The prevailing party in any arbitration shall be entitled to recover its reasonable attorney's fees and arbitration costs.

3. SCOPE AND DURATION

The Nuisance Easement and Dispute Resolution Covenant are imposed on the PROPERTY for the direct benefit of AMPORTS. These easements and covenants shall run with the land and shall be binding on all of the owners of the PROPERTY and all persons claiming under them, and continue to be in full force and effect for a period of 50 (fifty) years from the date that this document is recorded. After the expiration of this period, the easement and covenant will be automatically extended for successive periods of 10 (ten) years each, unless an instrument, signed by AMPORTS or its assigns, agrees to amend or terminate this Nuisance Easement and Dispute Resolution Covenant.

4. SEVERABILITY

If any of the provisions of this Nuisance Easement and Dispute Resolution Covenant are held to be invalid or unlawful by the final judgment of a Court of competent jurisdiction, that invalidity or illegality will not affect the validity of any other provisions of this Nuisance Easement and Dispute Resolution Covenant.

IN WITNESS WHEREOF, Grantor has executed this Agreement on the last date herein written.

Executed on this _____ day of _____, 2007,
at _____, California

Tracy Anthony Grantor, Date _____

Daniel Raffanti Grantor, Date _____

Herbert P. Jenkins Grantor, Date _____

IN WITNESS WHEREOF, Grantee has executed this Agreement on the last date written herein

Executed on this _____ day of _____, 2007,
at _____, California

_____ Grantee,
Jimmy Triplett
General Manager AMPORTS

State of _____)
) ss.
County of _____)

On _____ before me,
_____, a Notary Public in and for said County
and State, personally appeared

_____, personally known to me (or proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

EXHIBIT B

DRAFT RESOLUTION NO. 08-

A RESOLUTION OF THE CITY COUNCIL TO THE CITY OF BENICIA AMENDING RESOLUTION NO. 07-103 WHICH APPROVED THE "YUBA HEIGHTS" TENTATIVE SUBDIVISION MAP FOR THE SUBDIVISION OF FOUR VACANT RESIDENTIAL PARCELS INTO SEVEN RESIDENTIAL PARCELS LOCATED ON EAST H AND EAST I STREETS EAST OF EAST SIXTH STREET, AND ADOPTING THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION FOR THE PROPOSED SUBDIVISION

WHEREAS, the Planning Commission at a regular meeting on July 12, 2007 recommended approval of the proposed tentative subdivision map and the Initial Study/Mitigated Negative Declaration to the City Council;

WHEREAS, The City Council approved Resolution No. 07-103 at a regular meeting of City Council held on September 4, 2007 after duly noticed public hearings on August 21, 2007 and September 4, 2007;

WHEREAS, the Resolution No. 07-103's finding in subdivision (j) states, "The project is consistent with the General Plan requirement for buffers between residential and industrial uses because H Street provides such a buffer to an adequate extent and,"

WHEREAS, the City of Benicia, the Project Applicants and adjacent property owner have entered into a Settlement Agreement and Mutual Release, which calls for, among other things, the recordation of a "Nuisance Easement and Dispute Resolution Covenant" on all parcels within the Yuba Heights Subdivision;

WHEREAS, the City Council wishes to amend the finding as set forth in Resolution No. 07-103's subdivision (j) in full as set forth hereafter:

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Benicia hereby adopts this amendment to Resolution No. 07-103 as follows:

The finding set forth in subdivision (j) – shall be modified in full to read:

"The project is consistent with General Plan requirements for (1) buffers between residential and industrial zoning and (2) protection of existing uses from encroachment by incompatible uses, through incorporation of all of the following factors combined, no one of which is sufficient on its own;

- a) The particular topography of the Project site and surrounding area including H Street;
- b) The use of protective construction standards as specified in the Settlement Agreement;
- c) The recordation of the "Nuisance Easement and Dispute Resolution Covenant" against the Subject Property and/or any component thereof.

IX-C-27

**AGENDA ITEM
CITY COUNCIL MEETING: JANUARY 15, 2008
ACTION ITEM**

DATE : January 3, 2008

TO : City Manager

FROM : Director of Parks and Community Services

SUBJECT : **CLARIFICATION OF CITY COUNCIL DIRECTION
REGARDING THE COMMITMENT FOR A NEW SKATE PARK
SOUTH OF HIGHWAY 780**

RECOMMENDATION:

To the extent desired by City Council, to clarify their direction given on November 20, 2007 regarding the development of a new skate park south of Highway 780.

EXECUTIVE SUMMARY:

At the November 20, 2007 City Council meeting the City Council took the following action:

- Directed staff to close the Willow Glen Skate Park until funding can be identified to demolish the skate park asphalt and concrete and replace with turf and landscaping;
- A commitment to identify an alternative site to be located south of Highway 780 for a new skate park designed for younger users. The commitment of November 20th was not a formal action by the City Council;
- Identify funding to lay a gravel roadway to the Benicia Dog Park at the Benicia Community Park.

After hearing testimony at the December 4, 2007 City Council meeting regarding the closure of the Willow Glen Skate Park, the City Council wanted this item brought back to clarify their direction regarding the development of a new skate park south of Highway 780.

BUDGET INFORMATION:

No impact at this time.

BACKGROUND:

Following the City Council's action on November 20th, staff moved to close the skate park at Willow Glen with the installation of a temporary fence. Staff continues to develop costs and funding sources for demolition and landscape improvements at Willow Glen, a gravel road for

the dog park at Benicia Community Park and the square footage costs for developing a new skate park which will be discussed at mid-year budget review anticipated in early February.

At the December 12, 2007 meeting of the Parks, Recreation and Cemetery Commission, staff advised the Commission of the City Council's action of November 20th and was prepared to recommend the Commission establish an ad-hoc committee to identify alternative skate park locations and address related concerns. Staff's recommendation would have suggested that the committee consist of skate boarders, neighbors, interested citizens and members from the Parks, Recreation and Cemetery Commission. This recommendation was suspended until further direction is given by the City Council.

Staff is prepared to provide additional information and respond to questions.

Note: Also, on the 15th of January, 2008 Council Agenda is a request under the Council Comments section from Mayor Patterson regarding the desire to have the City Council reconsider the closure of Willow Glen Skate Park, retain the safety fence while conducting a facilitated inclusive discussion of skate park safety, nuisances from skate park operation and alternative skate park sites.

CITY COUNCIL MEMBER

REQUEST FOR ITEM ON COUNCIL AGENDA

Please submit this request by the Friday preceding the agenda packet distribution day, or 12 calendar days prior to the meeting. (For example, for a Council meeting on March 21st, please submit the request by March 10th.)

Requested by:

Mayor Patterson

Requested Council Meeting Date:

January 15, 2008

While every effort will be made to include your item on the requested date, please note that depending on the number of items already on an agenda, it may be placed on the subsequent meeting date.

Agenda Item Name:

Request to reconsider Willow Glenn Skate Park

Description of Item (i.e., the text that will go on the agenda as the middle paragraph, between the title and recommendation):

Mayor Patterson has requested that the City Council reconsider Willow Glenn Skate Park closure. It is intended to keep the "safety fence" installed during the following process and information gathering.

Such reconsideration would be for the following:

- 1. Convene a community professionally facilitated conversation about the Willow Glen Skate Park that specifically includes noticing all the neighbors and all those who have spoken at PRCC**
- 2. City Council to review and discuss the following:**
 - a. A report by a qualified skate park specialist about the condition of the pavement and the insurance risk actual cost estimates for repair past problems and how to avoid based on safety and insurance information;**
 - b. Consider reopening enforcement (measures that could be used and consequences);**

- c. **Improvements to current park, including small fence to prevent spill over onto sidewalk Taco Bell's responsibility with trash private property surveillance cameras to protect property owners from fence, car, mailbox and other vandalism; and**
- d. **Potential new sites, including estimated cost and estimated time to have on-line.**

If you would like any attachments regarding your item included in the packet, please note them below and forward them via email to acardwell@ci.benicia.ca.us, if possible, along with this completed form. If attachment(s) are not available via email, please describe the attachment(s) desired and any information you may have on where to locate (website, etc.) so they can be included in the packet.

A copy of this completed form will be included in the packet, followed by any attachments you note above. Thank you!

Jim Erickson - Skate Board Park at Willow Glen

From: "Christiane Smith" <swissmiss1@comcast.net>
To: <jerickson@ci.benicia.ca.us>
Date: 1/7/2008 7:21 AM
Subject: Skate Board Park at Willow Glen

Dear Mr. Erickson,

Please distribute the information below to all Benicia City council members:

We live one block away from the Skate board Park at Willow Glen. We believe that a skate board park should not be placed near homes. It should be placed near a school with green fields (like the closed Mills school) so that the neighbors are not affected. No one is interested in purchasing a house across a skate board park. I would not. Would you? The other important factor is that the Willow Glen State Park has no parking lot and the users were using the sports center parking lot, which is wrong. So to reconsider the reopening of this park and believe that the kids will now behave well is a wish but not a reality. We see just now often kids – AT NIGHT – skate boarding IN THE MIDDLE OF THE STREET and they surprise us. If they are ready to behave so well why are they skate boarding in the middle of the street when it is dark? Do they feel that they have that right? Why aren't they supervised by their parents or the police?

Many thanks for making sure that the Skate board Park at Willow Glen remains closed and consider building a new one in the proper location away from homes.

Sincerely,

Christiane Smith &
Jeffery A. Milburn
645 West J Street

X-A-3

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