

**From:** Elizabeth Patterson <elopato@comcast.net>  
**To:** Heather McLaughlin <Heather.McLaughlin@ci.benicia.ca.us>, Jim Erickson <Jim.Erickson@ci.benicia.ca.us>, Anne Cardwell <Anne.Cardwell@ci.benicia.ca.us>  
**Date:** 2/3/2009 7:34:14 AM  
**Subject:** Mayor's edits to Seeno Agreement

Heather et al,

Please review and be prepared to discuss tonight.

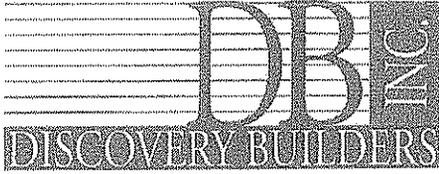
It would appear we would need a resolution by council to rescind the action if the majority of council wishes to do so. Please be prepared to provide advice on this matter.

It would be helpful to clarify the status of the application - the project as denied. The staff report indicates a "new application" or refers to an application. If there is a new application, then do all ordinances and fees (as updated last month apply?

The attachment is the same document but in two formats. Please make copies and distribute to council members, public and the Seeno Company.

Thanks,

Elizabeth



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Concord, California 94520  
(925) 682-6419  
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January 23, 2009

Dear Mayor Patterson and Members of the Benicia City Council:

After my conversations with members of the City Council and after the January 7, 2009 Community Meeting and further discussions within our organization, we offer the following in the hope that you will rescind your November 18, 2008 decision to deny our application to develop the Benicia Business Park Project. Please be advised that the commitments set forth herein are made by both the project owner, West Coast Home Builders, Inc. and the project developer, Discovery Builders, Inc. (hereafter collectively "Discovery Builders"). To that end please accept the following offer:

If, at the Feb 3, 2009 City Council meeting, the City Council votes to rescind its decision to deny our project we will commit to the following in exchange for said rescission:

#### I. WAIVER AND EXTENSION OF TIME LIMITS

Discovery Builders shall waive any present or past statutory or regulatory timelines for the Project and its application. We further agree to extend any time limits that may have accrued or will accrue as a result of the continued procession of our project for 12 months from the date of the Council's decision to overturn the Project denial. Timeliness of the process is essential to our agreement, however if the process takes longer, we are committed to continuing to work with the City and we will grant a 6 month extension in good faith. *It is agreed that failure to finalize by council approval the Specific Plan and Development agreement within 18 months, the project is deemed denied.*

#### II. DEVELOPMENT AGREEMENT

Discovery Builders shall enter into a Development Agreement with the City of Benicia, which shall be recorded prior to recording the tentative map. We shall negotiate the terms of the Agreement in good faith, but we acknowledge at the outset that the Agreement shall include the following components as well as others:

- A. The Specific Plan and all conditions of approval already introduced for the Project shall be terms of the Development Agreement unless the City Council determines one or more terms unnecessary to support the redesigned project as envisioned in the future Specific Plan; said conditions of approval shall have sustainability metrics and performance

measures identified in the certified Mitigation and Monitoring Plan of the future SEIR;

- B. The agreement shall include a requirement that Discovery Builders negotiate a separate written agreement with the Benicia Unified School District (the BUSD Agreement) to address the Project's impacts on Semple School, and that said agreement is in place prior to approval of the Development Agreement.
- C. The Agreement shall include a requirement that Discovery Builders enter into a separate written agreement (the PLA) with construction unions, including those commonly known as Building Trades, for work to be done on the Project including tenant improvements and the said agreement be in place prior to approval of the Development Agreement; said agreement shall be adopted by BUSD prior to the recording of the Tentative Map.
- D. The terms of the BUSD agreement and the PLA shall be separate from the Development Agreement but must be in place prior to approval of the Development Agreement; said PLA agreement shall be filed with the City of Benicia prior to issuance of the first Building Permit.

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### III. SUBSEQUENT EIR

In conjunction with the Development Agreement, Discovery Builders shall fund a Subsequent EIR (SubEIR) for the Project:

- A. The processing of the SubEIR shall include two scoping sessions.
  - B. The Health Risk Assessment prepared by LSA, dated November 2008, shall not be used or relied upon in any way during the environmental review and/or further processing of Project approvals;
  - C. The SubEIR shall be prepared by an independent consultant of the City's choosing, but in no case shall LSA be contracted for further work on the Project's environmental review of Project approvals;
  - D. All studies required by the mitigation measures and/or conditions of approval shall be completed prior to issuance of the first grading permit.
- Updated Economic Analysis and Market Study of the Project shall be included in the SubEIR.
- Updated Health Risk Assessment consistent with Education Code 17213.c(2)(c) which state the following: "For a school site with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils." shall be included in the SubEIR.

- G. SubEIR will identify that Development Agreement will be part of the Project.
- H. *The future SubEIR shall avoid significant air quality impacts through project design and transit and other programs. There shall not be overriding findings pursuant to CEQA for certification of the SEIR.*

#### IV. AB32 and SB 375

The Project shall comply with the requirements of AB32 and the Air Resources Board adopted 2008 Strategies and SB 375 to reduce vehicle miles traveled and consistent with an adopted regional plan. This will include but not be limited to implementation of a Transportation Demand Management (TDM) plan to reduce emissions and vehicle miles traveled. A TDM plan will need to be approved for every phase of Project development by the City of Benicia prior to issuance of the first building permit for that Phase. The TDM plan shall include provisions that 1) require the project sponsor to prepare CC&Rs for the project, subject to the approval of the City, to ensure property owners comply with the applicable TDM plan; 2) require the project sponsor to ensure an on-site compliance coordinator is provided in perpetuity to assist all property owners, monitor compliance, prepare annual reports documenting compliance with the applicable state statute and the performance standards of this mitigation measure, and recommend changes to the TDM plan or remedial actions if needed; 3) require the project sponsor to pay the City to retain a consultant with expertise in TDM programs to review the project sponsor's submittals; and 4) require the project sponsor to establish a funding mechanism to fund the on-site TDM services and on-going City oversight.

This TDM will include a free express shuttle service funded by a Benicia Business Park CFD. This shuttle service funded by the CFD will serve the Project site and Downtown Benicia. The TDM plan will also include designs for a transit center constructed on the Project site with properly planned and located shuttle stops. The TDM plan will also provide guidelines and requirements for shared-use parking, traffic calming mechanisms, bike rack locations, car-pool and van-pool ride match programs and requirements for implementation of bike paths and walking paths. This Project will be required to provide capital and operating funds to extend the Benicia Breeze to the Project site. The TDM plan shall require parking and building leases at the project to be "unbundled" (i.e., rental for building space and parking lots shall be separate). Businesses at the Business Park that have 50 or more employees and provide employee parking on a free or subsidized basis shall provide financial compensation to those employees who commute by means other than private automobile, in accordance with CA Health and Safety Code 43845. The TDM plan shall also include other features as determined by mitigations measures in the SubEIR.

The TDM plan shall require submittal of annual monitoring reports to the City, post construction, for implementation of its provisions and resulting commute practices of workers located on the project site. The TDM plan shall include provisions for issuing non-compliance citations for failure to comply with its requirements. The TDM plan

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shall indicate the penalty or other consequence attached to the citation to compel compliance by the project sponsor or subsequent property owner.”

Bio-swales and bio-retention basins must be integrated into the Project design and all buildings within the Project must be LEED certified

V. SPECIFIC PLAN

In conjunction with the Development Agreement and SubEIR Discovery Builders shall work with and fund the City-led preparation of a Specific Plan for the Project consistent with the a vision for a green tech R&D campus style business park, and compliant with paragraphs, III, and IV, V, as part of the Project approval process. Recovery of costs pertaining to infrastructure, including transit, shall be through an assessment district (including, but not exclusive to Mello-Roos) and traffic impact fees.

The Specific Plan shall follow the requirements of Government Code Section 65451. The Specific Plan will establish detailed development standards for the Project. Input from the community and all stakeholders will be included and used to develop the Specific Plan.

The City shall seek to recover the cost for the Specific Plan pursuant to Government Code Section 65456, and transfer such revenue to Discovery Builders.”

VI. ADDITIONAL TERMS AT COUNCIL'S DISCRETION

In addition to the above commitments we agree to the following:

- A. We will fund, lease, or pay for the City expenses, subject to audit by a public certified auditor, associated with the establishment and operation of a Community Advisory Panel or Commission for the Project as determined by the City Council, consisting of the Mayor, another Councilmember, 2 Planning Commissioners, 4 at-large members of the public representing environmental, social and economic interests, and 1 non-voting ex-officio member from the BUSD.

Discovery Builders will fund City expenses, subject to audit by a public certified auditor, for the services of a Project Manager responsible for managing all consultant contracts used by the City for the Project; advising the City on the Development Agreement; certifying compliance with conditions of approval; staffing the Community Advisory Panel; and developing and adhering to timetables for 1) completing the Specific Plan, 2) certifying the SEIR, 3) adopting the Master Plan Overlay, 4) adopting the Development Agreement, and 5) approval of project entitlements.

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- B. We will fund ~~reasonable~~ City expenses, *subject to audit by a public certified auditor*, associated with the establishment and operation of a Business Recruitment Program for the Project *adopted with performance goals and measures*.
- C. We will cooperate with the City in establishing a timetable for actively processing and pursuing project entitlements: We will work with the City to determine realistic dates for completing the Specific Plan, certifying the SEIR, Approval of the Vesting Tentative Map, Master Plan Overlay and Development Agreement *subject to review and approval by Council prior within 45 days of the adoption of a resolution "rescinding the XXX vote*.
- D. We will promote use of local hires *for all phases of construction including tenant improvements to achieve at least XXX % of the construction workforce*.
- E. Implement the *consensus based General Plan sustainability overarching goals for the project which may include amending the current General Plan -to create a Specific Plan for green tech, clean tech, research and development campus for the City of Berkeley*.
- F. Encourage and promote *through an adopted green/clean technology business plan and proactive recruitment plan to achieve adopted performance targets enforced by both penalties and bonuses to be determined during the Plan development*
- G. We will communicate *through a city directed consultant all public meetings and workshops and other communication with city and staff facilitated by the consultant to take the time necessary for comprehensive development, processing and community engagement*.
- H. We will work with the ~~city~~ in developing *an economic development plan subject to paragraph G based on an economic study directed by the city that shall include performance measures to make the Project economically sustainable and feasible for potential users*.

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Thank you for your time and consideration.

Best Regards,

Albert D. Seeno III  
President

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